

**SETTLEMENT AGREEMENT AND RELEASE
REGARDING WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL
AND ESTUARINE WATERS FOR POWER PLANT COOLING
BETWEEN STATE WATER RESOURCES CONTROL BOARD AND NRG**

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into by and between NRG Delta, LLC ("NRG Delta"), NRG California South, LP ("NRG South") (collectively "NRG"), and the State Water Resources Control Board ("State Water Board"), as of the last date executed below ("Execution Date"), referred to herein collectively as the "Parties" and each individually as a "Party."

RECITALS

A. WHEREAS, on May 4, 2010, the State Water Board approved Resolution 2010-0020 adopting the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (the "Policy") and related Substitute Environmental Document ("SED") for the Policy. The State Water Board subsequently amended the Policy on October 1, 2010, July 19, 2011, and June 18, 2013. A copy of the Policy, as subsequently amended, is attached to this Agreement as Exhibit A. The Policy applies to California thermal power plants that currently use a single pass cooling system also known as once-through cooling;

B. WHEREAS, the Policy requires owners and operators of existing power plants subject to the Policy to comply with "Track 1" or "Track 2" compliance alternatives as defined in section 2 of the Policy;

C. WHEREAS, the Track 1 compliance alternative contained in Policy section 2.A.(1) specifies that the intake flow rate at each unit is to be reduced, at a minimum, to a level commensurate with that which can be attained by a closed-cycle wet cooling system. The Policy, in relevant part, identifies that reduction as a minimum 93% reduction in intake flow rate for each unit, compared to the unit's design intake flow;

D. WHEREAS, the Track 2 compliance alternative contained in Policy section 2.A.(2) is available when a plant owner or operator demonstrates that the Track 1 compliance alternative is not feasible at the existing power plant. Track 2 includes a number of provisions, but two provisions allow for monitoring to demonstrate that reductions in impingement mortality and entrainment are at a comparable level to the reductions required under Track 1. The Policy defines "comparable level" as "a level that achieves at least 90 percent of the reduction[s]" required under Track 1. As a result, Track 2 compliance can be achieved by an 83.7% or greater reduction in impingement mortality and entrainment, pursuant to Policy sections 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii). The 83.7% reduction is an absolute minimum that must be achieved under Track 2's "comparable level" provisions, so plants seeking compliance pursuant to this language must be designed and operated to achieve required reductions under the Policy;

E. WHEREAS, NRG Delta, LLC owns and operates the Pittsburg Generating Station, and NRG California South, LP owns and operates the Mandalay Generating Station and Ormond Beach Generating Station, all of which are subject to the Policy;

F. WHEREAS, on or about October 27, 2010, NRG, together with other owners and operators of power plants utilizing once-through cooling technologies, filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against the State Water Board in the Superior Court of California for the County of Sacramento (the "Court"), Case No. 34-2010-80000701 (the "Action") (as used in this Agreement, "Action" refers to NRG's claims against the SWRCB);

G. WHEREAS, NRG's claims in the Action relate to disputes over whether the State Water Board's adoption of the Policy and SED was within the State Water Board's discretion and legal authority and, in particular, whether the State Water Board's actions complied with the Clean Water Act, the Porter-Cologne Water Quality Control Act, the Administrative Procedure Act, the California Environmental Quality Act, the United States and California Constitutions, and other federal and state regulations as alleged in the Action;

H. WHEREAS, on April 1, 2011, NRG Delta submitted, pursuant to the Policy, an Implementation Plan for the Pittsburg Generating Station, which document states that NRG Delta may achieve compliance with the Policy under Track 1 for the Pittsburg Generating Station;

I. WHEREAS, on April 1, 2011, NRG South submitted, pursuant to the Policy, Implementation Plans for the Mandalay Generating Station and Ormond Beach Generating Station which document NRG South's position that compliance with Track 1 of the Policy is not feasible at these facilities and identify steps that NRG South may undertake to comply with the Policy, potentially including compliance with Track 2;

J. WHEREAS, the Parties wish to compromise, resolve, settle, and terminate any and all of the disputes or claims in the Action on terms and conditions set forth herein (the "Settled Disputes and Claims");

K. WHEREAS, the Parties represent that they understand they are waiving significant legal rights by signing this Agreement, each Party in no way concedes any positions taken in the Action, and this Agreement is made in a spirit of compromise for the sole purpose of avoiding the uncertainties and expenses of litigation with respect to the Settled Disputes and Claims;

NOW, THEREFORE, in consideration of the foregoing and the following, the Parties agree as follows:

AGREEMENT

1. Recitals Incorporated. The recitals set forth above, including all definitions therein, are expressly incorporated as terms of this Agreement.

