

## **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 Western Area Power Administration (WAPA) – Sierra Nevada Region, with its regional business location at 114 Parkshore Drive, Folsom, California 95630 (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*”(SF<sub>6</sub> GIS Regulation) to achieve greenhouse gas emission reductions by reducing sulfur hexafluoride emissions from gas insulated switchgear. (Cal. Code Regs., tit. 17, §§ 95350-95359.)
- (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 1st 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) 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., 42410, and 42411.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, WAPA – Sierra Nevada Region is a federally-owned government utility under the Department of Energy legally conducting business in the State of California.
- (6) Allegations. CARB alleges that WAPA – Sierra Nevada Region violated the SF<sub>6</sub> 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 maintain records in accordance with the recordkeeping requirements (Cal. Code Regs., tit. 17, § 95355), resulting in 82 days of violations, as outlined in Notice of Violation SF6-2024-001. (Cal. Code Regs., tit. 17, § 95350 et seq.) CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against WAPA – Sierra Nevada Region for each exceedance involved in the violations and each day during which a violation occurred.

- (7) Acknowledgment. WAPA – Sierra Nevada Region 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, WAPA – Sierra Nevada Region 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 WAPA – Sierra Nevada Region for the alleged violations referred to above in the Legal Background and Case Background, and WAPA – Sierra Nevada Region’s agreement to complete all terms and conditions set forth below, CARB and WAPA – Sierra Nevada Region agree as follows:

- (9) Settlement Amount. WAPA – Sierra Nevada Region shall pay a civil penalty of one hundred nine thousand, five hundred and forty dollars (\$109,540.00 USD). WAPA – Sierra Nevada Region shall make all payments within thirty (30) calendar days from the Notification Date.
- (10) Notification Date. The date upon which CARB notifies WAPA – Sierra Nevada Region according to Paragraph 13 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to WAPA – Sierra Nevada Region.
- (11) Civil Penalty Payment Method. WAPA – Sierra Nevada Region 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. WAPA - Sierra Nevada Region is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. 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 WAPA – Sierra Nevada Region in accordance with Paragraph 13 (Notices).
- (12) Documents. WAPA – Sierra Nevada Region shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 13 (Notices).

- (13) 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  
Field Operations Branch  
Short-Lived Climate Pollutant Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to WAPA – Sierra Nevada Region:

Western Area Power Administration – Sierra Nevada Region  
114 Parkshore Drive  
Folsom, California 95630  
Dalldorf@WAPA.gov

As to WAPA – Sierra Nevada Region’s Legal Representation:

Ben Summerhays  
12155 West Alameda Parkway  
Lakewood, Colorado 80228  
Summerhays@WAPA.gov

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.

- (14) Repeat Violations. WAPA – Sierra Nevada Region agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) 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 7 pages and 32 numbered paragraphs.
- (16) Binding Effect. This Settlement Agreement binds WAPA – Sierra Nevada Region, 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.

- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) 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.
- (19) 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.
- (20) 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 or conflict of laws or Federal Law, as applicable.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.

- (25) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (26) Release. In consideration of full payment of the civil penalty and SEP payment(s), and all other undertakings above, CARB hereby releases WAPA – Sierra Nevada Region 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.
- (27) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (28) 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 section 38350 for violations of the SF<sub>6</sub> GIS Regulation (Cal. Code Regs., tit. 17, § 95350 et seq.) The penalty of \$109,540.00 over 82 days of violation is \$537.15 per noncompliant day for 28 days of reporting violations, and \$1,750.00 per noncompliant day for 54 days emissions violations.
- (29) Emissions. The provisions cited in Paragraph 6 (Allegations) above prohibit emissions above a specified level. CARB has alleged that WAPA – Sierra Nevada Region exceeded the specified emissions limitations in violation of CARB’s regulation.
- (30) 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.

- (31) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by WAPA – Sierra Nevada Region or confidential settlement communications.
- (32) 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 WAPA – Sierra Nevada Region 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 WAPA – Sierra Nevada Region with respect to:
    - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
    - (ii) Facts that were not disclosed by WAPA – Sierra Nevada Region 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 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, it is CARB's position that any defense or claim WAPA-Sierra Nevada Region may assert 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 is not sustainable as this

Settlement Agreement is intended to address all issues knowable to CARB with respect to the concerns stated in paragraph 6.

- (d) This Settlement Agreement does not limit or affect the rights of WAPA – Sierra Nevada Region 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 WAPA– Sierra Nevada Region, 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. WAPA – Sierra Nevada Region is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; WAPA – Sierra Nevada Region’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 WAPA – Sierra Nevada Region’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: Ellen M. Peter  
Title: Chief Counsel  
Date: September 6, 2024

**Western Area Power Administration – Sierra Nevada Region**

Signature: /S/  
Name: Melinda Jones  
Title: Utility Industry Restructuring Advisor, Sierra Nevada Region  
Date: August 28, 2024