

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

**ENVIRONMENTAL PROTECTION DIVISION  
OF THE NEW MEXICO ENVIRONMENT DEPARTMENT,  
Complainant,**

**NO. AQB LEA-25726-1601 (NOV)**

**LEA POWER PARTNERS, LLC,  
Respondent.**

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**SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and the Respondent, Lea Power Partners, LLC, (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by the Respondent. The Department alleges a violation of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Numbers PSD3449-M4 and P244-R1 (“Permits”).

**I. BACKGROUND**

**A. PARTIES**

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the AQCR, including assessing

civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau (“Bureau”) is an organizational unit of the Division.

2. Respondent is an electrical power company doing business in New Mexico at the Hobbs Generating Station Facility (“Facility”), located in Lea County, New Mexico. The Facility provides commercial electric power.

## **B. HISTORY AND ALLEGED VIOLATIONS**

3. Permit Condition A106.A "Facility: Allowable Emissions", Table 106.A, restricts CO emissions from each turbine generator to 441 pounds per hour (“pph”).

4. On September 26, 2016, the Bureau reviewed four reports generated by the Respondent for the Facility. These reports included three Semi-Annual Title V reports covering the period January 1, 2015 to June 30, 2016, and one Annual Compliance Certification Report covering the period January 1, 2015 to December 31, 2015.

5. On September 27, 2016, the Bureau reviewed the Air Quality Bureau Compliance Reporting on-line application for any Excess Emission Reports submitted by the Respondent during these monitoring periods. Based on the Bureau’s review, it was determined that Respondent submitted a total of twenty-one excess emission reports from start-up events, and two (2) excess emission reports from malfunction events. The total emissions from these events were 14,116.7 pounds of Carbon Monoxide (approximately 7.06 tons).

6. On February 16, 2017, the Bureau issued Notice of Violation LEA-25726-1601 alleging one (1) air quality violation: 1) the failure to stay within permitted allowable malfunction and startup, shutdown, and maintenance emissions, which is a violation of NSR Permit Facility Specific Requirements Table 106.A and A107, and Title V Permit Facility Specific Requirements Table 106.A and A107.

7. The NOV included a Corrective Action Verification (“CAV”) requiring the Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

8. On March 23, 2017, the Bureau received the CAV from the Respondent. The CAV was determined to be satisfactory by the Bureau on April 5, 2017.

9. The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

10. The Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and the Respondent agree to the terms and conditions in this Final Order to resolve the alleged violation in the NOV.

11. The Parties admit jurisdiction and consent to the relief specified herein.

### **B. CIVIL PENALTY**

12. In compromise and settlement of the alleged violation set forth in the NOV and upon consideration of the seriousness of the alleged violation and Respondent’s good faith efforts to comply, the Parties agree that the Respondent shall pay a civil penalty of \$25,593.50 to the State of New Mexico within thirty (30) calendar days after the effective date of this Final Order.

13. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department  
Air Quality Bureau  
c/o Compliance and Enforcement Manager  
525 Camino de los Marquez, Suite 1  
Santa Fe, New Mexico 87505

14. If the Respondent fails to make timely and complete payment of the civil penalty, the Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. The Respondent shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against the Respondent for the failure to make timely or complete payment.

### **III. OTHER TERMS AND CONDITIONS**

#### **A. RESERVATION OF RIGHTS AND DEFENSES**

15. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring the Respondent to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to the Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Respondent from raising any defense to a Department action seeking such relief.

#### **B. MUTUAL RELEASE**

16. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and violation alleged in the NOV. Such release applies only to civil liability.

#### **C. WAIVER OF STATE LIABILITY**

17. The Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for the Respondent's performance of any obligation under this Final Order.

**D. EFFECTIVE DATE AND TERMINATION DATES**

18. This Final Order shall become effective on the date it has been signed by the Department Secretary.

19. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when the Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 15 and 16 shall survive the execution and performance of this Final Order, and shall remain in full force and effect as an agreement between the Parties.

**E. INTEGRATION**

20. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

**F. BINDING EFFECT**

21. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.


**G. AUTHORITY OF SIGNATORIES**

22. The persons executing this Final Order on behalf of the Respondent and the Division, respectively, represent that he or she has the authority to execute this Final Order on behalf of the Respondent and the Division.

**H. SIGNATURE AND COUNTERPARTS**

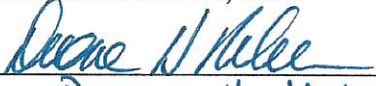
23. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

ENVIRONMENTAL PROTECTION DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT

By:   
RICHARD L. GOODYEAR, PE  
DIRECTOR

Date: 31 July 2017

LEA POWER PARTNERS, LLC

By:   
Print Name: Duane H. Nelson  
Print Title: Authorized Signatory

Date: 7/26/2017

## STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Lea Power Partners, LLC, is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

  
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**BUTCH TONGATE**  
**SECRETARY**  
**ENVIRONMENT DEPARTMENT**

Date: 8/1/17