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SETTLEMENT AGREEMENT AND RELEASE

The California Energy Commission (“Energy Commission” or “Commission”) and the Geysers Power Company, LLC (“GPC”), individually “Party” and collectively the “Parties,” enter into this Settlement Agreement and Release (“Agreement”).

I. INTRODUCTION

1. Pursuant to California Public Resources Code section 25500, the Energy Commission “shall have the exclusive power to certify all sites and related facilities in the state.” A “facility” includes any thermal powerplant with generating capacity of 50 megawatts or more and any facilities appurtenant thereto.” (Pub. Resources Code §§ 25110, 25120.)
2. GPC owns and operates six geothermal power plants licensed by the Commission and located in either Lake County or Sonoma County. The GPC geothermal power plants licensed by the Commission include: Geysers Unit 3, Sonoma (80-AFC-01C); Geysers Unit 16, Quicksilver (79-AFC-05C); Geysers Unit 17, Lake View (79-AFC-01C); Geysers Unit 18, Socrates (79-AFC-03C); Geysers Unit 19, Calistoga (81-AFC-01C); and Geysers Unit 20, Grant (82-AFC-01C) (collectively, “the Geysers Facilities”). The Final Commission Decisions (“Final Decisions”) govern the construction and operation of the Geysers Facilities.
3. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with conditions specified in the Commission’s Final Decisions.
4. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decisions required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards (“LORS”).
5. Pursuant to Public Resources Code section 25534, subdivision (a), the Energy Commission may, after one or more hearings, amend the conditions of any facility for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision, and a violation of any regulation or order issued by the Commission.
6. Pursuant to Public Resources Code section 25534, subdivision (b), the Energy Commission may administratively impose a civil penalty against a facility owner for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision. Any civil penalty shall be imposed in accordance with section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation. A civil penalty may be increased by an amount not to exceed \$1,500 for each day the violation occurs or persists, but the total per day penalties may not exceed fifty thousand dollars (\$50,000).
7. In February and March 2018, Energy Commission Staff conducted site visits and investigations at the Geysers Facilities. On April 17, 2018, Commission Staff issued a Compliance

Advice Letter informing GPC that the Energy Commission was investigating the fire protection systems at the Geysers Facilities for compliance with applicable fire codes and consistency with the Final Decisions and Compliance Monitoring Plans. On November 20, 2019, the Energy Commission Staff informed GPC that it alleged that the Geysers Facilities were out of compliance with the applicable Final Decisions, their respective Compliance Monitoring Plans, and applicable fire codes.

8. The Parties share the common objective of ensuring that the fire protection systems at the Geysers Facilities operate in a safe and reliable manner. GPC cooperated with the Commission throughout the Commission's investigation and is committing significant resources to update the Bases of Design ("BODs") for each of the Geysers Facilities and in the recommissioning of the fire protection systems at the Geysers Facilities. GPC has submitted all documents requested by Commission Staff, supported Commission Staff site visits, and provided access to documents and Geysers Facilities' staff and resources. Commission Staff and GPC participated in numerous meetings and took actions on any items identified.

II. PERTINENT FINAL DECISION PROVISIONS AND COMMISSION FINDINGS

1. The Final Decisions require various measures to ensure that the fire protection systems at the Geysers Facilities are in compliance with applicable fire codes and consistent with the Final Decisions' conditions and Compliance Monitoring Plans. Each of the Geysers Facilities have different facility-specific Final Decision conditions and/or Compliance Monitoring Plan provisions.

2. The Energy Commission Staff alleges non-compliance in connection with the fire protection systems at the Geysers Facilities for the following categories: the use of the fire protection systems for non-emergency operations; the repair and maintenance of the fire protection systems; and the performance of required inspection, testing, and maintenance ("ITM"), and the retention of ITM records. Energy Commission Staff further alleges that the Geysers Facilities were out of compliance with the applicable Final Decisions, their respective Compliance Monitoring Plans, and applicable fire codes. Without disputing or admitting any of the Energy Commission Staff's allegations, GPC has agreed to enter into this Agreement for the purpose of settlement and resolution of these matters with the Commission.

