



July 24, 2019

To: Secretary of State, State of California
Ruth Lafler, Thomson Reuters

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 24 2019

2:18 PM

From: Amy Gowan, Attorney
(916) 323-7465
Amy.Gowan@oal.ca.gov

Re: Erratum Notice
OAL File No. 2019-0214-02S
California Air Resources Board
Filed March 29, 2019

To Whom It May Concern:

Page 72 of the text filed on March 29, 2019, in the above reference matter, contains an error. The filed text states the wrong budget year in one place in section 95894(d). The filed text should have included budget year 2020, not 2021. Section 95894(d) is corrected to read:

(d) Allocation to Legacy Contract Generators without an Industrial Counterparty. Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2020 through the life of the legacy contract.

Attached is a copy of the applicable Form 400 and corrected pages of the regulation text. Please ensure that the corrected regulation text and this communication are retained with the original, endorsed Form 400 text in your records for the above referenced file number.

Please contact me directly if you have any questions.

Thank You,

Amy Gowan

Encl: Endorsed Form 400
Corrected Text (1 Page)
ARB Correction Request

NOTICE PUBLICATION/REGULATION

SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 01-2013)

OAL FILE
NUMBERSNOTICE FILE NUMBER
Z-2018-0824-04

REGULATORY ACTION NUMBER

2019-0214-025

EMERGENCY NUMBER

For use by Office of Administrative Law (OAL) only

2019 FEB 14 P 2:18

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Air Resources Board

AGENCY FILE NUMBER (if any)

ENDORSED - FILEDIn the office of the Secretary of State
of the State of CaliforniaMAR 29 2019
1:37PM**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)		FIRST SECTION AFFECTED		2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER		FAX NUMBER (Optional)	
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2018 36-2		PUBLICATION DATE 9/7/2018			

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Cap-and-Trade Amendments		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 95915 and 95989
	AMEND See Attachment
	REPEAL N/A
TITLE(S) 17	

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
November 15, 2018 - November 30, 2018**5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)**

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Bradley Bechtold	TELEPHONE NUMBER (916) 322-6533	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) bradley.bechtold@arb.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY
Richard W. Corey, Executive Officer

2/14/19

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 29 2019

Office of Administrative Law

Attachment to Form 400 for the Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT See Form 400 <i>per agency request</i>
	AMEND <i>KA 3/22/19</i> 95802, 95811 , 95812, 95813, 95820, 95830, 95831, 95833, 95834, 95841, 95841.1, 95851, 95852, 95854, 95856, 95870, 95871, 95890, 95891, 95892, 95893, 95894, 95911, 95912, 95913, 95914, 95920, 95921, 95942, 95943, 95973, 95974, 95976, 95977.1, 95979, 95981, 95981.1, 95982, 95983, 95984, 95985, 95987, 95990, 96011, 96014, 96021, 96022, Appendix B, and Appendix E
TITLE(S) 17	REPEAL N/A

activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

$$\begin{aligned} \cancel{TrueUp_t} &= \cancel{((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lc,t-2} * c_{t-2}) - A_{t-2,no trueup}} \\ TrueUp_t &= ((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lc,t-2} * c_{a,t-2}) - A_{t-2,no trueup} \end{aligned}$$

Where:

“ $Q_{lc,t-2}$ ” is the legacy contract qualified thermal output_t in MMBtu_t sold under a legacy contract in the data year two years prior to year “t,” as reported under MRR;

“ B_s ” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu-thermal;

“ c_{t-2} ” “ $c_{a,t-2}$ ” is the is the cap adjustment factor for the budget year two years prior to year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

(d) Allocation to Legacy Contract Generators without an Industrial Counterparty.
Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2020 through the life of the legacy contract.

(1) For stand-alone generation facilities that are legacy contract generators without an industrial counterparty, allowance allocation is calculated by the following equation:

$$A_t = (EE_{m_{lc}} \times c_t) + TrueUp_{CP3}$$

Where:

TO: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814

FROM: Ben Carrier
Senior Attorney
California Air Resources Board

DATE: July 23, 2019

SUBJECT: ERRATA TO TITLE 17, CALIFORNIA CODE OF REGULATIONS, CHAPTER 1,
ARTICLE 5, SECTION 95894

The California Air Resources Board (CARB) requests that the following typographical error be corrected in Title 17, California Code of Regulations (CCR), Chapter 1, Article 5, section 95894, which is part of the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cap-and-Trade Regulation). The Office of Administrative Law (OAL) filed the most recent amendments to the Cap-and-Trade Regulation with the Secretary of State on March 29, 2019 (Register 2019, No. 15-Z). The Cap-and-Trade Regulation amendments became effective on April 1, 2019.

