

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (CARB), principally located at 1001 I Street, Sacramento, California 95814, and Clean Energy Renewable Fuels LLC (the Company), principally located at 4675 MacArthur Court, Suite 800, Newport Beach, California 92660. The effective date (Effective Date) of this Agreement is the date it is fully executed.

RECITALS

- (1) The Global Warming Solutions Act of 2006 (Health & Safety Code section 38500 et seq.) authorized CARB to adopt regulations to reduce greenhouse gas (GHG) emissions. Pursuant to this authority, CARB adopted the Low Carbon Fuel Standard (LCFS), California Code of Regulations (CCR), title 17, sections 95480 et seq.
- (2) The LCFS is crucial to incentivizing innovative fuels that reduce GHG emissions. The regulation provides that fuel producers and importers generate deficits by supplying petroleum-based fuels which have a carbon intensity higher than a stated annual carbon intensity standard. On the other hand, low-carbon fuel producers and importers can generate credits by supplying transportation fuels with a carbon intensity below the stated standard. The regulation requires all participating fuel producers and importers to report the volume of fuel they supply and the fuel's corresponding carbon intensity. The volume and carbon intensity determine the number of credits or deficits the fuel will generate when reported to CARB.
- (3) The LCFS requires reporting parties to submit quarterly and annual reports, each of which must contain a statement attesting to accuracy. For the fuels transactions in a quarterly report, the reporting party must include the volume, fuel type, pathway code, and whether the corresponding credits or deficits were transferred with the fuel.
- (4) On April 4, 2018, CARB issued Notice of Violation (NOV) # F050317-CERF-RPT to the Company alleging that from 2012 to 2017 the Company: (1) submitted inaccurate quarterly and annual reports in violation of sections 95484(d) (eff. 2010), 95484(b)(2) (eff. 2013), and 95491(a)(2) (eff. 2016); and (2) entered false information into application-related materials, data submitted to the Executive Officer, and other records used for compliance or credit calculations in violation of sections 95484(d) (eff. 2010), 95484(c) (eff. 2013), and 95491(b)(1) (eff. 2016). Specifically, CARB alleged that these violations arose from the Company's failure to disclose that the liquefaction plant associated with reported fuel pathways used natural gas for process energy, resulting in a higher carbon intensity than associated with the approved and reported fuel pathways.
- (5) California Health & Safety Code section 38580(b) provides that any violation of the LCFS is subject to civil penalties. California Health & Safety Code section 43027(d) provides that any person who enters false information in, or fails to

keep any document required to be kept pursuant to the LCFS, is strictly liable for civil penalties of up to \$25,000 per violation. California Health & Safety Code section 43027(c) provides that any person who other violates any other provision of the LCFS is strictly liable for civil penalties of up to \$35,000 per violation.

- (6) Each day that a required report remains unsubmitted, incomplete, or inaccurate constitutes a separate violation of the LCFS.
- (7) To resolve the violations alleged in the NOV, CARB and the Company agree to the terms enumerated below.

TERMS

In consideration of CARB not filing a legal action against the Company for the alleged violations referred to above, and in consideration of the terms set out below, CARB and the Company agree as follows:

- (8) The Company shall undertake a mitigation program (Mitigation Program) in which the Company will incentivize the deployment of twenty (20) Class 7 or 8 trucks powered by Low-NOx CNG engines certified to 0.02g NOx/bhp-hr, in accordance with the following terms:
 - a. The trucks will be deployed for an average of thirty-six (36) months per truck and will be fueled with renewable natural gas (RNG) for this duration.
 - b. The trucks will be deployed at California public ports, or in the South Coast or San Joaquin Valley Air Basins, which are in non-attainment for one or more criteria pollutants.
 - c. The first truck will be deployed within six (6) months of the Effective Date, and all remaining trucks will be deployed within eighteen (18) months of the Effective Date.
 - d. The Company will incentive the truck deployments through one or more of the following entirely new initiatives funded wholly by the Company through a minimum total expenditure of \$800,000:
 - i. A "Try It & Buy It" program through which the Company leases trucks to operators for a period of time, and sells the trucks to operators for residual value upon completion of the lease period;
 - ii. A grant program wholly funded and operated by the Company;
 - iii. Low-cost financing directed at operators who are not eligible for traditional financing; or
 - iv. Through an alternate mechanism subject to advance approval by CARB.
 - e. The Company will not utilize existing programs for grant incentives (e.g., Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project or the Carl Moyer Program) as part of the Mitigation Program, and no truck

deployed using outside incentives will be eligible for credit under the Mitigation Program.

