

## 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 9<sup>th</sup> 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**

**Geysers Power Company,**

By: \_\_\_\_\_  
 Name: Drew Bohan  
 Title: Executive Director  
 Date:

By: \_\_\_\_\_  
 Name: Rosemary Antonopoulos  
 Title: Assistant Secretary  
 Date:

## **EXHIBIT A**

### **Compliance Conditions and Monitoring Plan and Fire Protection/Prevention Conditions**

## COMPLIANCE CONDITIONS AND MONITORING PLAN

### INTRODUCTION

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This compliance section, provides a means for assuring that facility is maintained, operated, and closed in compliance with public health and safety and environmental law; all other applicable laws, ordinances, regulations, and standards (LORS); and the conditions adopted by the California Energy Commission (CEC) and specified in the CEC's Decision on the project's Application for Certification (AFC), or otherwise required by law.

The Compliance Conditions of Certification are composed of elements that:

- Set forth the duties and responsibilities of the compliance project manager (CPM), the project owner or operator, delegate agencies, and others;
- Set forth the requirements for handling confidential records and maintaining the compliance record;
- State procedures for settling disputes and making post-certification changes;
- State the requirements for periodic compliance reports and other administrative procedures that are necessary to verify the compliance status for all CEC-approved conditions of certification;
- Establish contingency planning, facility non-operation protocols, and closure requirements; and
- Establish a tracking method for the technical area conditions of certification that contain measures required to mitigate potentially adverse project impacts associated with construction, operation, and closure below a level of significance; each technical condition of certification also includes one or more verification provisions that describe the means of assuring that the condition has been satisfied.

### KEY PROJECT EVENT DEFINITIONS

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The following terms and definitions help determine when various conditions of certification are implemented.

### ROLES AND RESPONSIBILITIES

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Provided below is a generalized description of the compliance roles and responsibilities for CEC staff (staff) and the project owner for the construction and operation of facility.

### COMPLIANCE PROJECT MANAGER RESPONSIBILITIES

The CPM's compliance monitoring and project oversight responsibilities include:

1. Ensuring that the design, construction, operation, and closure of the project facilities are in compliance with the terms and conditions of the Decision;
2. Resolving complaints;

3. Processing post-certification project amendments for changes to the project description, conditions of certification, and ownership or operational control, and requests for extension of the deadline for the start of construction (see COM-10 for instructions on filing a Petition to Amend or to extend a construction start date);
4. Documenting and tracking compliance filings; and
5. Ensuring that the compliance files are maintained and accessible.

The CPM will be the primary contact person for the CEC during recommissioning, project pre-construction, construction, operation, emergency response, and closure. The CPM will consult with the appropriate responsible parties when handling compliance issues, disputes, complaints and amendments.

All project compliance submittals are submitted to the CPM for processing. Where a submittal requires CPM approval, required by a condition of certification requires CPM approval, the approval will involve appropriate CEC technical staff and management. All submittals must include searchable electronic versions (.PDF, MS Word, or equivalent files).

#### CEC RECORD

The CEC maintains the following documents and information as public record, in either the Compliance file or Dockets Unit files, for the life of the project (or other period as specified):

- All documents demonstrating compliance with any legal requirements relating to the construction, operation, and closure of the facility;
- All Monthly and Annual Compliance Reports (MCRs, ACRs) and other required Periodic Compliance Reports (PCRs) filed by the project owner;
- All project-related formal complaints of alleged noncompliance filed with the CEC; and
- All petitions for project or condition of certification changes and the resulting staff or CEC action.

#### Chief Building Official Delegation and Agency Cooperation

Under the California Building Code standards, while monitoring project construction and operation, staff acts as, and has the authority of, the Chief Building Official (CBO). Staff may delegate some CBO responsibility to either an independent third-party contractor or a local building official. However, staff retains CBO authority when selecting a delegate CBO (DCBO), including the interpretation and enforcement of state and local codes, and the use of discretion, as necessary, in implementing the various codes and standards.