The error concerns subsection (d) of section 95894, which states:

- (d) Allocation to Legacy Contract Generators without an Industrial Counterparty. Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2021 through the life of the legacy contract.

CARB requests that this subsection be corrected as follows via an errata change (the typographical error is indicated in strikethrough text and the corrected insertion in underlined text):

- (d) Allocation to Legacy Contract Generators without an Industrial Counterparty. Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years ~~2021~~2020 through the life of the legacy contract.¹

¹ The corrected version of the page of the Final Regulation Order (i.e., p. 72) that includes the relevant portion of section 95894(d) is included as Attachment 1.

The rulemaking record for the amendments to the Cap-and-Trade Regulation clearly demonstrates that the use of the term "2021" in the CCR version of section 95894(d) is a typographical error, and that it should be corrected to "2020".

Specifically, CARB initially proposed a version of section 95894(d) in its 45-Day Proposed Amendments to the Cap-and-Trade Regulation that stated that relevant legacy contract generators may receive allowance allocation starting in budget year "2021".² At the November 2018 Board hearing on the 45-day Proposed Amendments, a stakeholder requested that a 15-day regulatory change provide allocation for the third compliance period, which is 2018-2020.³ Additionally, Board Vice Chair Sandra Berg recommended that staff look at CARB's approach to legacy contract allocation and ensure that it keeps both parties equally at the table.⁴

In response to this Board and stakeholder feedback, CARB's subsequent 15-Day Proposed Amendments to the regulatory text amended section 95894 to state "2020" instead of "2021".⁵ The 15-Day Amendments also included an amendment to sections 95894(d)(1) and (2), which indicate that, "[f]or budget year 2020," legacy contract generators are eligible for a true-up for the 2018 and 2019 budget years. As the Notice for the 15-Day Amendments states, "Section 95894(d) is modified to provide transition assistance to legacy contract generators without industrial counterparties for the third compliance period. The transition assistance would be provided as vintage 2020 allowance allocation, including true-up allowance allocation for the 2018 and 2019 budget years."⁶ There is no allocation for the third compliance period after 2020.

At the December 2018 Board hearing on the Cap-and-Trade Amendments, CARB staff indicated in its PowerPoint presentation to the Board that the 15-Day Amendments included

² Attachment 2, 45-Day Proposed Amendments to the Cap-and-Trade Regulation, section 95894(d), pp. 72-75, available at: https://ww3.arb.ca.gov/regact/2018/capandtrade18/ct18pro.pdf?_ga=2.96413596.1866431365.1563212725-1514349551.1555615113.

³ Attachment 3, November 2018 Board Hearing Transcript, at p. 239, available at: https://ww3.arb.ca.gov/board/mt/2018/mt111518.pdf?_ga=2.267420550.9022261.1562712115-1514349551.1555615113.

⁴ Attachment 3, *id.* at p. 262.

⁵ Attachment 4, 15-Day Proposed Amendments to the Cap-and-Trade Regulation, section 95894(d), pp. 30-32, available at: https://ww3.arb.ca.gov/regact/2018/capandtrade18/ct15dayregtext.pdf?_ga=2.189287971.9022261.1562712115-1514349551.1555615113.

⁶ Attachment 5, Notice for 15-Day Proposed Amendments, at p. 11, available at: https://ww3.arb.ca.gov/regact/2018/capandtrade18/ct15daynotice.pdf?_ga=2.95323028.9022261.1562712115-1514349551.1555615113.

the addition of third compliance period allocation for legacy contract generators.⁷ The CARB staff providing the presentation also stated orally at the hearing that the 15-day Amendments provide allocation for the third compliance period.⁸ Additionally, a stakeholder at the December hearing indicated its understanding that the proposed amendments would provide transition assistance for the third compliance period.⁹ Board members were present for the staff PowerPoint presentation, oral presentation, and stakeholder comments.

