

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and Ormat Nevada Inc. (Ormat) with its principle office at 6225 Neil Road Reno, Nevada 89511.

### RECITALS

1. The Global Warming Solutions Act of 2006 authorizes ARB to adopt regulations to reduce greenhouse gas emissions (Health & Safety Code section 38500 et seq.).
2. Pursuant to that authority, ARB adopted the Regulation for Reducing Sulfur Hexafluoride Emissions from Gas Insulated Switchgear (GIS), California Code of Regulations (CCR), title 17, section 95350 et seq. (SF<sub>6</sub>-GIS Regulation). The SF<sub>6</sub>-GIS Regulation became fully effective on June 17, 2011.
3. The SF<sub>6</sub>-GIS Regulation sets forth maximum annual SF<sub>6</sub> emission rates for GIS owners (CCR, title 17, section 95352); the maximum allowable emission rate for 2015 is six percent.
4. Ormat is a GIS Owner as defined by the SF<sub>6</sub>-GIS regulation and is subject to the SF<sub>6</sub>-GIS Regulation's requirements. (CCR, title 17, section 95351 (a) and (b))
5. Ormat submitted its 2015 report documenting an Annual SF<sub>6</sub> Emission Rate of 14.3 percent at its Ormesa facility in Holtville, California. The 2015 report for Ormesa was purported by ARB to contain inaccurate or incomplete information.
6. Ormat later revised the purported inaccuracies in its 2015 report for Ormesa to document an Annual SF<sub>6</sub> Emission Rate of 6.7 percent.
7. Based on the 2015 report submitted by Ormat, ARB alleges that Ormat failed to comply with the annual SF<sub>6</sub> emission rate limit established for 2015.
8. Based on the updated 2015 report, ARB alleges that Ormat inaccurately reported its facility information at its Ormesa facility for the 2011, 2012, 2013, 2014, and 2015 reporting years.
9. ARB also alleges that Ormat submitted its annual reports for its emissions at its Heber, Mammoth, and North Brawley facilities late for the 2011, 2012, 2013, 2014, and 2015 reporting years.
10. Ormat has replaced the GIS equipment at its Ormesa facility and implemented changes to its business practices to minimize future SF<sub>6</sub> emissions and to ensure future emissions reporting accuracy at all of its facilities.
11. The SF<sub>6</sub>-GIS Regulation provides, among other requirements, that any exceedance of the maximum allowable SF<sub>6</sub> emission rate for a calendar year

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constitutes a single separate violation for each day of the calendar year (CCR, title 17, section 95358(c)).

12. The SF<sub>6</sub>-GIS Regulation provides, among other requirements, that any day or portion thereof that any report required by the regulation remains unsubmitted, submitted late or contains incomplete or inaccurate data constitutes a single separate violation for each day of the calendar year (CCR, title 17, section 95358(b)).
13. Violation of the SF<sub>6</sub>-GIS Regulation is a violation of State law. Health & Safety Code sections 38580 and 42400 et seq. authorize strict liability penalties not to exceed ten thousand dollars (\$10,000) per day, for each day that the violation occurs.
14. ARB and Ormat desire to resolve this issue completely under the terms of this Agreement, in lieu of litigation. In order to resolve these ARB allegations and purported violations, Ormat agrees to take the actions enumerated below under "TERMS AND RELEASE."

**TERMS AND RELEASE**

In consideration of CARB not filing a legal action against Ormat for the alleged violations referred to above, and Ormat's payment of the penalties and funding of Supplemental Environmental Project (SEP) set forth below, CARB and Ormat agree as follows:

15. Within [10] Business Days of mutual execution of this Agreement, Ormat shall pay a civil penalty and fund a SEP in the total amount of \$150,000.00. Payment shall be made in two (2) payments as described below, no later than December 29, 2017.

<b>Payment Due Date:</b>	<b>In the Amount of and Payable to:</b>	
<b>December 29, 2017</b>	<b>\$78,000.00</b>	<b>the Air Pollution Control Fund</b>
<b>December 29, 2017</b>	<b>\$72,000.00</b>	<b>Tree Fresno</b>

For payments made to the **Air Pollution Control Fund**, each payment by the applicable payment due date along with the corresponding Attachment A – "Settlement Agreement Payment Transmittal Form" shall be submitted to:

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

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For payments made to the **Tree Fresno**, each payment by the applicable payment due date along with the corresponding Attachment B – “*SEP Payment Transmittal Form*” shall be submitted to:

**Tree Fresno**

For: Fresno TREES SEP

ATTN: Lee Ayres

3150 E. Barstow Ave.

Fresno, California 93740

A copy of each payment check or proof of wire transfer to any party, the signed Settlement Agreement, and any future mailings or documents required per the terms of this Settlement Agreement shall be mailed to:

