

# PAUL HASTINGS

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July 5, 2018

## VIA ELECTRONIC SUBMISSION<sup>1</sup>

Jason Gray  
Chief, Cap-and-Trade Program  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

Re: Comments of Crockett Cogeneration on June 2018 Workshop to Discuss Possible Revisions to the Cap-and-Trade Regulation

Dear Mr. Gray:

On behalf of Crockett Cogeneration ("Crockett"), I am writing to provide comments on the California Air Resources Board's most recent June 21, 2018 Workshop to Discuss Possible Revisions to the Cap-and-Trade Regulation and Preliminary Discussion Draft of Potential Changes to the Regulation.<sup>2</sup>

As outlined in our prior comments,<sup>3</sup> Crockett operates a cogeneration facility that provides steam to C&H Sugar under a steam sale contract running through 2026. This contract was executed before passage of Assembly Bill ("AB") 32 and does not provide for recovery of Cap-and-Trade Program compliance costs. Like other similarly situated counterparties, C&H has been unwilling to renegotiate its contract with Crockett to shoulder any portion of these compliance costs, nor has C&H been willing to join the Program as an opt-in covered entity.

In prior comments, we discussed the genesis of the Board's July 2017 resolution directing Staff to "work with any remaining entities with legacy contracts and their non-industrial counterparties to resolve the parties' issues related to recovery of greenhouse gas costs, or, as necessary, to propose regulatory amendments to be in place no later than the allocation of vintage 2021 allowances to ensure reasonable transition assistance for greenhouse gas costs through the term of the legacy contract."<sup>4</sup> In short, with transition assistance set to expire at the close of the second compliance period for legacy contract generators without industrial counterparties, Crockett faced the prospect of bearing stranded compliance costs alone, and submitted a series of comment letters to the Board requesting that transition assistance for these generators be extended for the life of the contract.

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<sup>1</sup> Submitted at: [https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=ct-6-21-18-wkshp-ws&comm\\_period=1](https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=ct-6-21-18-wkshp-ws&comm_period=1).

<sup>2</sup> See ARB, Preliminary Discussion Draft of Potential Changes to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (June 2018), [https://www.arb.ca.gov/cc/capandtrade/meetings/20180621/ct\\_pdd\\_06192018.pdf](https://www.arb.ca.gov/cc/capandtrade/meetings/20180621/ct_pdd_06192018.pdf).

<sup>3</sup> See, e.g., Comments of Crockett Cogeneration (Mar. 16, 2018), [https://www.arb.ca.gov/lispub/comm2/bccomdisp.php?listname=ct-3-2-18-wkshp-ws&comment\\_num=32&virt\\_num=26](https://www.arb.ca.gov/lispub/comm2/bccomdisp.php?listname=ct-3-2-18-wkshp-ws&comment_num=32&virt_num=26).

<sup>4</sup> ARB, Resolution 17-21, at 13 (July 27, 2017), <https://www.arb.ca.gov/board/res/2017/res17-21.pdf>.

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The updated June 2018 Preliminary Discussion Draft of Potential Changes to the Regulation continues to include a number of framework amendments that previously existed in the Regulation in comparable form and which reference legacy contract generators without industrial counterparties. Staff also continues to retain two placeholders for further clarification on allocation to legacy contract generators without an industrial counterparty.<sup>5</sup> Staff explains that it will “continue to work with legacy contract generators with non-industrial counterparties to encourage renegotiation and to determine if post-2020 allocation is necessary and appropriate.”<sup>6</sup>

Consistent with our previous comment letters, Crockett would like to reiterate once again its ongoing need for transition assistance for the term of its contract. As we have previously conveyed to Staff and the Board, Crockett’s contract does not provide for recovery of compliance costs, and Crockett’s counterparty, C&H, continues to refuse to renegotiate the contract to account for these costs. Based on these facts, Crockett believes that post-2020 allocation is unequivocally necessary and appropriate, consistent with the Board’s findings in Resolution 17-21. Crockett looks forward to continuing to work with Staff in the coming months, and would be happy to provide input on proposed language for the two placeholder provisions to provide reasonable transition assistance for the life of the contract.

Thank you for your consideration. Please contact me if you have any questions at 415-856-7010.

Sincerely,



Peter H. Weiner,  
for PAUL HASTINGS LLP

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<sup>5</sup> June 2018 Preliminary Discussion Draft, proposed sections 95871(f)(1) and Section 95894(d).

<sup>6</sup> *Id.* at 63.