

# PAUL HASTINGS

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## VIA ELECTRIC SUBMISSION

April 4, 2014

The Honorable Mary D. Nichols, Chairman  
California Air Resources Board  
1001 “I” Street  
Sacramento, CA 95814

**Subject:      Comments on CARB’s March 21, 2014 Proposed Modified Regulation Order  
Regarding California Cap-and-Trade Regulation re Legacy Contracts**

Dear Madam Chairman:

We appreciate the opportunity to provide these comments regarding the California Air Resources Board (“CARB”) March 21, 2014 proposed Modified Regulation Order<sup>1</sup> regarding the California Cap-and-Trade Regulation (the “Regulation”),<sup>2</sup> as it applies to legacy contracts.<sup>3</sup>

Since the Regulation was first proposed, CARB staff identified and has worked extensively with stakeholders seeking to resolve the issue of legacy contracts, an issue which threatened the continued viability of highly efficient electricity producing and combined heat and power (“CHP”) facilities in California.<sup>4</sup> In October 2013, CARB staff proposed to provide transition assistance to legacy contract generators through the Regulation’s second compliance period (i.e., 2017).<sup>5</sup> Consistent with that

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<sup>1</sup> CARB, Attachment 1, Modified Regulation Order, *available at*: <http://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade15dayattach1.pdf>

<sup>2</sup> Tit. 17, Cal. Code Reg. §§ 95800 *et seq.*

<sup>3</sup> Legacy contracts are those contracts that do not allow for a pass-through of the cost to purchase greenhouse gas (“GHG”) emission allowances to meet generators’ compliance obligation under the Regulation. *See* Modified Regulation Order, Section 95802(a)(203).

<sup>4</sup> *See* Proposed Regulation to Implement the California Cap-and-Trade Program, Part I, Volume I, CARB Staff Initial Statement of Reasons (“ISOR”), at II-32, n.22 (October 28, 2010). Following discussions with legacy contract generators, CARB staff committed in December 2010 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 emissions.” Board Resolution, 10-42, Attachment B (December 16, 2010), at 8. Understanding the importance of this matter, CARB staff held public workshops and met with many stakeholders on numerous occasions.

<sup>5</sup> CARB Staff, “Revised Staff Proposal for Legacy Contract Treatment in Cap-and-Trade” (October 16, 2013), *available at*: <http://www.arb.ca.gov/cc/capandtrade/legacy-contract-proposal.pdf>.

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proposal, CARB staff proposes the Modified Regulation Order, which, if adopted by the Board, would provide the necessary relief to these important facilities through the second compliance period (2017).

We fully support CARB staff's proposal in the Modified Regulation Order to provide relief to legacy contract generators through 2017. We believe this approach will provide the necessary transition assistance to the majority of legacy contact generators. Importantly, such relief will permit highly efficient electricity producing and CHP facilities—the very facilities the Regulation is designed to promote—to continue to operate. In particular, if the Board adopts the Modified Regulation Order, the substantial risk of credit downgrades, which threatens the ability of certain legacy contract generators to finance debt and raise capital, is expected to be alleviated.

We greatly appreciate the Board's and CARB staff's willingness to meet with stakeholders and its efforts throughout this process. Based on the foregoing, we encourage the Board to adopt the Modified Regulation Order.

Respectfully submitted,

*/s/ Peter H. Weiner*

Peter H. Weiner

and

*/s/ Michael S. Balster*

Michael S. Balster

cc:      Board Members of the California Air Resources Board  
          Virgil Welch, Special Counsel to the Chairman  
          Richard Corey, Executive Officer  
          Rajinder Sahota, Chief, CARB Climate Change Program Evaluation Branch

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