The Board then adopted the Cap-and-Trade amendments package, including the 15-Day Amendments to section 95894(d), that same day (i.e., December 13, 2018). CARB's Final Statement of Reasons for the amendments indicated that, while the 45-day Amendments would have only provided allocation after 2020, the 15-day Amendments added allocation for 2018-2020 through a vintage 2020 allocation.¹⁰

In sum, the rulemaking record indicates that the 15-day Amendments revised section 95894(d) to state that allocation would be provided starting in 2020. CARB staff, the Board, and stakeholders all contemporaneously understood the Cap-and-Trade Amendments to accomplish this goal. However, the number in subsection (d) was mistakenly printed as "2021" in the Final Regulation Order, due to a Staff error in merging the 45-day and 15-day Proposed Amendments. The use of the term "2021" in the Final Regulation Order is a typographical error. Making the change requested in this letter will correct the Cap-and-Trade Regulation to reflect the amendments as proposed to and adopted by CARB.

Please call me at (916) 327-5986 if you have any questions regarding this matter.

⁷ Attachment 6, Staff Presentation on Cap-and-Trade Amendments, December 2018 Board Hearing, at slide 15, available at: https://ww3.arb.ca.gov/board/books/2018/121318/18-10-6pres.pdf?_ga=2.268864121.9022261.1562712115-1514349551.1555615113.

⁸ Attachment 7, December 2018 Board Hearing Transcript, at p. 174, available at: https://ww3.arb.ca.gov/board/mt/2018/mt121318.pdf?_ga=2.67658393.9022261.1562712115-1514349551.1555615113.

⁹ Attachment 7, *id.* at p. 179.

¹⁰ Attachment 8, Final Statement of Reasons for Cap-and-Trade Amendments, at p. 377, available at: https://ww3.arb.ca.gov/regact/2018/capandtrade18/ct18fsor.pdf?_ga=2.28330804.9022261.1562712115-1514349551.1555615113.

Attachment 1

activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

$$\text{TrueUp}_t = \frac{((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lc,t-2} * C_{t-2}) - A_{t-2, \text{no trueup}}}{((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lc,t-2} * C_{a,t-2}) - A_{t-2, \text{no trueup}}}$$

Where:

“ $Q_{lc,t-2}$ ” is the legacy contract qualified thermal output_t in MMBtu_t sold under a legacy contract in the data year two years prior to year “t,” as reported under MRR;

“ B_s ” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu-thermal;

“ C_{t-2} ” “ $C_{a,t-2}$ ” is the is the cap adjustment factor for the budget year two years prior to year “t” as specified in Table 9-2. The subscript “a” designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

(d) Allocation to Legacy Contract Generators without an Industrial Counterparty.
Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2020 through the life of the legacy contract.

(1) For stand-alone generation facilities that are legacy contract generators without an industrial counterparty, allowance allocation is calculated by the following equation:

$$A_t = (EE_{m_{lc}} \times c_t) + \text{TrueUp}_{CP3}$$

Where:

Attachment 2

" E_t " " $C_{a,t}$ " is the cap adjustment factor for the legacy contract counterparty or entity in a direct corporate association with the legacy contract counterparty for budget year "t" as specified in Table 9-2. The subscript "a" designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

$$\text{TrueUp}_t = ((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lc,t-2} * c_{t-2}) - A_{t-2, \text{no trueup}}$$

$$\text{TrueUp}_t = ((Q_{lc,t-2} * B_s + E_{lc,t-2} * B_e) * AF_{lc,t-2} * c_{a,t-2}) - A_{t-2, \text{no trueup}}$$

Where:

" $Q_{lc,t-2}$ " is the legacy contract qualified thermal output_t in MMBtu_t sold under a legacy contract in the data year two years prior to year "t," as reported under MRR;

" B_s " is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu-thermal;

" E_{t-2} " " $C_{a,t-2}$ " is the is the cap adjustment factor for the budget year two years prior to year "t" as specified in Table 9-2. The subscript "a" designates the activity conducted by the legacy contract counterparty or the entity in a direct corporate association with the legacy contract counterparty; and

- (d) Allocation to Legacy Contract Generators without an Industrial Counterparty.
Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2021 through the life of the legacy contract.

