CARDINAL COGEN, INC.

288 Campus Drive, Building 14-105 | Stanford, California 94305-4109

February 14, 2014

Rajinder Sahota, Elizabeth Scheehle, and Claudia Orlando
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject:
Public Review Comments To Legacy Contract Proposed Provisions in Discussion Draft of 2013 Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Reference:
Discussion Draft – January 31, 2014, Potential Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Dear Rajinder, Elizabeth, and Claudia:

Cardinal Cogen, Inc., as a 3rd-party combined heat and power (CHP) producer operating a 49MW CHP plant and a steam plant in Stanford, California, is pleased that ARB continues develop the referenced 2013 amendments addressing the legacy contract issues. As you know, Cardinal Cogen operates under a legacy contract (2003) with Stanford University that pre-dates Assembly Bill 32 and 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. While ARB staff have made progress on legacy contract issues as required by September 2012 Board Resolution 12-33, Cardinal Cogen sees four issues with the current legacy contact provisions as provided in the reference Discussion Draft:

- Definition of Legacy Contract Qualified Thermal Output
- Approach for Calculating Legacy Contract Generator Allocations
- University Allocation Adjustment for Legacy Contracts
- Excess Equation in 95894(d)(2)

Each is discussed in detail below.

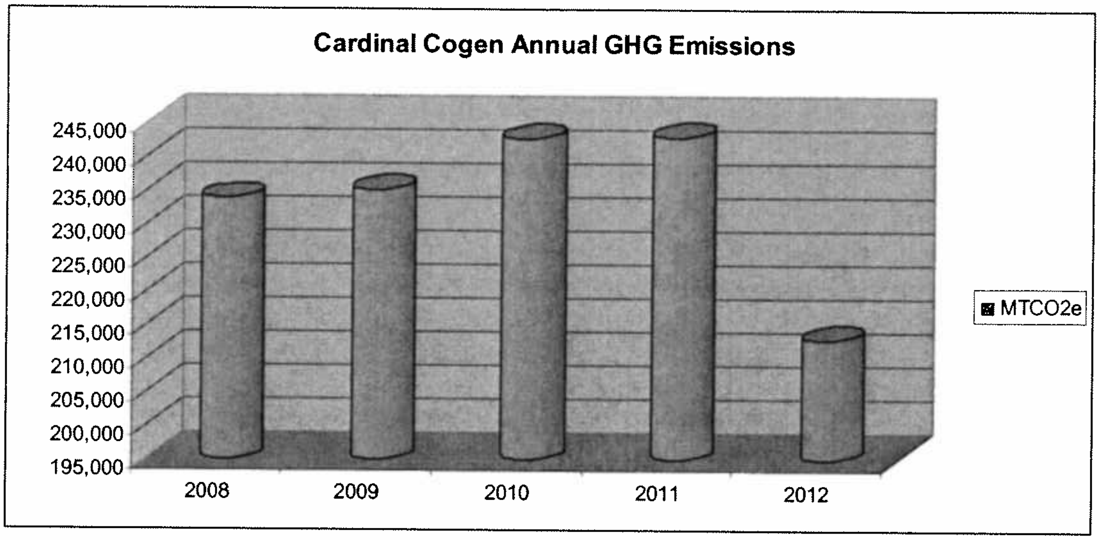
Legacy Contract Qualified Thermal Output Definition

In 95802(a)(200) ARB has re-phrased the definition on "Legacy Contract Qualified Thermal Output" and appears to have had the unintended consequence of changing the meaning. By prefacing the final two bullets with the phrase "...can be either:" the final sentence can be interpreted as "Legacy Contract Qualified Thermal Output" can only be cooling energy or thermal energy from equipment not integral to the cogeneration unit. This omits a large part of the thermal energy supplied under legacy contract generated from the cogeneration unit itself; such an omission would significantly reduce any legacy contract allocation and fail to address the unfairness of the cap and trade program on those generators under legacy contracts. To address this issue, we recommend that the wording in this definition be changed by replacing the phrase "...can be either:" with "...can also be:" This would clearly indicate that cooling energy and thermal energy from equipment not integral to the cogeneration unit are additive to the definition, not exclusive.