The DCBO will be responsible for facilitating compliance with all appropriate codes, standards, and CEC requirements. The DCBO will conduct on-site (including linear facilities) reviews and inspections at intervals necessary to fulfill these responsibilities. The project owner will pay all DCBO fees necessary to cover the costs of these reviews and inspections.

#### PROJECT OWNER RESPONSIBILITIES

The project owner is responsible for ensuring that all conditions of certification and applicable LORS are satisfied. The project owner will submit all compliance submittals to the CPM for processing unless the conditions specify another recipient. The Compliance Conditions regarding post-certification changes specify measures that the project owner must take when modifying the project's design, operation, or performance requirements, or to transfer ownership or operational control. Failure to comply with any of the conditions of certification or applicable LORS may result in a non-compliance report, an

administrative fine, certification revocation, or any combination thereof, as appropriate. A summary of the Compliance Conditions of Certification are included as Compliance Table 1 at the end of this Compliance Plan.

## COMPLIANCE ENFORCEMENT

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The CEC's legal authority to enforce the terms and conditions of its Decision are specified in Public Resources Code sections 25534, 25534.1, 25900 and elsewhere in the Warren-Alquist Act and CEC Regulations. The CEC may amend or revoke a project certification and may impose a civil penalty for any significant failure to comply with the terms or conditions of the Decision. The CEC's actions and fine assessments would take into account the specific circumstances of the incident(s).

## PERIODIC COMPLIANCE REPORTING

Many of the conditions of certification require submittals in the MCRs and ACRs. All compliance submittals assist the CPM in tracking project activities and monitoring compliance with the terms and conditions of the Geysers Decision. During construction of the project or approved modifications to the project, the project owner or an authorized agent will submit compliance reports on a monthly basis. During operation, compliance reports are submitted annually; though reports regarding compliance with various technical area conditions of certification may be required more often (e.g. Air Quality). Further detail regarding the MCR/ACR content and the requirements for an accompanying compliance matrix are described below.

### Request for Investigation

Title 20 California Code of Regulations section 1230 through 1232.5 sets forth the formal process for any person to request the CEC investigate an alleged violation of a commission regulation, order or condition of certification. The California Office of Administrative Law provides on-line access to the California Code of Regulations at <http://www.oal.ca.gov/>.

The steps of the Request for Investigation include the filing, with the executive director, of information regarding the alleged violation, an investigation and a response. Based on the information and the results of the executive director's investigation, the executive director may then bring a complaint against the alleged violator or take other action.

### Request for Informal Investigation

While the commission has a formal request for investigation process under section 1230, such a process does not preclude any person with a concern related to a licensed power plant from contacting the CPM. The CPM can work to resolve concerns taking appropriate actions such as contacting the project owner for information, working with other agencies, setting up meetings with stakeholders and recommending the executive director initiate a complaint.

## POST-CERTIFICATION CHANGES TO THE CEC DECISION

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The project owner must petition the CEC pursuant to Title 20, California Code of Regulations, section 1769, to modify the design, operation, or performance requirements of the project and/or the linear facilities, or to transfer ownership or operational control of the facility.

A project owner is required to submit a \$5,000 fee for every Petition to Amend (PTA) to a previously certified facility, pursuant to Public Resources Code section 25806(e). If the amendment's actual processing costs exceed \$5,000.00, the total PTA reimbursement fees owed by a project owner will not

exceed the maximum filing fee for an AFC, which is seven hundred fifty thousand dollars (\$750,000), adjusted annually. Implementation of a project modification without first securing CEC approval may result in an enforcement action, including civil penalties, in accordance with Public Resources Code, section 25534.

Below is a summary of the criteria for determining the type of approval process required, reflecting the provisions of Title 20, California Code of Regulations, section 1769, at the time this compliance plan was drafted. If the CEC modifies this regulation, the language in effect at the time of the requested change shall apply. Upon request, the CPM can provide sample formats of these submittals.

