

# PAUL HASTINGS

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## 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 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 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 background, 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 many 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. Due to the inequities caused by these “legacy contracts” that predate AB 32, in 2014 the Board decided that for legacy contracts with an industrial counterparty, transition assistance would be provided for the life of the contract. However, for those without an industrial counterparty – such as Crockett’s – the Board limited transition assistance to the end of the second compliance period.

With transition assistance slated to expire at the end of the second compliance period, Staff proposed to delete provisions from the Regulation pertaining to these non-industrial legacy contracts as part of the 2016 amendments to the Regulation.<sup>3</sup> Crockett, facing the prospect of bearing these stranded costs alone without assistance through 2026, submitted a series of comment letters to the Board requesting that transition assistance be extended for the life of the contract.<sup>4</sup> While the Board declined to act on

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<sup>1</sup> Submitted at: [https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=ct-3-2-18-wkshp-ws&comment\\_num=1](https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=ct-3-2-18-wkshp-ws&comment_num=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 (Feb. 2018), [https://www.arb.ca.gov/cc/capandtrade/meetings/20180302/ct\\_pdd\\_02232018.pdf](https://www.arb.ca.gov/cc/capandtrade/meetings/20180302/ct_pdd_02232018.pdf).

<sup>3</sup> See 2016 Regulation Documents, <https://www.arb.ca.gov/regact/2016/capandtrade16/capandtrade16.htm>.

<sup>4</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); Comments of Crockett Cogeneration (Apr. 28, 2017), [https://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=capandtrade16&comment\\_num=205&virt\\_num=18](https://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=capandtrade16&comment_num=205&virt_num=18).

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these requests as part of the 2016 amendment process, the Board did direct Staff by resolution in July 2017 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>5</sup>

In the Preliminary Discussion Draft of Potential Changes to the Regulation, Staff includes a number of framework amendments that previously existed in comparable form and which reference legacy contract generators without industrial counterparties. In two sections, Staff left placeholders for further clarification on allocation to legacy contract generators without an industrial counterparty.<sup>6</sup> Staff also indicated that it would “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>7</sup>

Crockett would like to thank Staff and voice its support for the framework amendments included in the Preliminary Discussion Draft, and to reaffirm the need for ongoing transition assistance post-2020 for the term of its contract. As indicated above and as discussed in previous comment letters, Crockett’s steam sales contract does not provide for the recovery of Cap-and-Trade Program compliance costs, and C&H continues to be unwilling to renegotiate its contract with Crockett to account for these costs. As a non-industrial counterparty that is not subject to the Program or willing to join, C&H has no incentive to absorb the added expense. Given Crockett’s continued inability to re-negotiate its contract with its counterparty, we ask that Staff incorporate language in the placeholder provisions that would extend transition assistance for the life of the contract consistent with the Board’s direction in Resolution 17-21. We would be pleased to work with Staff in crafting this language.

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

<sup>6</sup> Preliminary Discussion Draft, proposed sections 95871(f)(1) and Section 95894(d).

<sup>7</sup> *Id.* at 47.