

# PAUL HASTINGS

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April 28, 2017

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

Clerk of the Board  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

Re: Comments of Crockett Cogeneration on the Proposed Amendments to the Cap-and-Trade Regulation

Dear Chair Nichols and Members of the California Air Resources Board:

On behalf of Crockett Cogeneration (“Crockett”), I submit the following comments on the California Air Resources Board’s proposed amendments to the Cap-and-Trade Regulation in follow-up to Crockett’s comments submitted during the first 15-day comment period and previously, relating to the allocation of allowances for legacy contract generators without an industrial counterparty.<sup>2</sup> Crockett also presented its views at the Board’s November 17, 2016 meeting, where the Board directed Staff to evaluate options for considering Crockett’s comments.<sup>3</sup> Crockett’s January comments were submitted in connection with the Board’s November 17 directions, after consultation with ARB Staff regarding the scope of the initial Notice of Public Hearing and Staff’s ability to consider and respond to comments submitted during the first 15-day comment period.

The Second Notice of Public Availability of Modified Text and accompanying Proposed Amendments reflect that Staff has elected to not consider Crockett’s comments and request for relief in the context of the 2016 rulemaking process. Staff did discuss in the Notice, however, that it intends to initiate a new rulemaking process once the 2016 proceeding is completed to address assistance factors and industrial allocation for post-2020 compliance periods, necessitated by the deletion of Table 8-3 and provisions relating to post-2020 industrial allocation in response to stakeholder comments.<sup>4</sup> These deletions also had the technical effect of eliminating post-2020 allocation to legacy contract generators with an industrial counterparty. As a result, Staff indicated that it “intends to propose, in a future regulation, changes that

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<sup>1</sup> Submitted at: [https://arb.ca.gov/lispub/comm/bcsubform.php?listname=capandtrade16&comm\\_period=2](https://arb.ca.gov/lispub/comm/bcsubform.php?listname=capandtrade16&comm_period=2).

<sup>2</sup> See Comments of Crockett Cogeneration (Jan. 20, 2017), [https://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=capandtrade16&comment\\_num=125&virt\\_num=15](https://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=capandtrade16&comment_num=125&virt_num=15); see also Comments of Crockett Cogeneration (Nov. 4, 2016), [https://www.arb.ca.gov/lispub/comm2/bccomdisp.php?listname=ct-amendments-ws&comment\\_num=21&virt\\_num=20](https://www.arb.ca.gov/lispub/comm2/bccomdisp.php?listname=ct-amendments-ws&comment_num=21&virt_num=20). Crockett’s November 4, 2016 workshop comments are now included in the record within Attachment E: Public Workshop Materials, as part of the Board’s December 21, 2016 Notice of Availability of Modified Text and Availability of Documents and/or Information. See Attachment E, at 155-157, <https://www.arb.ca.gov/regact/2016/capandtrade16/attache.pdf>.

<sup>3</sup> Transcript of Meeting of the State of California Air Resources Board, at 334-337 (Nov. 17, 2016), <https://www.arb.ca.gov/board/mt/2016/mt111716.pdf>.

<sup>4</sup> See Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information, at 8-9, <https://www.arb.ca.gov/regact/2016/capandtrade16/2nd15daynot.pdf>.


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would reinstitute post-2020 legacy contract allocation at the same time that post-2020 industrial assistance factors are proposed.”<sup>5</sup>

While not clear from the discussion in the Second 15-Day Notice, it is Crockett's strong desire that the future rulemaking and regulation described by Staff will address transition assistance for legacy contract generators without an industrial counterparty, and extend assistance for the life of the contract. As noted previously, assistance is slated to end with the second compliance period, and there is only one [remaining] entity – Crockett – whose contract extends beyond 2017.<sup>6</sup> Crockett remains as equitably entitled to transition assistance as all other legacy contract generators without industrial counterparties, all of whom were provided assistance for the lives of their contracts. Crockett provides steam to C&H Sugar, which in turn uses the steam provided by Crockett to first produce all the electrical energy required for operation of the sugar refinery and second to supply all the thermal processes required to refine raw sugar and produce its products; both processes are accomplished by C&H without burning any fossil fuels. The steam sales contract does not provide for any pass-through for the type of costs created by the Cap-and-Trade Regulation and incurred by Crockett. C&H, were it to have emissions of its own, would readily qualify as an energy-intensive trade-exposed (“EITE”) industrial entity covered under the Regulation. It is the only cane sugar refiner west of the Mississippi, and competes nationally and internationally based on price. As a result, C&H has been unwilling to shoulder any of the load of compliance costs, including the cost of joining the system and reporting.

In light of these circumstances, Crockett renews its request for consideration of extending transition assistance for the life of Crockett's contract through 2026, whether that be in the context of the future rulemaking and regulation referenced by Staff in the Second 15-Day Notice or in an earlier bullet proceeding tailored specifically to the extension of transition assistance for legacy contract generators without an industrial counterparty. Crockett believes that its request warrants expeditious consideration by Staff, given that the relief requested encompasses the third compliance period in addition to the post-2020 period. 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> *Id.* at 13.

<sup>6</sup> Crockett's contract with its counterparty, C&H Sugar, extends until 2026.