3. The Parties agree to additional Conditions of Certification to update and modernize the fire protection provisions of the Final Decisions and their respective Compliance Monitoring Plans. GPC has also agreed with the Commission's request to update certain General Conditions and Compliance Conditions, unrelated to fire protection systems, to more closely parallel the Conditions in recent Commission decisions, including the addition of detailed facility closure plans not in the current certifications. The agreed upon Conditions of Certification GEN-1, COM Conditions of Certification 1 through 11, and fire protection Conditions of Certification 1 through 6 (collectively, the "New Conditions of Certification") are intended to be, and are, amendments augmenting the terms of the Final Decisions for each of the Geysers Facilities. The New Conditions of Certification are provided in Exhibit A.

III. RESPONSE TO COMMISSION INVESTIGATION

1. GPC has worked cooperatively with Energy Commission Staff since the April 17, 2018 Compliance Advice Letter to recommission the fire protection systems at each of the Geysers Facilities.
2. Many of the alleged violations of the Energy Commission's Final Decisions, their respective Compliance Monitoring Plans, and applicable fire codes are associated with conditions of the fire protection systems that were part of the plant's original design and existed at the time of construction, or with facility conditions that otherwise existed at the Geysers Facilities prior to GPC acquiring them in 1998 and 1999.
3. In assessing the fire protection systems at the Geysers Facilities, GPC prepared updated BODs for each of the Geysers Facilities. GPC has hired a fire protection engineer, who is a third-party expert, to help create, revise, and refine the BODs. The fire protection engineer also helped implement the initial recommissioning, developed a cooling tower fire protection guidance memorandum, and scheduled recommissioning activities. The BODs were designed to meet or exceed the intent of the original Basis of Design in the Final Decisions for the Geysers Facilities.
4. GPC staff and third-party experts, including a Delegate Chief Building Official ("DCBO") and the fire protection engineer, participated in public workshops, amendment workshops, and DCBO contract workshops and meetings. GPC addressed issues identified since the April 17, 2018 Compliance Advice Letter. GPC submitted amendments to add diesel-powered water pumps for the wet down systems designed to protect the Geysers Facilities' cooling towers from embers associated with wild land fires. GPC also redesigned the originally commingled fire and non-fire water systems to segregate the fire protection and fire prevention systems. GPC appointed a new project manager to oversee fire protection compliance activities at the Geysers Facilities, which include: finalizing alarm and monitoring installations; implementing actions identified during recommissioning; working to complete sprinkler action items; responding to Energy Commission, Sonoma County, and Lake County comments; scheduling long term recommissioning actions; and coordinating with the DCBO. GPC's cooperation and other efforts to repair and improve its fire protection systems have saved the Energy Commission time and resources in further investigation and adjudication of the alleged violations.
5. Given GPC's continuing and diligent cooperation, the Energy Commission Staff and GPC believe that rather than engaging in formal adjudication, it would be more productive to enter into this Agreement to allow the Parties to focus their collective resources on the ongoing recommissioning actions, which in turn will further expedite completion of the BODs and ensure that the fire protection systems at the Geysers Facilities remain safe and reliable.
6. In developing this Agreement, the Commission considered the cooperation of GPC, the facts developed by the Energy Commission Staff and GPC during the course of the investigation, the actions and omissions by the prior owners before GPC's acquisitions of the Geysers Facilities, and applied the relevant factors in the Public Resources Code Section 25534.1(e) to determine that settlement, rather than formal adjudication, is a more appropriate use of the Commission's and GPC's collective resources.

IV. TERMS AND RELEASE

In order to resolve the above-described alleged violations and terminate and settle these matters, and in consideration of Energy Commission Staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise seeking legal redress against GPC for the above-described alleged violations, the Energy Commission and GPC agree as follows:

1. This Agreement settles the regulatory and legal matters for the Geysers Facilities as of the Effective Date (as defined below in section IV(21)) regarding compliance with applicable LORS related to (a) the use of the fire protection system for non-emergency operations; (b) the repair and maintenance of the fire protection systems; and (c) the performance of required inspection, testing, and maintenance, and the retention of ITM records, as described in sections I(7) and II(2) herein. Upon approval of the BODs by Energy Commission Staff, this agreement further settles all regulatory and legal matters addressed in the BODs and the final recommissioning for each of the Geysers Facilities.