#### **AMENDMENT**

**THE PROJECT OWNER SHALL SUBMIT A PTA TO THE CEC DECISION, PURSUANT TO TITLE 20, CALIFORNIA CODE OF REGULATIONS, SECTION 1769(A), WHEN PROPOSING MODIFICATIONS TO THE DESIGN, OPERATION, OR PERFORMANCE REQUIREMENTS OF THE PROJECT AND/OR THE LINEAR FACILITIES. EXCEPT AS SPECIFIED IN SECTION 1769(A)(3)(B) FOR AIR QUALITY CONDITION CHANGES, IF A PROPOSED MODIFICATION RESULTS IN AN ADDED, CHANGED, OR DELETED CONDITION OF CERTIFICATION, OR MAKES CHANGES CAUSING NONCOMPLIANCE WITH ANY APPLICABLE LORS, THE PETITION WILL REQUIRE APPROVAL BY THE CEC AT A PUBLICLY NOTICED HEARING. CHANGE OF OWNERSHIP AND/OR OPERATIONAL CONTROL**

The project owner is required to file a petition pursuant to section 1769(b) for approval of any changes in ownership or operational control. This process requires public notice and approval by CEC staff, but does not require submittal of an amendment processing fee.

#### **STAFF-APPROVED PROJECT MODIFICATION**

Modifications that do not result in additions, deletions, or changes to the conditions of certification, that are compliant with the applicable LORS, and that will not have significant environmental impacts, may be authorized by staff pursuant to section 1769(a)(3)(A). Once the CPM files a notice of staff approval of the proposed project modifications, any person may file an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria of section 1769(a)(3)(A) or (B). If an objection is filed which makes a showing supported by facts that the change does not meet the criteria of section 1769(a)(3), the petition must be processed as an amendment to the Decision and must be considered for approval by the CEC at a publicly noticed Business Meeting or hearing.

#### **VERIFICATION CHANGE**

Pursuant to section 1770(d), a verification to a condition of certification may be modified by staff, after giving notice to the project owner, if the change does not conflict with any condition of certification.

#### **EMERGENCY RESPONSE CONTINGENCY PLANNING AND INCIDENT REPORTING**

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To protect public health and safety and environmental quality, the conditions of certification include contingency planning and incident reporting requirements to ensure compliance with necessary health and safety practices. A well-drafted contingency plan avoids or limits potential hazards and impacts resulting from serious incidents involving personal injury, hazardous spills, flood, fire, explosions or other catastrophic events and ensures a comprehensive timely response. All such incidents must be reported immediately to the CPM and documented. These requirements are designed to build from "lessons learned," limit the hazards and impacts, anticipate and prevent recurrence, and provide for the safe and secure shutdown and re-start of the facility.

## COMPLIANCE CONDITIONS OF CERTIFICATION

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### **COM-1:** Unrestricted Access

The project owner shall ensure that the CPM, responsible staff, and delegate agencies are granted unrestricted access to the facility site, related facilities, project-related staff, and the records maintained on-site for the purpose of conducting facility audits, surveys, inspections, or general or closure-related site visits. Although the CPM will normally schedule site visits on dates and times agreeable to the project owner, the CPM reserves the right to make unannounced visits at any time, whether such visits are by the CPM in person or through representatives from staff, delegated agencies, or consultants.

### **COM-2:** Compliance Record

The project owner shall maintain electronic copies of all project files and submittals on-site, or at an alternative site approved by the CPM for the operational life and closure of the project. The files shall also contain at least:

1. the facility's Application for Certification, if available;
2. all amendment petitions, staff approvals and CEC orders;
3. all site-related environmental impact and survey documentation;
4. all appraisals, assessments, and studies for the project;
5. all finalized original and amended design plans and "as-built" drawings for the entire project;
6. all citations, warnings, violations, or corrective actions applicable to the project, and
7. the most current versions of any plans, manuals, and training documentation required by the conditions of certification or applicable LORS.

Staff and delegate agencies shall, upon request to the project owner, be given unrestricted access to the files maintained pursuant to this condition.

### **COM-3:** Compliance Verification Submittals

A cover letter or email from the project owner or an authorized agent is required for all compliance submittals and correspondence pertaining to compliance matters. The cover letter or email's subject line shall identify the project by the docket number for the compliance phase, cite the appropriate condition of certification number(s), and give a brief description of the subject of the submittal. When submitting supplementary or corrected information, the project owner shall reference the date of the previous submittal and the condition(s) of certification applicable.