Taylor Grose

Air Resources Engineer

California Air Resources Board

Enforcement Division

P.O. Box 2815

Sacramento, California 95812

16. Ormat has agreed to undertake a SEP as described in Attachment C – “*SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Fresno TREES SEP*,” (“SEP Agreement”) and, Exhibit 1 – “*Fresno TREES SEP-Project Information and reporting requirements*” to offset a portion of the penalty, consistent with CARB’s SEP Policy. Pursuant to this Agreement, Ormat shall make payments according to the schedule above in (15).
17. Ormat has agreed that by funding the Fresno TREES SEP, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action. This Agreement does not in any way constitute an admission by Ormat of any liability or responsibility, past, present or future, for the matters released by and through this Agreement.
18. Upon agreeing to the terms set forth in the SEP Agreement, and funding the Fresno TREES SEP, Ormat is released of any and all actual or purported liabilities as they relate to the Fresno TREES SEP and as they relate to the ARB allegations as reflected in this underlying Settlement Agreement.
19. In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover

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the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s). ARB will deposit any such recovery into Air Pollution Control Fund. Accordingly, Ormat assigns any and all rights against the SEP implementer to CARB.

20. Effect of Untimely Payment. If any payment is more than fifteen (15) days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, Ormat shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
21. The effective date of this agreement is the date upon which the second party to sign executes this agreement.
22. The penalties arising from the facts described in recitals are non-dischargeable under United States Code, title 11, section 523 (a)(7).
23. This Agreement shall apply to and be binding upon Ormat, and its officers, directors, receivers, trustees, employees, successors and assignees and subsidiary corporations, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
24. This Agreement constitutes the entire agreement and understanding between ARB and Ormat concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Ormat concerning the subject matter hereof.
25. 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. This Agreement shall further serve to toll any statute of limitation until six months after all terms and conditions of this Agreement have been fulfilled.
26. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement.
27. 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.
28. 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.

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29. This Agreement is deemed to have been drafted equally by ARB and Ormat; it will not be interpreted for or against either party on the ground that said party drafted it.
30. **The manner in which the penalty was determined.**

Health & Safety Code section 39619.7 requires ARB to explain the basis for the penalties it seeks. This information is summarized here.

Penalties must be set at levels sufficient to deter violations. ARB determined the penalties in this matter 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. ARB considered those circumstances 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 alleged violations. In this matter, ARB concluded there were a number of mitigating factors including: the fact that this was a first time alleged violation; Ormat cooperated fully with the investigation and brought to ARBs attention, full information at facilities that it owns; Ormat's efforts to repair the GIS equipment to prevent future violations; and Ormat's commitment to ensuring its future compliance through equipment and procedural improvements. Penalties in future cases might be smaller or larger. Specifically, this penalty reflects a penalty of approximately \$136.99 per day for 365 days of alleged emissions violation as well as \$5,000.00 per alleged violation for 20 counts of allegedly late, incomplete or inaccurate reporting.

**The legal provisions under which the penalty was assessed.**

The penalty is based on Health and Safety Code section 42402 and CCR, title 17, section 95358, the provisions intended to govern SF<sub>6</sub>-GIS Regulation violations.

**Whether the governing provisions prohibit emissions at a specified level, and, if so a quantification of excess emissions if it is practicable to do so.**

The SF<sub>6</sub>-GIS Regulation prohibits SF<sub>6</sub> emissions above a specified annual percentage rate. In this case the emissions above the specified annual rates allowed were calculated to be 2 pounds of SF<sub>6</sub>. This is equivalent to 23.9 tons of carbon dioxide.

31. 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, and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

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32. The settlement amount was based on confidential settlement communications between ARB and Ormat. The Settlement amount is the product of an arm's length negotiation between ARB and Ormat and reflects ARB's assessment of the relative strength of its case against Ormat, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Ormat may have secured from its actions.
33. Now therefore, in consideration of the undertaking in paragraph 10 and the payment pursuant to paragraph 15, ARB hereby releases Ormat and its principals, officers, agents, predecessors and successors from any and all claims for the past alleged or actual violations of the SF<sub>6</sub>-GIS Regulation based on the circumstances described in the Recitals.
34. The undersigned represent that they have the authority to enter into this Agreement.

**SIGNATURES**

**California Air Resources Board**

**Ormat Nevada Inc.**

By: 

By: 

Name: Richard W. Corey

Name: Connie Stechman

Title: Executive Officer

Title: Secretary

Date: 2/14/2018

Date: 12-13-2017