

PAUL HASTINGS

1(415) 856-7010
peterweiner@paulhastings.com

October 17, 2018

VIA ELECTRONIC SUBMISSION¹

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

Re: Comments of Crockett Cogeneration on Proposed Amendments to the California Cap On Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation

Dear Mr. Gray:

On behalf of Crockett Cogeneration (“Crockett”), I am writing to provide comments on the California Air Resources Board’s proposed amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation.²

As outlined in our prior comments,³ 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 not been willing 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. With transition assistance set to expire at the close of the second compliance period for legacy contract generators without industrial counterparties, Crockett faces the prospect of bearing stranded compliance costs alone.

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.”⁴

The proposed amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms conform with AB 398 requirements and respond to direction in Board

¹ Submitted at: https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ct2018&comm_period=A.

² See ARB, Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (September 2018), <https://www.arb.ca.gov/regact/2018/capandtrade18/ct18pro.pdf>.

³ 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; Comments of Crockett Cogeneration (July 5, 2018), https://www.arb.ca.gov/lispub/comm2/bccomdisp.php?listname=ct-6-21-18-wkshp-ws&comment_num=17&virt_num=16.

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

July 5, 2018
Page 2

Resolution 17-21, ensuring appropriate allowance allocation for transition assistance for legacy contract generators without industrial counterparties.

Crockett supports the proposed amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation. 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 the post-2020 allocation provided by the proposed amendments is unequivocally necessary and appropriate, consistent with the Board's findings in Resolution 17-21.

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