All reports and plans required by the project's conditions of certification shall be submitted in a searchable electronic format (.pdf, MS Word or Excel, etc.) and include standard formatting elements such as a table of contents identifying by title and page number each section, table, graphic, exhibit, or addendum. All report and/or plan graphics and maps shall be adequately scaled and shall include a key with descriptive labels, directional headings, a distance scale, and the most recent revision date.

The project owner is responsible for the content and delivery of all verification submittals to the CPM and notification that the actions required by the verification were satisfied by the project owner or an agent of the project owner. All submittals shall be accompanied by an electronic copy on an electronic storage medium, or by e-mail, as agreed upon by the CPM. If hard copy submittals are required, they should be addressed as follows:

Compliance Project Manager  
Geysers Energy Project (Docket Number)  
California Energy Commission  
1516 Ninth Street (MS-2000)

**COM-4:** Monthly Compliance Report

During the construction of approved project modifications requiring construction of 6 months or more, the project owner or authorized agent shall submit an electronic searchable version of the MCR to the CPM within ten (10) business days after the end of each reporting month. No MCR shall be required for maintenance and repair activities, regardless of duration. MCRs shall be submitted each month until construction is complete, and the final certificate of occupancy is issued by the DCBO. MCRs shall be clearly identified for the month being reported. The MCR shall contain, at a minimum:

1. A summary of the current project construction status, a revised/updated schedule if there are significant delays, and an explanation of any significant changes to the schedule;
2. Construction submittals pending approval, including those under review, and comments issued, and those approved since last MCR;
3. A projection of project compliance activities (compliance submittals, etc.) scheduled during the next (2) two months; the project owner shall notify the CPM as soon as any changes are made to the project construction schedule that would affect compliance with conditions of certification;
4. A listing of incidents (safety, etc.), complaints, inspections (status and those requested), notices of violation, official warnings, trainings administered, and citations received during the month; a list of any incidents that occurred during the month, a description of the actions taken to date to resolve the issues; and the status of any unresolved actions noted in the previous MCRs;
5. Documents required by specific conditions (if any) to be submitted along with each MCR. Each of these items shall be identified in the transmittal letter, as well as the conditions they satisfy, and submitted as attachments to the MCR;
6. A list of conditions (if any) that have been satisfied during the reporting period, and a description or reference to the actions that satisfied the condition; and
7. A listing of the month's additions to the on-site compliance file.

**COM-5:** Periodic and Annual Compliance Reports

The project owner shall continue to submit searchable electronic ACRs to the CPM, as well as other PCR's required by the various technical disciplines. ACRs shall be completed for each year of commercial operation and are due each year on a date agreed to by the CPM. Other PCR's (e.g. quarterly reports), may be specified by the CPM. The searchable electronic copies

may be filed on an electronic storage medium or by e-mail, subject to CPM approval. Each ACR must include the AFC number, identify the reporting period, and contain the following:

1. an updated list showing the status of all conditions of certification (fully satisfied conditions do not need to be included in the matrix after they have been reported as completed);
2. a summary of the current project operating status and an explanation of any significant changes to facility operating status during the year;
3. documents required by specific conditions to be submitted along with the ACR; each of these items shall be identified in the transmittal letter with the conditions it satisfies, and submitted as an attachment to the ACR;
4. a cumulative list of all known post-certification changes approved by the CEC or the CPM;
5. an explanation for any submittal deadlines that were missed, accompanied by an estimate of when the information will be provided;
6. a listing of filings submitted to, or permits issued by, other governmental agencies during the year;
7. a projection of project compliance activities scheduled during the next year;
8. a listing of the year's additions to the on-site compliance file;
9. an evaluation of the Site Contingency Plan, including amendments and plan updates; and
10. a listing of complaints, incidents, notices of violation, official warnings, and citations received during the year, a description of how the issues were resolved, and the status of any unresolved complaints.

