

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) and Comisión Federal de Electricidad (CFE), PMB 42-023 120-A Rockwood Ave., Conjunto Urba, Calexico California 92231

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 entities that provide electricity into California to submit, by June 1st of each year, an emissions data report containing information 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 to pay an amount of up to \$10,000 for each violation.
5. ARB contends that for several reporting periods, CFE did not timely comply with the MRR. As a result, ARB was obligated to conduct its own review and to assign an emissions level for the facility. CFE disputes ARB's contention that its actions constituted a violation, questioning the application of the MRR to CFE as a decentralized entity of the Mexican federal public administration that did not receive direct notice from ARB of its obligations. CFE also maintains that its power sales were sourced from a zero-emitting generation asset.
6. In reaching this settlement, ARB considered a variety of circumstances, including the size and complexity of CFE's operations, the nature, magnitude, and duration of the alleged violation, any harm to the environment or the regulatory program, efforts that CFE took to submit its MRR reports following notice from ARB, and the financial burden to the CFE.
7. In this matter, there were a number of mitigating factors, including that this is the first time ARB has contacted CFE regarding delayed compliance, CFE's explanation indicates a misunderstanding, and CFE has agreed to submit an updated GHG monitoring plan to ARB to demonstrate that reporting will be timely and accurate in

future reporting years.

8. To meet the reporting obligations arising from the MRR, CFE has taken, or agreed to take, the actions enumerated below. ARB accepts this Agreement in termination and settlement of all outstanding compliance obligations for 2011-2014.

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 circumstances, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and CFE agree as follows.

TERMS

10. Not later than March 31, 2017, CFE shall deliver a cashier's check or money order in the sum of US\$349,500.00 made payable to the "Air Pollution Control Fund."

The check should note "CFE MRR Settlement" in the memo section. CFE 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. CFE reiterates its commitment not to violate the MRR.

12. This Agreement shall apply to and be binding upon CFE, and any successors and assignees, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

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

14. 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.

15. 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

Handwritten signatures in blue ink are present at the bottom of the page, including a large signature on the left, a signature in the middle, and a signature on the right.

Agreement remains in full force and effect.

16. 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.

17. 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 Settlement's Basis

18. Health & Safety Code section 39619.7 requires ARB to explain the manner in which a noncompliance obligation was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. CFE acknowledges that ARB has complied with section 39619.7 in investigating 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 CFE's obligation under this settlement agreement was calculated, has identified the provision of law under which CFE's obligation arises, , 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 an obligation was determined, including any per-unit obligation. Settlement obligations must be set at levels sufficient to deter future violations. To quantify the obligations set forth herein, all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in Health & Safety Code section 42403, were considered. 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, and the magnitude of any errors. Those circumstances were considered together with the the goal of deterring future violations and obtaining swift compliance, obligations sought in other cases, and the potential costs and risk associated with litigating any violations. Obligations in future cases might be smaller or larger.

CFE's obligation hereunder was discounted based on the fact that CFE has not had prior compliance problems with regard to ARB programs, circumstances suggest that the delay in CFE's reporting 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 obligation was assessed and why those provisions are appropriate. The obligation is based on Health & Safety Code section 42402 and CCR, title 17, section 95107, the provisions applicable to the MRR.

Whether the governing provisions prohibit emissions at a specified level. The MRR does not prohibit emissions above a stated level.

20. CFE's obligation hereunder is based on confidential settlement communications between ARB and CFE. The obligation set forth herein is the product of an arms-length negotiation between ARB and CFE and reflects ARB's assessment of the relative strength of its case, 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 CFE may have secured from its actions or omissions.


21. In consideration of the payment under paragraph 10 and undertaking in paragraph 11, above, ARB hereby releases CFE and its receivers, trustees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 5, above.

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

California Air Resources Board

Comisión Federal de Electricidad

By: 
Richard W. Corey
Executive Officer

By: 
Name: Eduardo Arriola Jiménez
Title: Generation Deputy Director General

Date: March 27, 2017

Date: March 15, 2017