2. The New Conditions of Certification in Exhibit A are intended to be, and are, amendments augmenting the terms of the applicable Final Decisions. Any failure by GPC to comply with these requirements will constitute a significant failure to comply with the Final Decision terms or conditions of approval of the application for certification.

3. GPC shall execute the Agreement and provide a copy no later than thirty (30) days after approval of this Agreement by a publicly noticed Business Meeting to the attention of:

Shawn Pittard
Deputy Director, Siting Transmission and Environmental Protection Division
California Energy Commission, MS-16
1516 9th Street
Sacramento, CA 95814

4. GPC shall submit to the Energy Commission a payment in the amount of Two Million, One Hundred Thousand Dollars (\$2,100,000) to settle these matters as full accord and satisfaction. The payment is due within 30 days after GPC receives written notification by the Commission's Compliance Program Manager ("CPM") of the execution of the Settlement Agreement by the Executive Director. Payment shall be made by electronic transfer to the Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided by the Energy Commission.

5. If the Energy Commission does not approve the Agreement, it shall become null and void. GPC further agrees that if this matter comes before the Energy Commission in an administrative adjudication, members of the Energy Commission and the Executive Director shall not be disqualified from participation because of prior consideration of this Agreement.

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

7. This Agreement shall constitute the full and final settlement of all matters related to the fire protection systems for the Geysers Facilities described in sections I(7), II(2), and IV(1) herein, subject to GPC's payment of the settlement amount specified herein.

8. In consideration for GPC's entry into this Agreement and for the one-time settlement payment specified in the Terms and Release provisions of this Agreement, the Commission hereby releases GPC and its principals, directors, officers, agents, employees, shareholders, subsidiaries, affiliates, parent corporations, and predecessors and successors from any and all claims for violations of the Warren-Alquist Act, the Commission's Regulations, the Final Decisions, applicable fire codes, for the matters identified in sections I(7), II(2), IV(1) and IV(7) above (the "Release").

9. GPC does not admit, and this Agreement does not constitute an admission by GPC as to, any of Energy Commission Staff's allegations identified in sections I(7), II(2), IV(1) and IV(7) above in regard to conditions related to the fire protection systems at the Geysers Facilities, and further does not constitute an admission by GPC that it violated the Conditions of Certification contained in the Final Decision or any other law, ordinance, regulation or standard applicable to the Geysers Facilities. Further, GPC's agreement to the New Conditions of Certification is not evidence of and does not constitute an admission by GPC that the Geysers Facilities are or were ever out of compliance with any applicable laws, ordinances, regulations, and standards. GPC reserves the right to contest the use of this Agreement in any other matter or proceeding, except in a proceeding to enforce the Agreement itself.

10. To the extent required by law, neither Party shall disclose any confidential information provided in support of this Agreement unless (a) written permission to do so has been provided by the Party providing the information, or (b) disclosure is required by law. To be confidential, information must be marked with wording such as "Confidential," "Proprietary," "Trade Secret," or other terms sufficient to provide notice of the confidential nature of such information. In connection with requests for disclosure under law to the extent allowed by law, the disclosing Party will use reasonable efforts to (i) notify the other Party prior to any disclosure of confidential information and (ii) reasonably cooperate with the other Party's efforts to prevent or limit such disclosure.

11. This Agreement constitutes the entire agreement and understanding between the Parties, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and GPC.

12. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all Parties to this Agreement.


13. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

14. 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.
15. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.
16. 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.
17. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.
18. 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.
19. The Commission agrees to provide a copy to GPC at least one business day prior to the Commission's issuance of any press release regarding this Agreement.
20. The undersigned represent that they have the authority to execute this Agreement.
21. This Agreement is effective upon signature by both Parties (the "Effective Date").
22. The Parties agree that pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

**California Energy Commission
LLC**

By: 
Name: Drew Bohan
Title: Executive Director
Date: 12/14/2020

Geysers Power Company,

By: 
Name: Rosemary Antonopoulos
Title: Assistant Secretary
Date: 12/15/2020