**COM-6:** Confidential Information

Any information that the project owner designates as confidential shall be submitted to the CEC's Executive Director with an application for confidentiality, pursuant to Title 20, California Code of Regulations, section 2505(a).

**COM-7:** Annual Energy Facility Compliance Fee

Pursuant to the provisions of section 25806 (b) of the Public Resources Code, the project owner shall continue paying an annual compliance fee which is adjusted annually, due by July 1 of each year in which the facility retains its certification.

**COM-8:** Amendments and Staff Approved Project Modifications

The project owner shall petition the CEC, pursuant to Title 20, California Code of Regulations, section 1769, to modify the design, operation, or performance requirements of the project or linear facilities, or to transfer ownership or operational control of the facility. Section 1769 details the required contents for a Petition to Amend a CEC Decision.

A project owner is required to submit a five thousand (\$5,000) dollar fee for every Petition to Amend a previously certified facility, pursuant to Public Resources Code section 25806(e).

If the actual amendment processing costs exceed \$5,000.00, the total Petition to Amend reimbursement fees owed by a project owner will not exceed seven hundred fifty thousand dollars (\$750,000), adjusted annually.

**COM-9:** Incident-Reporting Requirements

Within 24 hours of its occurrence, the project owner shall report to the CPM any safety-related incident. Such reporting shall include any incident that has resulted in death to a person; an injury or illness to a person requiring overnight hospitalization; a report to Cal/OSHA, OSHA, or other regulatory agency; or damage to the property of the project owner or another person of more than \$50,000. If not initially provided, a written report also will be submitted to the CPM within five business days of the incident. The report will include copies of any reports concerning the incident that have been submitted to other governmental agencies.

**COM-10:** Non-Operation and Restoration Plans

If the facility ceases operation temporarily because it is physically unable to operate (excluding maintenance or repair) for longer than three (3) months (or other CPM-approved date), the project owner shall notify the CPM. Notice of planned non-operation, excluding maintenance or repair, shall be given at least two (2) weeks prior to the scheduled date. Notice of unplanned non-operation shall be provided no later than one (1) week after non-operation begins.

**COM-11:** Facility Closure Planning

The project owner shall coordinate with the CEC to plan and prepare for eventual permanent closure and license termination by filing a Facility Closure Plan. The Facility Closure Plan shall be filed 90 days before the commencement of closure activities or at such other time agreed to between the CPM and the project owner. The Facility Closure Plan shall include the information set forth in Title 20, California Code of Regulations, section 1769, but shall not be subject to the fee set forth in Public Resources Code section 25806(e).

Proposed **FACILITY DESIGN** Condition of Certification for each of the six jurisdictional Geysers facilities:

**GEN-1** Whenever material modifications to the facility are planned, the project owner shall design, construct, and inspect project modifications in accordance with the applicable version of the California Building Standards Code (CBSC), also known as Title 24, California Code of Regulations, which encompasses the California Building Code (CBC), California Administrative Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Energy Code, California Fire Code, California Code for Building Conservation, California Reference Standards Code, and all other applicable engineering laws, ordinances, regulations and standards (LORS) in effect at the time initial design plans are submitted to the chief building official (CBO) for review and approval (the CBSC in effect is the edition that has been adopted by the California Building Standards Commission and published at least 180 days previously). The project owner shall ensure that the provisions of the above applicable codes are enforced during the construction, addition, alteration, or demolition of the modifications.

Where, in any specific case, different applicable sections of the code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern.

The project owner shall ensure that all contracts with contractors, subcontractors, and suppliers clearly specify that all work performed, and materials supplied comply with the codes listed above.

**Verification:** Within 30 days following receipt of the certificate of occupancy (if one is required by the CBO) for any material project modification completed after the effective date of this condition, the project owner shall submit to the compliance project manager (CPM) a statement of verification, signed by the responsible design engineer, attesting that all designs, construction, installation, and inspection requirements of the applicable LORS and the CEC's decision have been met in the area of facility design. The project owner shall also provide the CPM a copy of the certificate of occupancy within 30 days of receipt from the CBO. Once the certificate of occupancy has been issued, the project owner shall inform the CPM at least 30 days prior to any construction, addition, alteration, or demolition to be performed on any portion(s) of the completed facility that requires CBO approval for compliance with the above codes. The CPM will then determine if the CBO needs to approve the work.