- f. The Company will fund a third-party emissions vehicle monitoring program and report. The third-party will collect and report to CARB fuel usage, mileage, operating costs, repair history, and customer satisfaction data for the twenty (20) trucks deployed under the Mitigation Program. The report will be due within sixty (60) days of the completion of the truck deployments for purposes of the Mitigation Program.
 - g. If the Company fails to deploy one or more of the twenty (20) trucks in accordance with the terms of this Agreement, the Company will pay a stipulated civil penalty to CARB in the amount of \$40,000 per truck.
 - h. The Company will report to CARB quarterly on the progress in implementing the Mitigation Program until all terms are completed. The quarterly reports will contain, at a minimum, the following information: number of trucks deployed, location of deployment, operator information, incentive mechanism, and the Company's expenditures on incentive mechanisms with supporting documentation demonstrating satisfaction of the funding terms described herein, including the minimum expenditures. CARB may request additional information to ensure compliance with the terms of this Agreement, and the Company shall provide such information upon request.
 - i. The Company will not engage in marketing of the Mitigation Program other than: (1) in communications specifically directed to potential operators of the twenty (20) trucks; or (2) upon completion of the Mitigation Program, to report the outcomes of the Mitigation Program to demonstrate the economic, environmental, and practical benefits of deployment of Class 7 or 8 trucks with low-NOx CNG engines.
 - j. The Company will not portray the Mitigation Program or any element therein as a CARB sponsored or affiliated program.
 - k. Upon completion of the truck deployment under the Mitigation Program, the Company will provide a final report to CARB providing an accounting of funds expended towards truck deployment with supporting records.
- (9) The Parties shall exchange signed copies of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof. The signed Agreement and any future mailings, reports, or other documents required to be provided to CARB per the terms of this Agreement to shall be sent to:

Mr. Thomas Lopez
Thomas.Lopez@arb.ca.gov
Fuels Enforcement Section, Enforcement Division
California Air Resources Board
8340 Ferguson Avenue
Sacramento, CA 95828

- (10) Within 15 business days of the Effective Date, the Company shall pay a civil penalty of \$100,000 to the California Air Pollution Control Fund. The Company shall send the payment along with the enclosed Settlement Agreement Payment Transmittal Form (Attachment A) to:

California Air Resources Board, Accounting Office
P.O. Box 1436
Sacramento, CA 95812-1436

- (11) The parties further agree that the penalties described in paragraph 10 are punitive in nature, rather than compensatory, and payable to a governmental unit. Therefore, it is agreed that these penalties are non-dischargeable under 11 United States Code § 523(a)(7).
- (12) This Agreement shall apply to and be binding upon the Company, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (13) This Agreement constitutes the entire agreement and understanding between CARB and the Company concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements, whether made orally or in writing, between CARB and the Company concerning the subject matter hereof.
- (14) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties.
- (15) Each provision of this Agreement is severable, and in the event that a court holds that any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (16) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to choice-of-law rules.
- (17) This Agreement was drafted equally by the Parties and should not be interpreted for or against either party on the grounds that said party drafted it.
- (18) In consideration of the payment of civil penalties as set forth in paragraph 10 and the funding of the Mitigation Program as set forth in paragraph 8, and other good and valuable consideration, CARB hereby releases and forever discharges the Company and its principals, officers, directors, shareholders, employees, agents, predecessors, affiliates, successors and assigns, from claims that CARB has or may have based on the allegations in paragraph 4.

PENALTY BASIS

- (19) Health & Safety Code section 39619.7 requires CARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. CARB has considered all relevant facts, including those listed in Health & Safety Code section 43031, has explained the manner in which the penalty amount was calculated, and has identified the provision of law under which the penalty is being assessed. This information is summarized below.

The manner in which the penalty was determined, including any per unit penalty.

Penalties must be set at levels sufficient to discourage violations. For violations of the LCFS, the maximum strict liability penalty established by statute is \$35,000 per violation per day. The violations in this case resulted in a civil penalty of \$100,000 for misreported volumes pertaining to a given fuel pathway code. CARB determined the penalty in this matter based on the unique circumstances of this case and applying the factors under Health & Safety Code section 43031. The reduced penalty in this case reflects consideration of the Company's efforts to comply, cooperation with CARB's investigation, the significant expenditure required to be made by the Company under the Mitigation Program, and the relative overall program impact of the violations. Penalties in future cases may be smaller or larger based on the circumstances of each case.

The governing legal provisions.

The penalty is based on California Health & Safety Code sections 38580(b) and 43027(d), as well as title 17 CCR section 95494.

Whether the governing provisions prohibit emissions at a specified level.

Health & Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission of an air contaminant for purposes of the governing penalty statutes.

- (20) The penalty reflects confidential settlement communications between CARB and the Company. The penalty is the product of an arms-length negotiation between CARB and the Company and reflects CARB's assessment of the relative strength of its case against the Company, the desire to avoid the uncertainty, the burden and expense of litigation, the ability to obtain swift compliance with the law, and the aim to remove any unfair advantage that the Company may have secured from its actions.
- (21) The undersigned represent that they have the full authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: _____ /S/ _____

Name: Richard W. Corey

Title: Executive Officer

Date: 12/30/2019

Clean Energy Renewable Fuels LLC

By: _____ /S/ _____

Name: Tyler Henn

Title: Vice President

Date: 12/23/2019