2. Terms of Settlement.

2.1 Pittsburg Generating Station.

2.1.1 Implementation Plan Approval. The Track 1 compliance plan and other elements of the Implementation Plan contained in the Pittsburg Generating Station's April 1, 2011 Implementation Plan comply with the Policy's Track 1 compliance requirements.

2.1.2 Interim Mitigation. NRG Delta shall continue to employ interim mitigation measures, including but not limited to: the use of variable frequency drives (“VFDs”), fee payments to the Department of Fish and Wildlife, and measures consistent with federal and state species permits as they may be amended from time to time. The Parties agree that these measures satisfy the interim mitigation requirements in the Policy section 2.C(3)(a) and that no additional interim mitigation is necessary.

2.1.3 Track 1 Compliance.

a. NRG Delta may achieve Track 1 compliance by converting the existing once-through cooling Units 5 and 6 to utilize the closed-cycle wet cooling tower currently utilized by Unit 7 and the retirement of Unit 7, all as described in the Implementation Plan for the Pittsburg Generating Station. As an alternative to achieving Track 1 compliance through the conversion project, NRG Delta reserves the right to permanently retire Pittsburg Generating Station.

b. The State Water Board will suspend the (NPDES) renewal process for the Pittsburg Generating Station until the filing at the California Public Utilities Commission of a Power Purchase Agreement sufficient to enable NRG Delta, LLC to proceed with the conversion project described in paragraph 2.1.3(a) above, at which time the NPDES renewal process will be reactivated. If such a filing has not occurred by December 31, 2015, then the NPDES renewal process shall continue to be suspended until the compliance deadline, or upon the expiration of any extension thereof to maintain the reliability of the electric system under Policy section 2.B(2)(a) or (b), at which time NRG Delta shall permanently retire the Pittsburg Generating Station.

2.2 Mandalay Generating Station and Ormond Beach Generating Station

2.2.1 Infeasibility Determination. Track 1 is not feasible, as defined in Policy section 5, at Mandalay Generating Station and Ormond Beach Generating Station under Policy section 2.A.(2).

2.2.2 Compliance Alternatives. NRG South may comply with the Policy either by retiring its units utilizing once-through cooling and pursuing a replacement project at Mandalay Generating Station and/or Ormond Beach Generating Station or, alternatively, by pursuing Track 2 compliance as provided in paragraph 2.2.4, below.

2.2.3 Interim Mitigation. A per-million-gallon fee, as recommended in the Expert Panel Final Report dated March 14, 2012, is an appropriate basis for calculating interim mitigation payments under Policy section 2.C.(3)(b). The Parties agree that the amount of the per-million-gallon fee will be no greater than \$6.50/million-gallon. The Parties further agree that NRG may seek to apply the funds to an Oxnard wetlands restoration project.

2.2.4 Track 2 Studies and Compliance Measurement.

a. Track 2 compliance can be achieved by an 83.7% or greater reduction in impingement mortality and entrainment using screens or other technology controls and operational measures pursuant to Policy section 2.A.(2)(a)(ii) and 2.A.(2)(b)(ii).

b. The existing velocity cap installed at the Ormond Beach Generating Station cooling water intake has satisfied the requisite reduction in impingement mortality under section 2.A.(2)(a)(ii) of the Policy.

c. Track 2 compliance can be achieved through a combination of (1) technology controls, such as screens, and (2) operational controls to further reduce flow, pursuant to Policy section 2.A.(2)(b)(ii). The percent reductions in entrainment achieved by the technology controls may be based on calculations of the numbers of fishes and other meroplankton of a specific age or size class that have been protected from the effects of entrainment for the species selected for analysis. As used in this Agreement, the term “fishes and other meroplankton” means ichthyoplankton and meroplankton as identified in the Policy at section 2.A.(2)(b)(ii).

d. Following initial confirmation pursuant to Policy section 4.A.(2) and 4.B.(2) that the combination of technology and operational controls will achieve the required reductions, further ongoing confirmation of compliance in the course of NPDES permit monitoring and renewal will be based on (1) the percentage reduction achieved by the technology as determined by the initial verification studies, combined with (2) the percentage reductions in entrainment from the operational controls corresponding to flow reductions, which will be reported on an annual basis, using the results of the Baseline Studies as provided in paragraph 2.2.5, below.

