

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) 1001 I Street, Sacramento, California 95814, and SOUTHERN CALIFORNIA EDISON (SCE), Rosemead, California.

### **RECITALS**

1. The Global Warming Solutions Act of 2006 authorized ARB to adopt regulations to reduce greenhouse gas emissions, including market-based approaches. (Health & Saf. Code §§38560, 38570.) Pursuant to that authority, ARB adopted the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Regulation), California Code of Regulations (CCR), title 17, §95801 et seq.
2. The Regulation is crucial to reducing greenhouse gas (GHG) emissions, and includes several provisions intended to ensure a fair and functional market.
3. California Health & Safety Code sections 38580 and 42402 et seq. provide that one who violates the Regulation is liable for a penalty of up to \$75,000 for intentional violations, \$25,000 for each violation based on negligence or up to \$10,000 based on strict liability.
4. ARB contends that following the November 2012 allowance auction SCE disclosed its auction participation to the press on several occasions, in violation of sections 95912 and 95914 of the Regulation.
5. In reaching this settlement, ARB considered a variety of circumstances, including the nature and limited duration of the violation, SCE's contention that it did not violate the regulation, that it did not intend to violate the regulation, and the absence of any evidence that SCE intended to affect the market or harm the regulatory program. SCE has long been involved in developing and refining the Regulation and maintains that in the unique circumstances presented, it intended to prevent the spread of misinformation that had already become public.
6. In order to resolve these alleged violations, SCE has taken, or agreed to take, the actions enumerated below. Further, ARB accepts this Agreement in termination and settlement of this matter.
7. 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and SCE agree as follows.

### **TERMS**

8. Within 15 business days following execution of this agreement, SCE shall deliver a check or money order in the sum of \$75,000.00 made payable to the "Air Pollution Control Fund."

The check should note "SCE 2012 Cap-and-Trade settlement" in the memo section. Please submit the signed settlement agreement and check to:

Mr. Will Brieger  
Air Resources Board, Office of Legal Affairs  
P.O. Box 2815  
Sacramento, CA 95812

9. It is further agreed that the penalties described in the prior paragraph are punitive in nature, rather than compensatory, and payable to a governmental unit. Therefore, it is agreed that these penalties imposed on SCE by ARB arising from the facts described in recital paragraphs 1 – 8 are non-dischargeable under 11 United States Code § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

10. SCE shall take all reasonable precautions to avoid future disclosures to third parties regarding auction participation or bidding.

11. This Agreement shall apply to and be binding upon SCE, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

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

13. This Agreement does not constitute an admission by SCE of any violation of any federal, state or local law, ordinance or regulation. Neither this Agreement nor anything in this Agreement shall be admissible in any proceeding as evidence of any liability or wrongdoing by SCE.

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 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.

**SB 1402 STATEMENT**

18. Health & Safety Code section 39619.7 requires ARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. SCE acknowledges that ARB has complied with section 39619.7 in investigating, prosecuting 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 the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, 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 the penalty was determined, including any per unit penalty.** Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined 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. Consideration was given to the extent to which the violation deviated from Regulation's requirements, the cause of the violation, and whether the violator gained in any way from the violation. Those circumstances were considered 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 violations. Four incidents were penalized at \$10,000 per disclosure, and one disclosure resulted in a \$35,000 penalty. Penalties in future cases might be smaller or larger.

In this matter the penalty was discounted based on the fact that the violation was a first time violation for this company, and most of the company's disclosures were in response to a situation where some bidding information had already become public. At the time, SCE did not understand that its disclosures would violate any standard. The company later made diligent efforts to cooperate with ARB's investigation.

**The legal provisions under which the penalty was assessed and why those provisions are appropriate.** The penalty is based on Health & Safety Code sections 42402 et seq. and CCR, title 17, section 96013, the provisions intended to govern violations of the Regulation.

**Whether the governing provisions prohibit emissions at a specified level.** The provisions above do not prohibit emissions above a stated level, but Health & Safety Code section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

19. The penalty was based on confidential settlement communications between ARB and SCE. The penalty is the product of an arms length negotiation between ARB and SCE and reflects ARB's assessment of the relative strength of its case against SCE, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SCE may have secured from its actions.

20. In consideration of the penalty payment and undertaking in paragraph 10, above, ARB hereby releases SCE and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations from any claims the ARB may have based on the circumstances described in paragraph 4, above.

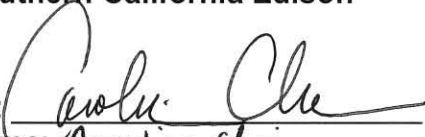
21. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

By:   
Richard Corey  
Executive Officer

Date: 2/3/2014

**Southern California Edison**

By:   
Name: Caroline Choi  
Title: VP, Environmental Affairs + Integrated Planning

Date: 30 January 2014