

INDEPENDENT
ENERGY
PRODUCERS
ASSOCIATION

Steve Kelly
11-8-1

October 20, 2011

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

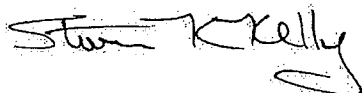
Re: Proposed Resolution Text: Long-Term Contracts

Dear Clerk and Board Members:

In addition to the letter that IEP submitted to the Board and the public record (dated October 10, 2011) we would also like to submit for your consideration the following Resolution language addressing long-term contracts without a means for GHG cost recovery.

Thank you for your consideration of this important matter.

Respectfully submitted,



Steven Kelly
Policy Director

GHG CAP-AND TRADE RULE – SEPTEMBER 2011 15-DAY NOTICE DRAFT
PROPOSED RESOLUTION TEXT
ADDRESSING LONG-TERM CONTRACTS

WHEREAS, certain California facilities subject to the Cap-and-Trade Rule entered into long-term, contracts before the passage of AB 32 and before the parties could reasonably have anticipated AB 32's requirements;

WHEREAS, in some cases such long-term contracts may not allow the seller to pass on the costs that will be imposed on them to purchase allowances under the Cap-and-Trade Rule;

WHEREAS, section 38562 of the Health and Safety Code requires ARB to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize total benefits to California;

WHEREAS, in Attachment to Resolution 10-42, staff committed to "work with interested stakeholders to ensure proper treatment under the regulation of any electricity generators or combined heat and power facilities with pre-AB 32 long-term contracts that do not allow for pass-through of costs associated with greenhouse gas emission:"

WHEREAS, in the Initial Statement of Reasons for Adoption of the Cap-and Trade Rule, Board Staff recognized the importance of protecting parties to long-term contracts, noting that some of those contracts, entered into before the mid-2000s, "do not include provisions that would allow full pass-through of cap-and-trade costs," and may therefore "require special treatment" under the Cap-and-Trade Rule (ISOR at II-32, n.22; Appendix J at J-16 n.15);

WHEREAS, in the notice accompanying the first 15-day changes to the proposed regulation, Staff acknowledged that many parties were seeking to resolve this issue through bilateral contract negotiations, but that, should renegotiation not be possible in all cases, Staff would consider whether special treatment was warranted;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with interested stakeholders to develop and adopt amendments to the Cap-and-Trade Rule by June 2012 to provide transitional relief to covered entities who are parties to long-term contracts that do not allow the recovery of the costs of purchasing GHG emissions allowances;

Supported and Submitted By:

Calpine Corporation

Air Liquide

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PROPOSED RESOLUTION TEXT

SMUD	California Cogeneration Council
Shell Energy North America	Independent Energy Producers Assoc.
Constellation Energy	Rio Bravo Fresono
Rockland Capital	ACE Cogeneration Company, LP
Rio Bravo Poso	Rio Bravo Jasmin
Rio Bravo Rocklin	