2.2.5 Baseline Studies. NRG South may conduct baseline studies consistent with Policy section 4.A.(1) and 4.B.(1) for Mandalay Generating Station and as needed to supplement existing data for Ormond Beach Generating Station, consistent with the understanding regarding Track 2 compliance outlined above. Prior impingement studies conducted at the Ormond Beach Generating Station accurately reflect current impacts for the purposes of Policy section 4.A.(1). NRG South will submit the plans for the proposed baseline studies to Board staff for review within 60 days of the Execution Date of this Settlement Agreement. The State Water Board will provide written confirmation within 30 days of NRG South’s submittal that the baseline studies satisfy the requirements of Policy sections 4.A.(1) and 4.B.(1), as applicable. The baseline studies shall be deemed to have satisfied the study design requirements of Policy sections 4.A.(1) and 4.B.(1) if the State Water Board does not respond to the study submittal within 30 days of submission.

3. Technology Evaluation. NRG South may evaluate screening or other technologies to be installed at Mandalay Generating Station and/or Ormond Beach Generating Station by conducting pilot study(ies) consistent with the agreements regarding Track 2 compliance, outlined above. NRG South will seek State Water Board approval for pilot study designs as needed.

4. Intake Flows. It may be necessary to continue intake flows even when not directly engaging in power-generating activities or critical system maintenance for short time periods while performing baseline, pilot and/or verification and confirmation studies. As needed, NRG South will provide the State Water Board with proposed testing schedules in the development of baseline, pilot and technology study plans and coordinate the study designs with the State Water Board with a goal of minimizing intake flows not associated with power-generating activities or

critical system maintenance. Upon State Water Board confirmation of the relevant study, NRG South shall be deemed to have demonstrated to the State Water Board that a reduced minimum flow is necessary for operations, pursuant to Policy section 2.C(2).

5. Updates and Other Requests. Whenever NRG South submits information to the State Water Board and requests the State Water Board's confirmation or approval, the State Water Board will respond promptly with an approval or an explanation for disapproval, including any additional information needs, but in any event no later than 60 days after receipt of the information or request. In the event the State Water Board requests additional information or other amendment, the State Water Board shall provide approval not later than 30 days after receipt of the information or amendment. These deadlines may be extended by mutual agreement in writing. The information or submittal to the State Water Board for approval shall be deemed to be approved if the State Water Board does not respond to the submittal within 30 days.

6. NPDES Permits. NPDES permits for Pittsburg Generating Station, Mandalay Generating Station and Ormond Beach Generating Station will incorporate, respectively, provisions necessary to implement the terms of this Agreement pertaining to that facility contained in Section 2 of this Agreement.

7. Implementation of Settlement.

7.1 Stay or Stipulated Dismissal without Prejudice.

7.1.1 It is the Parties' intent that NRG's claims in the Action shall be stayed while the Parties take the necessary actions to implement the terms of this Agreement. Further, it is the Parties' intent that, in the event of a breach of this Agreement, or in the event that the substantive terms of this Agreement are not incorporated into the NPDES permits for these NRG facilities consistent with Section 6 of this Agreement, the stay of the Action will be lifted and the Action may then proceed.

7.1.1.a. Within twenty-one (21) days of the Execution Date of this Agreement, NRG will seek to have the Action stayed in order to allow the Parties' intentions and the terms of this Agreement to be implemented. The State Water Board will support any motion to stay the Action in accordance with this paragraph 7.1.1.

7.1.1.b. In the event that the Parties are unable to obtain a stay of the Action, the Parties will stipulate to dismiss the Action without prejudice and with the right to re-open as set forth in paragraph 7.1.1.d. and Section 9 of this Agreement. The Parties shall enter this stipulation within twenty-one (21) days of being informed by the Court that it will not stay the Action. A dismissal without prejudice under this Section will serve to toll any applicable statutes of limitation, filing, statute of repose, laches defense, claim of waiver or estoppel, or other similar defense or claim that is applicable to any of the claims or causes of action asserted by NRG in the Action.