Proposed **FIRE PROTECTION** Conditions of Certification for each of the six jurisdictional Geysers facilities:

**FIRE PROTECTION-1** - The project owner shall notify and submit design drawings to the compliance project manager (CPM) for any planned modifications that would materially change the design, operation, or performance of the fire protection or fire alarm systems.

**Verification:** At least 15 business days before the start of any construction that materially changes the design, operation or performance made to the fire protection or fire alarm systems, the project owner shall submit a complete set of design drawings to the CPM for review and approval, and to the DCBO for plan check against the applicable LORS and construction inspection.

**FIRE PROTECTION-2** - The project owner shall maintain and update, as appropriate, the fire protection Basis of Design documents and appendices to ensure that the fire protection and fire alarm systems are documented and accurately depicted on drawings for the project site.

**Verification:** The project owner shall provide the CPM with an updated Basis of Design document within 30 days of completing any changes to fire protection or fire alarm systems that result in changes to the Basis of Design.

**FIRE PROTECTION-3** - The project owner shall ensure that all required inspections, testing, and maintenance (ITM) are performed on the project's fire protection systems as specified and in the frequencies set forth in Title 19, California Code of Regulations, section 904(a) and on the project's fire alarm systems as specified in the applicable edition of the National Fire Protection Association (NFPA) 72 National Fire Alarm and Signaling Code.

**Verification:** The project owner shall provide to the CPM copies of the completed ITM reports for the project's fire protection systems and fire alarm systems within 15 days of receiving the ITM reports. The ITM reports shall be submitted quarterly for the first two years following approval of this condition, then all ITM reports shall be submitted annually thereafter.

**FIRE PROTECTION-4** – Whenever deficiencies or failures are identified in any of the ITM reports for the project's fire protection or fire alarm systems, the project owner shall provide the CPM with a summary of the following information from the ITM reports required by **FIRE SAFETY-3**:

- (a) A summary of all deficiencies or failures identified;

- (b) The corrective action the project owner has taken, or plans to take, to address each identified deficiency or failure; and
- (c) The completion date or an estimated completion date to implement the corrective action.

**Verification:** The project owner shall provide the CPM with the information from (a)-(c) within 15 days of receiving the ITM reports.

**FIRE PROTECTION-5** - In the case of a fire protection system impairment, as defined in the latest applicable edition of *NFPA-25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, California Edition*, that would prevent the proper functioning of any portion of the fire protection or fire alarms systems during a fire event, the project owner shall inform the CPM of the impairment along with the following information:

- (a) The date discovered;
- (b) The location of the impairment;
- (c) A short description, including a photograph (if applicable), of the impairment and its cause (if known), and a description of the actions to be taken to protect life and safety until the impairment is corrected;
- (d) The corrective action outlining how the impairment was repaired, including any engineering drawings or inspections, not already provided to the CPM or the DCBO;
- (e) The date the impairment was repaired; and
- (f) Before and after photographs (if applicable) showing the completed impairment repair.

**Verification:** The project owner shall provide the CPM with information from (a)-(c) within two business days of the discovery of an impairment, or within a time as approved by the CPM. The project owner shall provide the CPM with information from (d)-(f) within 5 days of correction of the impairment.

**The following Condition of Certification (FIRE PREVENTION-1) shall apply to the non-NFPA fire prevention wetdown systems for Units 3, 17, and 19 only.**

**FIRE PREVENTION-1** – After commissioning of the non-NFPA cooling tower wet down system, the project owner shall annually conduct the inspection, testing, and maintenance protocol designated in the Basis of Design Document for the wetdown system.

**Verification:** The project owner shall submit the test results of the annual inspection, testing, and maintenance protocol the Basis of Design Document 30 days after completion of the test.