- (1) For stand-alone generation facilities that are legacy contract generators without an industrial counterparty, allowance allocation is calculated by the following equation:

$$A_t = EEm_{ic} \times c_t$$

Where:

“A_t” is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty for legacy contract emissions from budget year “t.” This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a) and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year “t”;

“EEm_{ic}” is the emissions reported, in MTCO₂e, associated with electricity sold under the legacy contract in 2012; and

“c” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

- (2) For legacy contract generators without an industrial counterparty not subject to either section 95894(c) or section 95894(d)(1), allowance allocation is calculated by the following equation:

$$A_t = (Q_{ic} \times B_s + E_{ic} \times B_e) \times c_t$$

Where:

“A_t” is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty, for legacy contract emissions from budget year “t.” This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a)

and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year “t”;

“Q_{lc}” is the legacy contract qualified thermal output, in MMBtu, sold under a legacy contract in data year 2012, as reported pursuant to MRR;

“E_{lc}” is the electricity, in MWh, sold under the legacy contract in data year 2012;

“B_e” is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

“B_s” is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu; and

“c_t” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

- (e) Legacy Contract Natural Gas True-up Allocation. Entities that received allowance allocation pursuant to section 95894 for vintage years 2015-2017, used natural gas rates subject to CPUC jurisdiction as part of their legacy contract pricing, and had a percentage of their vintage 2015-2017 legacy contract transition assistance discounted to reflect anticipated compensation for GHG costs in rates corresponding with the natural gas consignment percentage shall receive a legacy contract natural gas true-up allocation that equals the total quantity of allowances that were discounted from the vintage 2015-2017 allocations. This legacy contract natural gas true-up allocation shall only be provided in 2019 with vintage 2020 allowances. Entities shall receive this true-up allocation as a legacy contract generator with an industrial counterparty or a legacy contract generator without an industrial counterparty, as applicable, regardless of their current eligibility for legacy contract transition assistance pursuant to sections 95894(a)-(d). Legacy contract counterparties will have

vintage 2020 allocation adjusted by the legacy contract natural gas true-up allocation pursuant to section 95891(e).

- (d)(f) Data Sources. In determining the appropriate values for sections 95894(c)-(e), the Executive Officer may employ all available data reported to ARB under MRR and all other relevant data, including invoices, that demonstrate the amount of electricity and legacy contract qualified thermal output sold or provided for off-site use does not include a carbon cost in the budget year for which ~~it~~the legacy contract generator is seeking an allocation. If necessary, the Executive Officer will solicit additional data to establish a representative allocation. The operator of the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty must provide the additional data upon request by the Executive Officer.
- (e)(g) Contract Expiration or Generator Closure. Once a legacy contract expires or the legacy contract generator with an industrial counterparty or legacy contract generator without an industrial counterparty closes operations, the generator will no longer be eligible for free allocation pursuant to 95890(e), and allocation will be prorated for the time in which the contract was eligible.

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

Subarticle 10: Auction and Sale of California Greenhouse Gas Allowances

§ 95911. Format for Auction of California GHG Allowances.

- (a) Auction Bidding Format.

- (4) Entities registered into the California Cap-and-Trade Program must submit bids in ~~whole~~-U.S. dollars and whole cents.

- (c) Method for Setting the Auction Reserve Price.

Attachment 3

1 California has more years of a much steeper cap under its
2 built. Thank you very much.

3 MS. SHROPSHIRE: Good afternoon, Chair Nichols
4 and members of the Board. My name is Robin Shropshire.
5 And I'm here today representing Panoche Energy Center.

6 I plan to be brief today, but wanted to let you
7 know that Panoche agrees to continue to work with our
8 utility counterparty in good faith to try to find a
9 contract solution. One of the important goals of those
10 negotiations is to ensure a carbon price signal is
11 accurately reflected in the energy price.

12 Having said that, we're here to ask you for help.
13 Our simple request is that the 15-day package includes
14 transition assistance for the third compliance period.
15 Secondly, that historically it's been demonstrated to be
16 effective for Board members to participate in the
17 discussions between counterparties. We request that in
18 the continued negotiations that a Board member participate
19 to help move this forward.

20 Then last, if in the -- if in six months a
21 resolution hasn't occurred, that in the next rulemaking
22 relief is provided by taking allowances from our
23 counterparty to cover emissions. I know that both the
24 Board and staff are eager to get beyond this.