7.1.1.c. The stay described in paragraph 7.1.1.a. or the tolling specified in paragraph 7.1.1.b. will run so long as the Parties are pursuing the necessary steps to implement the terms of this Agreement.

7.1.1.d. In the event that the NPDES permits do not contain the provisions necessary to implement Section 6 of this Agreement, or to the extent that the State Water Board is otherwise in breach of this Agreement, the State Water Board stipulates that NRG can lift the stay, reactivate or reinstate the Action, and NRG can amend the original Action to include additional claims or causes of action consistent with applicable statutes of limitations. The tolling period provided by paragraph 7.1.1.b. shall not apply to additional claims or causes of action not asserted in the Action.

7.2 Dismissal with Prejudice. Upon re-issuance of NPDES permits for Pittsburg Generating Station, Mandalay Generating Station and Ormond Beach Generating Station that adopt the provisions of the Policy and this Agreement as provided in Section 6, NRG will file a voluntary dismissal of the Action with prejudice, or if the Action has already been dismissed pursuant to 7.1.1.b., then NRG shall not be entitled to reopen or reinstate the claims or causes of action contained in the Action and those claims are subject to the release of paragraph 7.3.

7.3 Release. Upon the conditions of paragraph 7.2, NRG fully and forever releases the State Water Board from any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, costs or expense, including attorneys' fees, of any kind or nature whatsoever, in law, equity or otherwise, which it may now have as a result of the adoption of the Policy. The release provided by this paragraph does not extend to any subsequent actions of the State Water Board that modify the Policy in a way that imposes additional obligations on NRG or any subsequent action by the State Water Board that is in breach of this Agreement.

8. Effect on State Water Board Authorities. Except as specifically agreed to herein, nothing in this Agreement limits the authority of the State Water Board to exercise its powers provided under state and federal law, including to issue or enforce orders.

9. Default and Remedies. In the event of an alleged breach, the non-breaching Party agrees to give written notice of the alleged breach to all other Parties and to consult with the Parties within fifteen (15) days of the written notice of the alleged breach, unless otherwise agreed in writing, for the purpose of attempting in good faith to resolve any disputes prior to the initiation of litigation or court proceedings. If the Parties are unable to resolve the dispute, the non-breaching Party can move to re-open the Action, and can amend the original Action to include additional claims,

10. Attorneys' Fees and Costs. All Parties agree to bear their own fees and costs associated with the Action or any challenges by any non-party to this Agreement and related implementing documents and processes.

11. Superior Court to Enforce Agreement. The Parties agree and acknowledge that this Agreement shall be deemed to have been entered into by and between the Parties in the County of Sacramento, State of California. The Parties agree that the Superior Court of California for the County of Sacramento, in which forum the Action was filed, shall be the judicial forum for purposes of jurisdiction should any Party seek to enforce the terms of this Agreement.

12. No Admission. This Agreement and its provisions and any proceedings taken hereunder are for settlement purposes only and are not intended to be, and shall not in any event be construed or deemed to be, an admission or concession on the part of the Parties, or any of them, of any liability or wrongdoing whatsoever. This Agreement is predicated upon unique facts which exist between the Parties and none of the Parties intend this Agreement to be a waiver of any right or position in regards to any third party. Neither this Agreement nor any negotiations or proceedings in pursuance of this Agreement shall be offered or received in any action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of the Parties, or any of them, or anyone acting on their respective behalves.

13. Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors and assigns. No Party may assign its rights under this Agreement without the prior written consent of the other Parties.

14. No Third Party Beneficiaries. This Agreement is between the Parties and is not intended to confer upon any person other than the Parties any rights or remedies.