# Memorandum

To: Dockets  
Geysers Unit 3, Sonoma (80-AFC-1C)  
Geysers Unit 16, Quicksilver(79-AFC-5C)  
Geysers Unit 17, Lakeview (79-AFC-1C)  
Geysers Unit 18, Socrates (79-AFC-3C)  
Geysers Unit 19, Calistoga(81-AFC-1C)  
Geysers Unit 20, Grant (82-AFC-1C)

Date: November 9, 2020

From: **Jared Babula, Attorney IV**  
**Chief Counsel's Office**  
**California Energy Commission**  
1516 Ninth Street  
Sacramento, CA 95814-5512

Subject: Basis for Finding an Exemption under the California Environmental Quality Act

## I INTRODUCTION

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq. See also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. An activity is not subject to CEQA if any of the following apply: (1) the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Code Regs., tit. 14, § 15060(c)(2); (2) the activity is not a "project" as defined in section 15378 of the regulations. (Cal. Code Regs., tit. 14, § 15060(c)(3); (3) the project is exempt pursuant to a categorical exemption. (Cal. Code Regs., tit. 14, § 15061(b)(2); (4) the activity is covered by the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).

## II DISCUSSION

The approval of a settlement agreement by the California Energy Commission (CEC), which incorporates updates to compliance, reporting and notification Conditions of Certification GEN-1, COM Conditions of Certification 1 through 9, and FIRE PROTECTION Conditions of Certification 1 through 6 is exempt from CEQA for three reasons. First, the settlement is not a project. The CEQA Guidelines state that a project "means the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." (Cal. Code Regs., tit. 14, § 15378(a).)

In this case, the settlement and condition changes are administrative in nature resolving issues of licensing compliance and reporting of facility information. The settlement does not result in any physical change to the environment.

Second, even if approval of the settlement is considered a project under Section 15378, the settlement is exempt from CEQA under a categorical exemption. Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement, which include the adoption of an administrative decision or order enforcing a license, are categorically exempt from CEQA. (Cal. Code Regs., tit. 14, § 15321.)

Third, is the *common sense* exemption. CEQA only applies to projects that have the potential for causing a significant effect on the environment. (Cal. Codes Regs., tit. 14, § 15061(b)(3).) A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.)

The action in this case is to approve a settlement including amending reporting, compliance and notification Conditions of Certification. In this case, the action relates to the CEC's compliance and enforcement functions and would not result in a direct or indirect physical change to the environment. Because it can be seen with certainty that there is no possibility that approval of the settlement would have a significant effect on the environment, and nothing in the record suggests otherwise, approval of the settlement would not be subject to CEQA under the *common sense* exemption.

### III CONCLUSION

For the above reasons, approval of the settlement agreement by the CEC would be exempt from CEQA and a Notice of Exemption may be filed with the Office of Planning and Research.

**STATE OF CALIFORNIA**  
**STATE ENERGY RESOURCES**  
**CONSERVATION AND DEVELOPMENT COMMISSION**

*IN THE MATTER OF:*

**GEYSERS UNIT 3, SONOMA**  
**GEYSERS UNIT 16, QUICKSILVER**  
**GEYSERS UNIT 17, LAKE VIEW**  
**GEYSERS UNIT 18, SOCRATES**  
**GEYSERS UNIT 19, CALISTOGA**  
**GEYSERS UNIT 20, GRANT**

**GEYSERS POWER COMPANY, LLC**

**Docket Numbers**

**(80-AFC-01C)**  
**(79-AFC-05C)**  
**(79-AFC-01C)**  
**(79-AFC-03C)**  
**(81-AFC-01C)**  
**(82-AFC-01C)**

**ORDER APPROVING  
SETTLEMENT**

**STAFF RECOMMENDATION**

Geysers Power Company, LLC (GPC) owns and operates six geothermal power plants licensed by the California Energy Commission (CEC) and located in either Lake County or Sonoma County and 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”).