25 And I just want to thank you for your support.

1 said this the last --

2 CHAIR NICHOLS: Yeah, I was about to say, it's
3 like I want to send you to your room, kids, if you don't
4 stop fighting.

5 (Laughter.)

6 CHAIR NICHOLS: I think we did that like three or
7 four times ago.

8 VICE CHAIR BERG: We did that last time.

9 So, staff, you know, please look at what we're
10 doing. Make sure that it keeps both parties equally to
11 the table. And that would be my recommendation.

12 Thank you.

13 CHAIR NICHOLS: Any other comments?

14 Yes.

15 ASSEMBLY MEMBER GARCIA: Thank you, Madam Chair.
16 And thank you, Rajinder, for covering those six points.
17 Some of them were part of questions that I was going to
18 raise.

19 And, you know, I'm quite surprised we don't have
20 twice as many people in line to speak, given that there
21 has been an assertive effort -- in fact, I opened the
22 mailbox here and it's the Californians for Cost
23 Containment targeted advertisement that many who are here
24 look quite different in pictures, but --

25 (Laughter.)

Attachment 4

(C) Itemizing any use of allocated allowance auction proceeds on administrative and outreach costs and educational programs described in section 95893(d)(4).

NOTE: Authority cited: Sections 38510, 38560, 38562, 38570, 38571, 38580, 39600 and 39601, Health and Safety Code.

Reference: Sections 38530, 38560.5, 38564, 38565, 38570 and 39600, Health and Safety Code.

§ 95894. Allocation to Legacy Contract Generators for Transition Assistance.

(d) Allocation to Legacy Contract Generators without an Industrial Counterparty.
Legacy contract generators not covered by section 95894(c) may receive allowance allocation only for budget years 2024 through the life of the legacy contract.

(1) For stand-alone generation facilities that are legacy contract generators without an industrial counterparty, allowance allocation is calculated by the following equation:

$$\begin{aligned} \cancel{A_t} &= (\cancel{EE m_{12}} \times \cancel{c_t}) \\ A_t &= (EE m_{12} \times c_t) + TrueUp_{CP3} \end{aligned}$$

Where:

"A_t" is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty for legacy contract emissions from budget year "t." This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a) and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year "t";

"EE m₁₂" is the emissions reported, in MTCO_{2e}, associated with electricity sold under the legacy contract in 2012; and

“c_t” is the cap adjustment factor for budget year “t” to account for cap decline as specified in Table 9-2.

“TrueUp_{CP3}” is the amount of true-up allowances allocated from budget year 2020 to account for allocation not properly accounted for in prior allocations. This value of allowances from budget year “t” shall be allowed to be used for compliance for budget year t-2 and subsequent years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D). For budget years 2021 and beyond, “TrueUp_{CP3}” is equal to zero. For budget year 2020, this value is calculated by the following equation:

$$Trueup_{CP3} = \sum_{t=2018}^{2019} EEm_{ic} \times c_t$$

- (2) For legacy contract generators without an industrial counterparty not subject to either section 95894(c) or section 95894(d)(1), allowance allocation is calculated by the following equation:

~~$$A_t = ((Q_{ic} \times B_s + E_{ic} \times B_e) \times c_t)$$~~

$$A_t = (Q_{ic} \times B_s + E_{ic} \times B_e) \times c_t + TrueUp_{CP3}$$

Where:

“A_t” is the amount of California GHG allowances directly allocated to the legacy contract generator without an industrial counterparty, for legacy contract emissions from budget year “t.” This value shall only be calculated if the entity meets the eligibility requirements, pursuant to sections 95894(a) and 95894(b), and is covered by the Cap-and-Trade Program during the compliance period containing year “t”;

"Q_{lc}" is the legacy contract qualified thermal output, in MMBtu, sold under a legacy contract in data year 2012, as reported pursuant to MRR;

"E_e" is the electricity, in MWh, sold under the legacy contract in data year 2012;

"B_e" is the emissions efficiency benchmark per unit of electricity sold or provided to off-site end users, 0.431 California GHG Allowances/MWh;

"B_s" is the emissions efficiency benchmark per unit of legacy contract qualified thermal output, 0.06244 California GHG Allowances/MMBtu; and

"c_t" is the cap adjustment factor for budget year "t" to account for cap decline as specified in Table 9-2.

