

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and Russell City Energy Company, LLC (RCEC) with its principle office at 717 Texas Avenue, Houston Texas, 77002.

RECITALS

1. The Global Warming Solutions Act of 2006 authorizes ARB to adopt regulations to reduce greenhouse gas emissions (Health & Safety Code section 38500 et seq.).
2. Pursuant to that authority, ARB adopted the Regulation for Reducing Sulfur Hexafluoride Emissions from Gas Insulated Switchgear (GIS), California Code of Regulations (CCR), title 17, section 95350 et seq. (SF₆-GIS Regulation). The SF₆-GIS Regulation became fully effective on June 17, 2011.
3. The SF₆-GIS Regulation sets forth maximum annual SF₆ emission rates for GIS owners (CCR, title 17, section 95352); the maximum allowable emission rate for 2015 is 6 percent.
4. RCEC submitted its 2015 report documenting an annual emission rate of 8.7 percent.
5. RCEC is a "Gas Insulated Switchgear (GIS) Owner" as defined by the SF₆-GIS regulation and is subject to the SF₆-GIS Regulation's requirements.
6. Based on the 2015 reports submitted by RCEC, ARB alleges that RCEC failed to comply with the annual SF₆ emission rate limit established for 2015.
7. RCEC has repaired the GIS equipment and implemented changes to their business practices to minimize future SF₆ emissions.
8. The SF₆-GIS Regulation provides that any exceedance of the maximum allowable SF₆ emission rate for a calendar year constitutes a single separate violation for each day of the calendar year (CCR, title 17, section 95358(c)).
9. Violation of the SF₆-GIS Regulation is a violation of State law. Health & Safety Code sections 38580 and 42400 et seq. authorize strict liability penalties not to exceed ten thousand dollars (\$10,000) per day, for each day that the violation occurs.
10. ARB and RCEC desire to resolve this issue completely under the terms of this Agreement, in lieu of litigation. In order to resolve these violations, RCEC agrees to take the actions enumerated below under "TERMS AND RELEASE."

TERMS AND RELEASE

11. RCEC agrees to a total stipulated penalty in the amount of \$125,000.00.

Payment shall be made to the "Air Pollution Control Fund" on behalf of RCEC. Payment and submittal of a copy of the signed Agreement shall be handled in accordance with the instructions in Attachment A to this Agreement.

RCEC shall mail the original executed agreement postmarked to:

Taylor Grose
Enforcement Division
California Air Resources Board
PO Box 2815
Sacramento, California 95812

12. The effective date of this agreement is the date upon which RCEC executes this agreement.
13. The penalties arising from the facts described in recitals are non-dischargeable under United States Code, title 11, section 523 (a)(7).
14. This Agreement shall apply to and be binding upon RCEC, and its officers, directors, receivers, trustees, employees, successors and assignees and subsidiary corporations, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
15. This Agreement constitutes the entire agreement and understanding between ARB and RCEC concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and RCEC concerning the subject matter hereof.
16. 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 to this Agreement. This Agreement shall further serve to toll any statute of limitation until six months after all terms and conditions of this Agreement have been fulfilled.
17. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement.
18. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

Settlement Agreement

ARB and RCEC

May 5, 2017

19. This 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. This Agreement is deemed to have been drafted equally by ARB and RCEC ; it will not be interpreted for or against either party on the ground that said party drafted it.
21. **The manner in which the penalty was determined.**

Health & Safety Code section 39619.7 requires ARB to explain the basis for the penalties it seeks. This information is provided throughout this Agreement and is summarized here.

Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. In this matter ARB concluded there were a number of mitigating factors including: the fact that this was a first time alleged violation; RCEC cooperated fully with the investigation and voluntarily brought the violation to ARB's attention prior to the required reporting date; RCEC's efforts to repair the GIS equipment to prevent future violations; and RCEC's commitment to ensuring its future compliance through equipment and procedural improvements. Penalties in future cases might be smaller or larger. Specifically, this penalty reflects a penalty of approximately \$343 per day for 365 days of violation.

The legal provisions under which the penalty was assessed.

The penalty is based on Health and Safety Code section 42402 and CCR, title 17, section 95358, the provisions intended to govern SF₆-GIS Regulation violations.

Whether the governing provisions prohibit emissions at a specified level, and, if so a quantification of excess emissions if it is practicable to do so.

The SF₆-GIS Regulation prohibits SF₆ emissions above a specified annual percentage rate. In this case the emissions above the specified annual rates allowed were calculated to be 19 pounds of SF₆. This is the equivalence of 216 tons of carbon dioxide.

22. RCEC acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health & Safety Code

Settlement Agreement

ARB and RCEC

May 5, 2017

section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

23. The penalty was based on confidential settlement communications between ARB and RCEC. The penalty is the product of an arm's length negotiation between ARB and RCEC and reflects ARB's assessment of the relative strength of its case against RCEC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that RCEC may have secured from its actions.
24. Now therefore, in consideration of the undertaking in paragraph 10 and payment on behalf of RCEC to the California Air Resources Board, ARB hereby resolves finally and releases RCEC and its principals, officers, agents, predecessors and successors from any and all claims for the past violations of the SF₆-GIS Regulation that ARB may have based on the circumstances described in the Recitals.
25. The undersigned represent that they have the authority to enter into this Agreement.

SIGNATURES

California Air Resources Board

By:  _____

Name: Richard W. Corey

Title: Executive Officer

Date: 7/10/2017

Russell City Energy Company, LLC

By:  _____ ^{KP}

Name: W. Thaddeus Miller

Title: Chief Legal Officer

Date: 05/30/2017