In February and March 2018, CEC Staff conducted site visits and inspections at the Geysers Facilities. On April 17, 2018, Staff issued a Compliance Advice Letter informing GPC that CEC Staff was investigating the fire protection systems at the Geysers Facilities for compliance with applicable fire codes and consistency with CEC licenses and Compliance Monitoring Plans. On November 20, 2019, the Energy Commission Staff informed GPC that it alleged that the six jurisdictional Geysers geothermal facilities Geysers Facilities were out of compliance with the applicable Final Decisions, their respective Compliance Monitoring Plans, and applicable fire codes.

GPC has worked with CEC Staff since the April 17, 2018 Compliance Advice Letter to recommission the fire protection systems at each of the CEC Geysers Facilities.

In assessing the fire protection systems at the Geysers Facilities, GPC prepared updated Basis of Design documents (“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.

GPC's cooperation and other efforts to repair and improve its fire protection systems have saved the CEC time and resources in further investigation and adjudication of the alleged violations.

Given GPC's continuing and diligent cooperation, CEC Staff and GPC believe that rather than engaging in formal adjudication, it would be more productive to enter into a settlement 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.

In developing this settlement, CEC Staff considered the cooperation of GPC, the specific facts developed by CEC 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 CEC's and GPC's collective resources.

CEC Staff worked with GPC to develop additional conditions of certification, to ensure the Geysers Facilities operate in compliance with all applicable Final Commission Decisions, their respective Compliance Monitoring Plans, and applicable fire codes. The agreed upon Conditions of Certification, GEN-1, COM Conditions of Certification 1 through 11, FIRE PROTECTION Conditions of Certification 1 through 5 are intended to be amendments to the Final Decisions for each of the CEC Geysers Facilities. Condition of Certification FIRE PREVENTION 1 is intended to be an amendment to the Final Decision for Units 3, 17 and 19.

The legal requirements at issue, as well as staff's allegations and GPC's position, are included in the Settlement Agreement, which provides for a payment of \$2,100,000.00 by GPC to the CEC. In addition, changes to the conditions of certification are also included in the Settlement Agreement.

Staff recommends that the CEC approve the Settlement Agreement and changes to the conditions of certification and direct the Executive Director to execute the Settlement Agreement on behalf of the CEC.

## **ENERGY COMMISSION FINDINGS**

- 1) Public Resources Code section 25532 requires the CEC to establish a monitoring system to assure that any facility certified by the CEC is constructed and is operating in compliance with air and water quality, public health and safety, and

other applicable regulations, guidelines, and conditions adopted or established by the CEC or specified in the written decision.

- 2) Public Resources Code section 25534 empowers the CEC to amend or revoke a license and impose administrative civil penalties.
- 3) Public Resources Code section 25534.1 sets forth factors to consider when determining the amount of an administrative civil penalty.
- 4) As stated in the settlement agreement, in reaching resolution, Staff has considered the factors identified in Public Resources Code section 25534.1, specifically the nature, circumstance, extent, and gravity of the alleged violations, the cost to the state in pursuing the enforcement action, efforts by GPC to resolve issues, funds expended to upgrade facility, and overall cooperation.
- 5) The agreed settlement is appropriate and reflects a fair resolution of issues.
- 6) The settlement also includes new reporting and notification Conditions of Certification, GEN-1, COM Conditions of Certification 1 through 11, FIRE PROTECTION Conditions of Certification 1 through 5, and FIRE PREVENTION Condition of Certification 1. Upon execution of the settlement agreement, these conditions of certification will become part of the facilities' licenses.
- 7) Approval of the settlement, including amending of the licenses with new conditions of certification, is exempt from the California Environmental Quality Act as set forth in the California Code of Regulations Title 14, sections 15060(c)(2), 15060(c)(3), 15061(b)(2), 15061(b)(3), and 15321.

## **CONCLUSION AND ORDER**

The CEC hereby approves the Settlement Agreement and changes to the conditions of certification and directs the Executive Director to execute the Settlement Agreement on behalf of the CEC and file a Notice of Exemption with the Office of Planning and Research.

**IT IS SO ORDERED.**

## **CERTIFICATION**

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on November 16, 2020.

AYE:

NAY:

ABSENT:

ABSTAIN:

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Cody Goldthrite  
Secretariat