"TrueUp_{CP3}" is the amount of true-up allowances allocated from budget year 2020 to account for allocation not properly accounted for in prior allocations. This value of allowances from budget year "t" shall be allowed to be used for compliance for budget year t-2 and subsequent years pursuant to sections 95856(h)(1)(D) and 95856(h)(2)(D). For budget years 2021 and beyond, "TrueUp_{CP3}" is equal to zero. For budget year 2020, this value is calculated by the following equation:

$$\text{Trueup}_{CP3} = \sum_{t=2018}^{2019} (Q_{lc} \times B_e + E_{lc} \times B_s) \times c_t$$

- ~~(e) Legacy Contract Natural Gas True-up Allocation. Entities that received allowance allocation pursuant to section 95894 for vintage years 2015-2017, used natural gas rates subject to CPUC jurisdiction as part of their legacy contract pricing, and had a percentage of their vintage 2015-2017 legacy contract transition assistance discounted to reflect anticipated compensation for GHG~~

Attachment 5

through the purchase of allowances. In addition, text in section 95893(d)(7)(C) is modified to add a general prohibition on spending allocated allowances on costs, penalties, or activities mandated by any legal settlement, administrative enforcement action, or court order. These changes support CARB oversight of the uses of allocated allowance proceeds to ensure usage on its main purposes—reduction of GHG emissions and ratepayer benefit.

Section 95893(e)(4)(A) is modified to require reporting of the GHG emissions reduction purpose for allocated allowance proceeds expended on educational programs in order to ensure the educational programs are focused on achieving GHG emissions reductions as required in the revised section 95893(d)(4).

Section 95893(e)(4)(B) is modified to clarify that natural gas suppliers should use the elements applicable to the specific projects and activities they conduct in order to estimate the GHG reductions from the use of allocated allowance proceeds.

Section 95893(e)(4)(C) is modified to require itemized reporting of educational program expenses which are now allowed pursuant to section 95893(d)(4).

10. Modifications to Section 95894. Allocation to Legacy Contract Generators for Transition Assistance

Section 95894(d) is modified to provide transition assistance to legacy contract generators without industrial counterparties for the third compliance period. The transition assistance would be provided as vintage 2020 allowance allocation, including true-up allowance allocation for the 2018 and 2019 budget years.

Transition assistance to legacy contract generators helps address compliance costs for generators with contracts that were in place before AB 32 was passed. Legacy contract generators received transition assistance from 2013 through 2017, and that assistance ended beginning 2018. Under the initial 45-day proposal, legacy contract generators without industrial counterparties would resume receiving transition assistance after the third compliance period, beginning with vintage 2021 allowance allocation and with no true-up allowance allocation for the 2018 and 2019 budget years. CARB's long-term approach for legacy contracts is to encourage renegotiation of legacy contracts so that energy prices include GHG costs. Including transition assistance during the third compliance period (2018-2020) helps to avoid a potentially disruptive change in compliance costs as legacy contract generators work to renegotiate legacy contracts.

Section 95894(e) is deleted to remove the legacy contract natural gas (LCNG) true-up allocation provision that was part of the initial proposal. Staff initially proposed the LCNG true-up allocation to align CARB's implementation of legacy contract allocation with a recent California Public Utilities Commission (CPUC) decision about the pass-through of GHG costs in natural gas rates.

Since allocation of vintage 2015 allowances, CARB's calculation of legacy contract

Attachment 6

15-day Changes

Cap-and-Trade Regulation

- Revised the approach to address EIM emissions leakage
- Updated allowance allocation provisions
 - Revised waste-to-energy allocation calculation to increase transition assistance
 - Combustion emissions from non-organic feedstocks, such as plastics, have a compliance obligation
 - 15-day proposal increased allocation from about 65% to about 90% in the third compliance period
 - Added third compliance period allocation for legacy contract generators
 - Classified leakage risk for newly eligible sectors
- Removed the true-up allocation related to CPUC decision on natural gas pricing
- Revised conformance and invalidation provisions for U.S. Forest offset projects
- Clarified text to ensure clarity on application of “Direct Environmental Benefits”

MRR

- Revised “EIM Purchaser” definition and calculation of entities’ share of EIM Outstanding Emissions

Attachment 7

1 Board adopted in 2017, these facilities now have to
2 procure and surrender some portion of their own
3 allowances. Staff expects that the new methodology will
4 increase total allowance -- allocation to the sector
5 beyond what was proposed in the 45-day proposal.