Calculating Legacy Contract Generator Allocations

In 95894(d)(2), ARB is proposing an approach whereby legacy contract generator allocations for 2013 through 2017 are based solely on 2012 greenhouse gas emissions with no true-up provision. In the proposed cap and trade regulation where allocations are accurately provided to EITE facilities, Universities as covered or opt-in entities, and Public Service Facilities with CHP based on current emissions with a true-up, it is unfair for ARB to propose an approach that treats CHP who are not in these three categories differently. There is no rationale that suggests that CHP who are not associated with EITE, Universities as covered entities or opt-in entities, or Public Service Facilities are less deserving of a true and full allocation based on the greenhouse gas emissions of each year. We ask in the interest of fairness that our facilities be treated in the same manner as the EITE facilities, Universities as covered or opt-in entities, and Public Service Facilities with CHP with the same benefits.

Using 2012 as a base year for legacy allocations is also a specific concern for Cardinal Cogen, as the facility underwent a planned major inspection outage at the 2012 which crossed over into January of 2013. Planned major inspection outages only occur once every 7-8 years and are coordinated with the utility and our legacy counterparty, Stanford University. During this planned outage the cogeneration unit was down for 7.5 weeks (5 weeks in 2012). While we met the thermal demand with our 4 boilers, we supplied no electricity to Stanford during this period, so our 2012 annual emissions are unusually low. This is demonstrated in the table below which shows Cardinal Cogen's greenhouse gas emissions from 2008 through 2012. Cardinal Cogen's 2012 emissions are approximately 15% lower than 2010 and 2011 emissions which were near capacity output. Cardinal Cogen is concerned about the unfair annual costs that will be incurred with a potential 15% deficit in greenhouse gas costs under ARB's approach for legacy contract allocations. This issue is all the more concerning for calendar year 2014 where emissions will be able to reach the 2010—2011 range again.



It is important to realize that under our legacy contract with Stanford University, Cardinal Cogen is obligated to provide as much power and steam as Stanford University demands. Cardinal Cogen has no say in what that demand will be, but it is our obligation to meet the requested demand up to our permitted capacity. That said, we expect to operate at near full capacity, as we did in 2010/2011. Given that we have no say in the demand requirement, Cardinal Cogen believes that it should be fully allocated for associated greenhouse gas costs that come as a result of our legacy contract with Stanford University, not a level which is 85% of our expected operating level.

<u>University Allocation Adjustment for Legacy Contracts</u>

In Section 95891(f), ARB properly adjusts allocations to EITE facilities provided under 95891(b) through 95891(d) where a CHP or stand-alone generator is also provided an allocation for a legacy contract. However, allocations to Universities are not adjusted for legacy contracts. Under the current proposed amendments, a University as a covered entity or an opt-in entity and its dedicated 3rd party CHP plant or stand-alone generator could both receive allocations from ARB for the same legacy contract issue. To maintain fairness to all stakeholders – EITE facilities, the Universities, and there dedicated legacy contract generators – all University allocations should be adjusted for allocations provided to dedicated legacy contract generators receiving allocations. To do this, Cardinal Cogen recommends that the phrase "...95891(b) through 95891(d)..." which appears four times in 95891(f) be replaced with "...95891(b) through 95891(e)..." which will treat EITE facilities and Universities equally with respect to adjustments from legacy contract allocations.

<u>Excess Equation in 95894(d)(2)</u>

In 95894(d)(2), two equations are presented for the term "$TrueUp_{2015}$". Having two definitions for the same term is confusing. We believe it is the intention of ARB to define this term with three parts - allowances determined for 2013, 2014, and 2015. The equation for $TrueUp_{2015}$ containing only allowances for 2013 and 2014 should be deleted to avoid confusion. Furthermore, the definition of $TrueUp_{2015}$ below the equations should make it clear that this term contains allowance for years 2013, 2014, and 2015.

Making these changes would create regulatory integrity in the cap and trade program and a fair environment between all facilities providing heat and power to universities and EITE facilities while ensuring that legacy allocations appropriately offset legacy contract generators for the greenhouse gas costs they will incur under contracts established before September of 2006. Cardinal Cogen is concerned that if all of these changes are not adopted by spring of this year we will incur unfair costs under the ARB cap and trade program. We welcome the opportunity to discuss these recommendations further with ARB staff in order to ensure adoption of these changes this spring. Thank you for this opportunity to comment on this important regulation. Should you have any questions regarding these comments, please call me at (650) 723-1779.

Sincerely,

RS Dahlin

Ron Dahlin
General Manager
Cardinal Cogen, Inc.

Copies:
William Buchan, Market Potential, Inc.