

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Long Beach Generation LLC (Long Beach), with its principal location at 301 Vista Del Mar Boulevard, El Segundo, California 90245, (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580).
- (2) Regulation. CARB adopted the "*Regulation for Reducing Sulfur Hexafluoride Emissions from Gas Insulated Switchgear*" (SF₆ GIS Regulation) to achieve greenhouse gas emission reductions by reducing sulfur hexafluoride emissions from gas insulated switchgear. (Cal. Code Regs., tit.17, §§ 95350-95359.)
- (3) Regulatory Provisions. Any owner of gas insulated switchgear must comply with the annual emissions rate and inventory measurement procedures, maintain records, and submit an annual report containing specific information to CARB by June 1st of each year. (Cal. Code Regs., tit.17, § 95350 et seq.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 95350 et seq.; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Long Beach was organized under the laws of California as a limited liability company and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) SF6-2019-2158 which was issued on January 14, 2021. CARB alleges Long Beach violated the SF₆ GIS Regulation by being an owner of gas insulated switchgear that reported an emissions exceedance (Cal. Code Regs., tit.17, § 95352), as outlined in Notice of Violation SF6-2019-2158. (Cal. Code Regs., tit.17, § 95350 et seq.) CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Long Beach for each exceedance and each day when an exceedance occurred.
- (7) Acknowledgment. Long Beach admits to the facts in paragraphs 5 through 6, but denies any liability resulting from said allegations.

- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Long Beach has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Long Beach (or its affiliates) for the alleged violations referred to above in the Legal Background and Case Background, and Long Beach's agreement to complete all terms and conditions set forth below, CARB and Long Beach agree as follows:

- (9) Settlement Amount. Long Beach shall pay a civil penalty of forty-six thousand five hundred dollars (\$46,500.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled "California Clean Air Day" in the amount of forty-five thousand dollars (\$45,000.00 USD), consistent with CARB's SEP Policy, for a total settlement of ninety-one thousand five hundred dollars (\$91,500.00 USD). Long Beach shall make all payments within 30 calendar days from the date CARB notifies Long Beach of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Long Beach shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Long Beach is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Long Beach in accordance with Paragraph 15 (Notices).
- (11) SEP Payment Method(s). Long Beach shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Coalition for Clean Air, using instructions provided separately by CARB in a Payment Transmittal Form. Long Beach is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Long Beach in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. Long Beach has agreed that by funding the SEP entitled "California Clean Air Day," Long Beach will not receive any direct or indirect financial benefit, and that whenever Long Beach publicizes the SEP or the results of the SEP,

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Long Beach will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.

- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Long Beach assigns any and all rights against the SEP implementer to CARB.
- (14) Documents. Long Beach shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in Paragraph 15 (Notices).
- (15) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:
California Air Resources Board
Enforcement Division / Settlement Agreements
Field Operations Branch/Short Lived Climate Pollutant Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Long Beach:
George Piantka
4600 Carlsbad Boulevard
Carlsbad, California 92008
George.Piantka@nrg.com

As to Long Beach's Legal Representation:
Walter Stone
1825 K Street
Suite 1203
Washington, DC 20006
Walter.Stone@nrg.com and LegalNotices@nrg.com

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Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (16) Repeat Violations. Long Beach agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (17) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 33 paragraphs.
- (18) Binding Effect. This Settlement Agreement binds Long Beach, and its successors and assignees and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (19) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (20) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (21) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (22) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (23) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (24) Not Tax Deductible. For purposes of this Settlement Agreement, Long Beach shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (25) Rules of Construction. Any rule of construction to the effect that ambiguities are to be

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resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.

- (26) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (27) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of the full payment of the civil penalty and SEP Payment Amount, and all other undertakings above, CARB hereby releases Long Beach (and its affiliates) and their successors and assignees, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (32) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000.00) per day under Health and Safety Code section 38580 for violations of the SF₆ GIS Regulation (Cal. Code Regs., tit.17, § 95350 et seq.) The penalty of \$91,500 is based on 183 days of violation at \$500 per exceedance and/or noncompliant day.

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(33) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/
Name: Ellen M. Peter
Title: Chief Counsel
Date: 8/3/2021

Long Beach Generation LLC

Signature: /S/
Name: Eric Leuze
Title: Vice President
Date: 7/28/2021