

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 AES Alamitos, LLC (AES Alamitos), located at 690 N. Studebaker Road, Long Beach, California 90803 (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, AES Alamitos was organized under the laws of the State of Delaware as a corporation and conducted business in the State of California.
- (6) Allegations. CARB alleges AES Alamitos 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), resulting in 130 days of violations, as outlined in Notice of Violation SF6-2023-003 (Cal. Code Regs., tit. 17, § 95350 et seq.). CARB alleges that if paragraphs 1 through 6 were proven, civil

penalties could be imposed against AES Alamitos for each reporting and exceedance violation involved and each day in violation.

- (7) Acknowledgment. AES Alamitos admits to the facts in paragraphs 1 through 5, but denies any liability resulting from said allegations in paragraph 6.
- (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, AES Alamitos 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 AES Alamitos for the alleged violations referred to above in the Legal Background and Case Background, and AES Alamitos' agreement to complete all terms and conditions set forth below, CARB and AES Alamitos agree as follows:

- (9) Settlement Amount. AES Alamitos shall pay a civil penalty of ninety-seven thousand five hundred dollars (\$97,500.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled, Landscaping for Life, with the U.S. Green Business Council - LA Chapter, in the amount of ninety-seven thousand five hundred dollars (\$97,500.00 USD), consistent with CARB's SEP Policy, for a total settlement of one hundred ninety-five thousand dollars (\$195,000.00 USD). AES Alamitos shall make all payments within 30 calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies AES Alamitos according to Paragraph 16 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to AES Alamitos.
- (11) Civil Penalty Payment Method. AES Alamitos 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. AES Alamitos 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, AES Alamitos 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 AES Alamos in accordance with Paragraph 16 (Notices).

- (12) SEP Payment Method. AES Alamos shall fund the SEP by wire transfer payable to the SEP Administrator/Recipient, U.S. Green Business Council - LA Chapter, for the SEP Landscaping for Life, using instructions provided separately by CARB in a SEP Payment Transmittal Form. AES Alamos is responsible for all payment processing fees. Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to AES Alamos in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. AES Alamos has agreed that by funding the SEP entitled Landscaping for Life, with the U.S. Green Business Council - LA Chapter, using instructions provided separately by CARB in a SEP Payment Transmittal Form, AES Alamos will not receive any direct or indirect financial benefit, and that whenever AES Alamos publicizes or refers to the SEP or the results of the SEP, AES Alamos 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 Administrator/Recipient 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 Administrator/Recipient, 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, AES Alamos assigns any and all rights against the SEP Administrator/Recipient to CARB.
- (15) Documents. AES Alamos 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 AES Alamos:
AES Alamos, LLC
690 N Studebaker Road
Long Beach, California 90803
keith.mcgregor@aes.com

As to AES Alamos Legal Representation:
Greenberg Glusker LLP
2049 Century Park East, Suite 2600
Los Angeles, California 90067
nperchahern@greenbergglusker.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. AES Alamos 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 8 pages and 36 numbered paragraphs.
- (19) Binding Effect. This Settlement Agreement binds AES Alamos, 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 AES Alamos and its principals, officers, receivers, trustees, successors and assignees, subsidiary, affiliates, 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 \$195,000.00 is over a period of 130 days of violation and is approximately \$1,500.00 for each day in violation.

(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 AES Alamos did not meet the regulatory requirements, CARB alleged 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 AES Alamos, LLC.

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

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

(a) This Settlement Agreement resolves the civil and administrative 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 AES Alamos 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 AES Alamos with respect to:
- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by AES Alamos 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, AES Alamos 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 AES Alamos 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 AES Alamos, 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. AES Alamos is responsible for achieving and maintaining compliance with all applicable

federal, State, and local laws, regulations, and permits; AES Alamos' 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 AES Alamos' 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: Ellen M. Peter

Title: Chief Counsel

Date: June 6, 2024

AES Alamos, LLC

Signature: /S/

Name: Mark Miller

Title: President and Chief Executive Officer

Date: June 3, 2024