

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 Stockton Port District (Port), with its principal location at 2201 West Washington Street, Stockton, California 95203 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. All publicly owned electric utilities are subject to renewable energy procurement requirements as outlined in Senate Bill (SB) 1078 (Sher, 2002), SB 350 (de León, 2015), and SB 100 (de León, 2018). The California Energy Commission administers this Renewables Portfolio Standard as established in Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code. If the California Energy Commission finds any publicly owned electric utility to be in violation of its renewable energy procurement requirements, it must refer the violation to CARB for CARB to impose any penalty. (Public Utilities Code, § 399.30(o).)
- (2) Regulation. The California Energy Commission's enforcement of the Renewable Portfolio Standard is contained in the California Code of Regulations Title 20, sections 1240 and 3200-3208. The California Energy Commission refers any determined violation of the Standard, along with its record of proceedings, to CARB for penalty assessment (Cal. Code Regs., tit. 20, § 1240(h)).
- (3) Regulatory Provisions. For the compliance period beginning January 1, 2011, and ending December 21, 2013, a local publicly owned electric utility must demonstrate it procured electricity products such that at least an average of 20 percent of its retail sales over the compliance period came from eligible renewable energy resources, and at least 50 percent of electricity products procured must meet the definition of Portfolio Content Category 1 (Cal. Code Regs., tit. 20, § 3204(a)(1), (c)(1)).
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties. Any penalties imposed by CARB must be comparable to penalties adopted by the California Public Utilities Commission (CPUC) for noncompliance by retail sellers. For Compliance Period 1, January 1, 2011 to December 31, 2013, the CPUC applied a \$50 per renewable energy credit (REC, 1 megawatt-hour) penalty to a retail seller's shortfalls in meeting both procurement quantity and portfolio balance requirements. This includes a per-compliance-period penalty cap for retail sellers at 50 percent of the retail seller's procurement quantity requirements for the compliance period multiplied by \$50 per REC, as stated in California Public Utilities Commission Decision 14-12-023. CARB may, within its discretion and in conformance with State

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law, use California Public Utilities Commission's penalty structure as a foundation upon which to determine penalties for similar violations by publicly owned utilities as a means to ensure comparability. (California Public Utilities Commission Resolution E-4257 (Oct. 29, 2009), Decision 14-12-023 (Dec. 4, 2014); Health & Saf. Code, §§ 38580 and 42400 *et seq.*; Public Utilities Code, § 399.30.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, the Port was organized under the laws of California as a publicly owned utility and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement settles the "Notice of Violation Against the Stockton Port District; Noncompliance with the Renewables Portfolio Standard Program," which was issued on September 20, 2019 by the California Energy Commission. The Notice of Violation alleges the Port violated the Renewables Portfolio Standard by being a publicly owned utility that failed to satisfy two separate Renewables Portfolio Standard procurement requirements for Compliance Period 1 (beginning January 1, 2011 and ending December 31, 2013):
 - a. a procurement target deficit of 7,205 megawatt-hours of electricity products (Cal. Code Regs., tit. 20, § 3204(a)), and
 - b. a portfolio balance deficit of 304 megawatt-hours of electricity products (Cal. Code Regs., tit. 20, § 3204(c)).

CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against the Port for each violation and exceedance involved in the violation.

- (7) Acknowledgment. The Port admits to the facts in paragraphs 1 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, the Port 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 the Port for the alleged violations referred to above in the Legal Background and Case Background, and the Port's agreement to complete all terms and conditions set forth below, CARB and the Port agree as follows:

- (9) Settlement Amount. The Port shall pay a civil penalty of twenty-five thousand dollars (\$25,000.00 USD), and shall make the payment within 30 calendar days from the date CARB notifies the Port of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. The Port 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. The Port 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 the Port in accordance with Paragraph 12 (Notices).
- (11) Documents. The Port 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 12 (Notices).
- (12) 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 Enforcement
Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to The Port:
Steve Escobar
Senior Deputy Port Director

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Stockton Port District (Port of Stockton)
2201 West Washington Street
Stockton, California 95203
sescobar@stocktonport.com

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.

- (13) Repeat Violations. The Port agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (14) 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 32 paragraphs.
- (15) Binding Effect. This Settlement Agreement binds the Port, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (16) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section

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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.

- (21) Not Tax Deductible. For purposes of this Settlement Agreement, the Port 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.
- (22) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (23) 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.
- (24) 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.
- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of the full payment of the civil penalty and all other undertakings above, CARB hereby releases the Port and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.

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(28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

(29) Per Unit Penalty. The per unit penalty in this case is a \$50 per megawatt-hour penalty to a publicly owned utility's shortfalls in meeting both procurement quantity requirements and portfolio balance requirements within a compliance period. Additionally, this penalty is consistent with Health and Safety Code (HSC) § 38580 which states that CARB may use HSC § 42400 *et seq.* and CARB's Enforcement Policy to determine and collect penalties.

(30) Emissions. The provisions cited above prohibit emissions above a specified level. Without more information, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the Port did not meet the regulatory requirements, any of the emissions from it were noncompliant.

(31) 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.

(32) Confidential Business Information. CARB based this penalty in part on confidential business information provided by the Port and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

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ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 7/27/2021

Stockton Port District

Signature: /S/

Name: Kirk DeJesus

Title: Port Director

Date: 7/26/2021