6 Fifteen-day changes also add allowance allocation
7 to legacy contract generators during the third compliance
8 period to help avoid a potentially disruptive change in
9 compliance costs as the one or two remaining legacy
10 contractors -- contract generators work to renegotiate
11 contracts.

12 --o0o--

13 AIR POLLUTION SPECIALIST SINGH: Staff recommends
14 that the Board approve both proposed resolutions,
15 including approving written responses to environmental
16 comments, certifying the final EA, and making the required
17 CEQA findings for the Cap-and-Trade Amendments.

18 If adopted, these amendments will be in effect
19 April 1st 2019.

20 --o0o--

21 AIR POLLUTION SPECIALIST SINGH: Staff is
22 proposing to address several items in a subsequent
23 Cap-and-Trade rulemaking. We plan to adjust the
24 allocation to the utilities in response to SB 100, which
25 increases the renewable portfolio standard to 60 percent

1 Cap-and-Trade Amendments before you today.

2 Crockett operates a cogeneration facility that
3 provides steam to C&H Sugar under steam sale contract
4 running through the year 2026. This is a legacy contract
5 that was executed before passage of AB 32 and does not
6 provide for recovery of Cap-and-Trade Program compliance
7 costs.

8 The current regulations sunset transition
9 assistance for legacy contracts without an industrial
10 counterparty at the end of the second compliance period,
11 causing legacy contract holders, like Crockett, to bear
12 stranded compliance costs alone for the remainder of their
13 contract durations.

14 We appreciate that the Board, via resolution
15 17-21, and staff, via today's draft amendments, have
16 recognized and addressed this issue. The proposed
17 amendments before you today would provide transition
18 assistance in the third compliance period and through the
19 remaining life of legacy contracts without industrial
20 counterparties.

21 Crockett supports adoption of the proposed
22 Cap-and-Trade Amendments.

23 Thank you.

24 MR. WEINER: Madam Chair, and members of the
25 Board. I'm Peter Weiner representing the Covanta. And I

Attachment 8

Comment:

F. Allocation to Legacy Contract Generators

SMUD appreciates the inclusion in the 45-day language of provisions continuing allowances to be allocated to cover legacy contract emissions for generators with counterparties that are not otherwise included in the Cap and Trade program. Such allocation was allowed for these circumstances through the 2017 program year (the end of the second compliance period) but removed from the current regulation from 2018 forward. (SMUD)

Response: Thank you for the support. As the commenter notes, the initial proposed amendments (also referred to as “45-day language”) include allowance allocation to legacy contract generators without industrial counterparties resuming after 2020 and continuing through the life of the legacy contract. The 15-day revisions add allowance allocation to legacy contract generators without industrial counterparties for the years 2018 through 2020 through a vintage 2020 allowance allocation that will include true-up allocation for 2018 and 2019.

Calculation Method for Post-2020 Allocation to Legacy Contract Generators without Industrial Counterparties

C-4.2. Comment:

However, SMUD sees no reason at this point to continue to use the provisions previously in the regulations that tied the legacy contract allocations in these cases to historical 2012 information, rather than to actual emissions from generation or useful thermal energy supplied under a legacy contract. For legacy contracts with an industrial counterparty, the allocation is based on actual emissions as provided in data reporting from the year prior to the application for allowances – the latest data available, and subsequently trued up in following years to actual data. SMUD sees no reason not to differentiate at this point between the process for legacy allowance allocation with or without an industrial counterparty.

A previous rationale for providing legacy contract allocations was for transition assistance, similar to the 100% assistance factors for industrial entities through the end of the second compliance period. With AB 398 and the 45-day language, that transition assistance rationale no longer stands – assistance factors are at 100% after 2020 and proposed to be at 100% for the third compliance period (2018- 2020).

As time passes, basing the legacy contract allocation for instances without an industrial counterparty on historical 2012 information becomes less and less accurate. The best structure would follow the “latest data plus true-up” structure used for contracts with an industrial counterparty...

Rather than add the complication again of two different methods for determining allocations for legacy contracts with and without industrial counterparties, SMUD