15. Notices. All communications and notices to be given to any Party under this Agreement shall be sufficiently given for purposes hereunder if in writing and delivered by hand, courier or overnight delivery service, or certified or registered mail return receipt requested with appropriate postage prepaid, with an additional copy provided by electronic mail, and directed to the addresses below:

As to State Water Board:

Michael A.M. Lauffer
Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
michael.lauffer@waterboards.ca.gov

As to NRG:

Elizabeth P. Ewens, Esq.
Ellison, Schneider & Harris L.L.P
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
epe@eslawfirm.com

and

West Region General Counsel
NRG Energy, Inc.
P.O. Box 192 (U.S. Mail)
696 W. 10th Street (All other deliveries)
Pittsburg, CA 94565

15.1 Any Party may change its notice recipient or address for providing notice to it by notifying the other Party in writing setting forth such new notice recipient or address.

16. Further Cooperation. The Parties, and each of them, agree to do all things reasonably necessary to implement this Agreement, including, but not limited to, executing such additional writings as may be reasonably required to carry out the intent of this Agreement. The Parties will reasonably cooperate, each with the other, to effectuate the purpose of this Agreement, to protect and defend its integrity and do what may be necessary to verify its existence and operation in such matters as may be relevant.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. There are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter of this Agreement.

18. Modification of Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

19. Mutual Preparation. The Parties each cooperated in the drafting and preparation of this Agreement and thus it shall be deemed drafted by all Parties to the Agreement. The language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any Party as the drafter thereof.

20. Authority. Each Party respectively represents and warrants to each other Party that the undersigned representative for such Party has full and complete authority to execute and enter into this Agreement and bind said Party to the terms hereof.

21. Counterparts. This Agreement may be executed by facsimile and in counterparts, and each counterpart shall be considered an original, and all of which, taken together, shall constitute one and the same instrument; provided, however, that original signatures will also be provided to all counsel by mail.

22. Captions. The captions contained herein are intended solely for convenience and shall not be construed as full or accurate descriptions of the terms hereof.

23. Independent Investigation. Each Party has made such investigation of the facts pertaining to this Agreement and of all matters pertaining thereto as it deems necessary.

24. Governing Law. This Agreement has been executed and delivered in the State of California and its validity, interpretation, performance, and enforcement shall be governed by the laws of the State of California.

25. Severability. If any portion or portions of this Agreement are held by a court of competent jurisdiction to conflict with any federal, state, or local laws, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining portions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portions had not been included herein.

26. Force Majeure. No Party to this Agreement shall be deemed in violation of it if it is prevented from performing any of the obligations hereunder by reason of boycotts, labor disputes, embargoes, shortage of material, act of God, strikes, lockouts, labor troubles, inability to procure labor or materials, fire, accident, laws or regulations of general applicability, act of superior governmental authority, weather conditions, sabotage, or any other cause or circumstances for which it is not responsible and beyond its control (financial inability excepted). Any Party intending to assert force majeure shall notify the other Party(ies) in writing as soon as practicable following the date the Party first knew, or by the exercise of reasonable diligence should have known, of the force majeure event.

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27. Voluntary and Knowing Execution. Each Party respectively represents and warrants to each other Party that it has thoroughly read and considered all aspects of this Agreement, that it understands all provisions of this Agreement, that it has had the opportunity to consult with counsel, and that it is voluntarily and knowingly entering into this Agreement without duress or coercion of any kind.

SO AGREED:

Dated: ~~September~~ 9, 2014 STATE WATER RESOURCES CONTROL BOARD
October

By: Thomas Howard
Thomas Howard
Executive Director

Dated: September ____, 2014 NRG CALIFORNIA SOUTH, LP

By: _____
John Chillemi
President, NRG California South GP LLC

Dated: September ____, 2014 NRG DELTA, LLC

By: _____
John Chillemi
President, NRG Delta LLC

27. Voluntary and Knowing Execution. Each Party respectively represents and warrants to each other Party that it has thoroughly read and considered all aspects of this Agreement, that it understands all provisions of this Agreement, that it has had the opportunity to consult with counsel, and that it is voluntarily and knowingly entering into this Agreement without duress or coercion of any kind.

SO AGREED:

Dated: September ____, 2014 STATE WATER RESOURCES CONTROL BOARD

By: _____
Thomas Howard
Executive Director

Dated: ^{October} ~~September~~ 9, 2014 NRG CALIFORNIA SOUTH, LP

By: John Chillemi
John Chillemi
President, NRG California South GP LLC

Dated: ^{October} ~~September~~ 9, 2014 NRG DELTA, LLC

By: John Chillemi
John Chillemi
President, NRG Delta LLC