

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 Southern Power Company, located at 3535 Colonnade Parkway, BIN S-934-EC, Birmingham, Alabama 35243 (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. This regulation was amended and renamed in 2021 and is presently known as the "*Regulation for Reducing Greenhouse Gas Emissions from Gas-Insulated Equipment*." (Cal. Code Regs., tit.17, §§ 95350-95359.) The present settlement relates to alleged violations prior to 2021 and therefore involves the previous regulatory provisions and not the newly adopted provisions.
- (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 1 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 eleven thousand seven hundred ten dollars (\$11,710.00 USD), including the consumer price index, 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., 42411, and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Southern Power Company was organized under the laws of the State of Delaware as a corporation. Southern Power Company legally conducts business in the State of California through affiliated Limited Liability Companies registered with the California Secretary of State to do business in California.

- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) SF6-2023-001, which was issued on August 8, 2023, and which included all pending allegations against Southern Power Company. CARB alleges Southern Power Company violated the SF₆ GIS Regulation by being an owner of gas insulated switchgear that exceeded the maximum annual emissions rate (Cal. Code Regs., tit.17, § 95352); and failed to submit annual reports in accordance with the reporting requirements (Cal. Code Regs., tit.17, § 95356), resulting in 35 days of violations, as outlined in Notice of Violation SF6-2023-001 (Cal. Code Regs., tit.17, § 95350 et seq.). The violations were addressed in revised reports submitted by Southern Power in 2021 and 2022. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Southern Power Company for each reporting and exceedance violation involved and each day in violation.
- (7) Acknowledgment. Southern Power Company 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, Southern Power Company 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 Southern Power Company for the alleged violations referred to above in the Legal Background and Case Background, and Southern Power Company's agreement to complete all terms and conditions set forth below, CARB and Southern Power Company agree as follows:

- (9) Settlement Amount. Southern Power Company shall pay a civil penalty of fifty-one thousand two hundred thirty-one dollars and twenty-five cents (\$51,231.25 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled Marine Vessel Speed Reduction Incentive Program Phase 3 in the amount of fifty-one thousand two hundred thirty-one dollars and twenty-five cents (\$51,231.25 USD), consistent with CARB's SEP Policy, for a total settlement of one hundred and two thousand four hundred sixty-two dollars and fifty cents (\$102,462.50 USD). Southern Power Company shall make all payments within 30 calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies Southern Power Company

according to Paragraph 16 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to Southern Power Company.

- (11) Civil Penalty Payment Method. Southern Power Company shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board" using instructions provided separately by CARB in a Payment Transmittal Form. Southern Power Company is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, Southern Power Company shall email CARB proof of the civil penalty payment including the Payment Transmittal Form, at the email address listed in Paragraph 16 (Notices). 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 Southern Power Company in accordance with Paragraph 16 (Notices).
- (12) SEP Payment Method. Southern Power Company shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Ventura County Air Pollution Control District, using instructions provided separately by CARB in a SEP Payment Transmittal Form. Southern Power Company is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, Southern Power Company shall email CARB proof of the SEP payment including the SEP Payment Transmittal Form, at the email address listed in Paragraph 16 (Notices). Should payment instructions change, CARB will provide notice to Southern Power Company in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. Southern Power Company has agreed that by funding the SEP entitled Marine Vessel Speed Reduction Incentive Program Phase 3, Southern Power Company will not receive any direct or indirect financial benefit, and that whenever Southern Power Company publicizes or refers to the SEP or the results of the SEP, Southern Power Company will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) 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, Southern Power Company assigns any and all rights against the SEP implementer to CARB.

- (15) Documents. Southern Power Company shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 16 (Notices).
- (16) 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
Short Lived Climate Pollutant Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov (proof of payment)

As to Southern Power Company:

Southern Power Company
3535 Colonnade Parkway, BIN S-934-EC
Birmingham, Alabama 35243
keharris@southernco.com

As to Southern Power Company's Legal Representation:

Troutman Pepper Hamilton Sanders
600 Peachtree Street NE # 3000
Atlanta, Georgia 30308
mack.mcguffey@troutman.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.

- (17) Repeat Violations. Southern Power Company agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 9 pages and 35 numbered paragraphs.

- (19) Binding Effect. This Settlement Agreement binds Southern Power Company, 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.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (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 full payment of the civil penalty and SEP payment, and all other undertakings above, CARB hereby releases Southern Power Company 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 Paragraph 6 (Allegations) 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 eleven thousand seven hundred ten dollars (\$11,710.00 USD) per day under Health and Safety Code sections 38350 and 42411 for violations of the SF₆ GIS Regulation (Cal. Code Regs., tit.17, § 95350 et seq.). The penalty of \$102,462.50 is over a period of 35 days of violation and is approximately \$2,928.00 for one exceedance and thirty-four noncompliant days.
- (33) 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 Southern Power Company did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (34) 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. Here, mitigating factors include self-disclosure and cooperation by Southern Power Company.

(35) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Southern Power Company or confidential settlement communications.

(36) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Southern Power Company with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Southern Power Company with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Southern Power Company to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.

- (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Southern Power Company shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Southern Power Company or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Southern Power Company, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Southern Power Company is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Southern Power Company's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Southern Power Company's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: February 20, 2024

Southern Power Company

Signature: /S/

Name: John L. Pemberton

Title: SVP, General Counsel, CCO, Southern Power Company

Date: February 1, 2024