

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) and CONSTELLATION NEW ENERGY (CNE), with its principal place of business at 100 Constellation Way, Baltimore, MD 21202.

RECITALS

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations requiring the reporting and verification of greenhouse gas emissions. (Health & Saf. Code §38530.) Pursuant to that authority, ARB adopted the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR), California Code of Regulations (CCR), title 17, §95100 et seq.
2. The MRR is crucial to the development of the greenhouse gas (GHG) inventory, and supports other regulatory programs, including the cap on GHG emissions established by CCR, title 17, §95801 et seq., known as the Cap-and-Trade Regulation. The MRR requires electricity entities to submit, by June 1st of each year, an emissions data report that is certified to be complete and accurate within stated standards. (CCR, tit. 17, §95103.) The June 1st deadline is intended to precede other regulatory events later in the year, such as verification under the MRR, and the distribution of allowances and surrender of compliance instruments under the Cap-and-Trade Regulation.
3. Where a report required under the MRR is late or does not meet the regulation's standards for accuracy, completeness, or third-party verification, the MRR provides that each day a report remains unsubmitted, incomplete or inaccurate constitutes a separate violation. (CCR, tit. 17, §95107.)
4. California Health & Safety Code sections 38580 and 42402 provide that one who violates the MRR or related regulations is strictly liable for a penalty of up to \$10,000 for each violation.
5. ARB contends that for the reporting period 2013 CNE failed to comply with the MRR because its emissions data report contained errors. As a result, ARB set aside the positive emissions data verification statement for 2013, necessitating submittal of a new report and verification by CNE.
6. In reaching this settlement, ARB considered a variety of circumstances, including the size and complexity of the violator's operations, the nature, magnitude, and duration of the violation, any harm to the environment or the regulatory program, efforts the violator took to prevent the violation and to correct it, and the financial burden to the violator.
7. In this matter, there were both mitigating and aggravating factors, including that this is the first time ARB has noted the company as being in violation of the MRR, the company's explanation indicates an innocent error, and the company submitted an updated GHG monitoring plan to ARB to demonstrate that reporting will be accurate in future reporting years, but on the other hand, the time needed to correct errors was lengthy.

8. To resolve these violations, CNE has taken, or agreed to take, the actions enumerated below. ARB accepts this Agreement in termination and settlement of this matter.

9. 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and CNE agree as follows.

TERMS

10. Within 15 business days following execution of this Agreement by all parties, CNE shall deliver a cashier's check or money order in the sum of \$149,017.00 made payable to the "Air Pollution Control Fund."

The check should note "CNE 2013 MRR settlement" in the memo section. CNE shall send (1) the signed settlement agreement, (2) check, and (3) the payment transmittal form (Attachment A) to:

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

and send a copy of the settlement agreement and copy of the check to:

William Brieger
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812-2815

11. It is further agreed that the penalties described in the prior paragraph are payable to a governmental unit and punitive in nature, rather than compensatory. Therefore, it is agreed that these penalties imposed on CNE by ARB arising from the facts described in recital paragraphs 1 – 9 are non-dischargeable under 11 United States Code § 523 (a)(7).

12. CNE shall not violate the MRR, CCR, title 17, section 95100 *et seq.*

13. This Agreement shall apply to and be binding upon CNE, and any receivers, trustees, successors and assignees, subsidiary and parent corporations and likewise upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

14. This Agreement constitutes the entire agreement and understanding between ARB and CNE concerning the subject matter hereof, and supersedes all prior negotiations and agreements between ARB and CNE concerning the subject matter hereof.

15. 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.

16. 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.

17. 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.

18. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

The Penalty's Basis

19. Health & Safety Code section 39619.7 requires ARB 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. CNE 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 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, which provision does not prohibit the emission of pollutants at a specified level. That information, some of which is also elsewhere in this settlement agreement, is summarized here.

The manner in which the penalty was determined, including any per-unit penalty. 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. Consideration was given to the reporting entity's size and complexity, the extent to which the monitoring and reporting deviated from MRR requirements, the cause of any errors and omissions, the magnitude of any errors, and the length of time it took to correct all errors. 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. Penalties in future cases might be smaller or larger.

In this matter the penalty equates to \$589 for each day that the report was inaccurate. The penalty was discounted based on the fact that the violation was a first time violation for this company, circumstances suggest that the reporting error may have resulted from a misunderstanding, and the company made efforts to comply and to cooperate with ARB's investigation.

The legal provisions under which the penalty was assessed and why those provisions are appropriate. The penalty is based on Health & Safety Code section

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42402 and CCR, title 17, section 95107, the provisions intended to govern MRR violations.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated level, but 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 for purposes of the governing penalty statutes.

20. The penalty was based on confidential settlement communications between ARB and CNE. The penalty is the product of an arms length negotiation between ARB and the company and reflects ARB's assessment of the relative strength of its case against the company, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law and to remove any unfair advantage that the company may have secured from its actions.


21. In consideration of the penalty payment, ARB hereby releases CNE and its receivers, trustees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the 2013 reporting period.

22. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

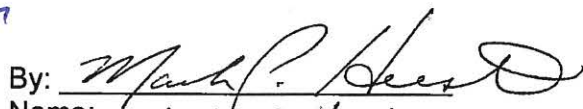
Constellation New Energy

By:



Richard W. Corey
Executive Officer

By:



Name: Mark P. Huston
Title: President & CEO - CNE

Date:

6/17/2016

Date:

6/3/16