STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF CONNECTICUT

AND

DEVON POWER LLC

TRADING AGREEMENT AND
ORDER NO. 8181A
MODIFICATION NO. 2

TRADING AGREEMENT AND ORDER MODIFICATION

In the matter of a Trading Agreement and Order between the Commissioner of Environmental Protection ("Commissioner") and Devon Power LLC ("DP").

WHEREAS, the Commissioner and DP, having agreed to the terms and conditions set forth in Trading Agreement and Order No. 8181A signed by the Commissioner on April 22, 2003, and Trading Agreement and Order 8181A Modification 1 issued March 21, 2005 do now, by mutual agreement, modify said Trading Agreement Order No. 8181A as follows:

1. Delete paragraph A.1. and substitute the following therefor:

   This Trading Agreement and Order supersedes Trading Agreement and Order 8181 issued on January 12, 2000.

2. Delete paragraph A.5. and substitute the following therefor:

   Reserved.

3. Delete the date May 1, 2005, and substitute therefor May 1, 2009, in paragraphs A.6. and C.1.

4. Delete paragraph C.2.a and substitute the following therefor:

   Until May 1, 2009, before the first day of each month DP shall have in its possession sufficient approved DERCs for the current day for the peaking unit based on the following calculations;

   Before the first day of each month, DP shall estimate DERCs required for such month for the peaking unit as follows:

(i) <u>At all times</u>:

Estimated DERCs (in tons) use = [((FLER in lbs/MMBtu) – (0.95 x NOx allowable rate in lbs/MMBtu)) x (estimated fuel use in MMBtu)] ÷ 2000 pounds/ton

No later than the twentieth day of each month, DP shall calculate and permanently retire DERCs used in the preceding calendar month, as follows:

Actual DERCs (in tons) = [((FLER in lbs/MMBtu) – (0.95 x NOx allowable rate in lbs/MMBtu)) x (actual fuel use in MMBtu)] ÷ 2000 pounds/ton

Where:

a. NOx allowable rate = allowable limit rate in lbs/MMBtu shown in Table 1 of this Trading Agreement and Order.
b. FLER = full load emission rate in lbs/MMBtu as shown in Table 1 of this Trading Agreement and Order.
c. Discount (0.95) = 5% design margin applied to the allowable limit rate.

ii) <u>During the ozone season only</u>:

No later than December 31st each year, DP shall acquire and permanently retire seven ozone season DERCs for every actual ton of excess NOx emitted from the peaking unit during the previous ozone season based upon the actual emissions for each day that Connecticut one hour ozone levels were forecasted to be "moderate to unhealthful", "unhealthful", or "very unhealthful", until such time that the EPA revokes the 1-hour standard. Upon such revocation, DP shall calculate and permanently retire seven ozone season DERCs for every actual ton of excess NOx emitted from the peaking unit during such ozone season based upon the actual emissions for each day that Connecticut eight hour ozone levels were forecasted to be "moderate to unhealthy for sensitive groups", "unhealthy for sensitive groups", "unhealthy", or "very unhealthy".

Where:

Actual ton of excess NOx emitted = [((FLER in lbs/MMBtu) – (0.95 x NOx allowable rate in lbs/MMBtu)) x (actual fuel use in MMBtu)] ÷ 2000 pounds/ton

The total actual tons of excess NOx emitted from the peaking unit during forecasted ozone exceedance days shall be multiplied by seven and then rounded to the next greater whole ton, to determine the number of DERCs to be permanently retired. This requirement is in addition to the DP's requirement to

estimate excess emissions and subsequent permanent retirement of a sufficient number of approved DERCs in accordance with paragraph C.2.a.(i) of this Trading Agreement and Order.

5. Delete paragraph C.2.b. and substitute the following therefor:

Reserved.

6. Delete paragraph C.2.c. and substitute the following therefor:

During the non-ozone season: Until May 1, 2009, from October 1 through April 30, inclusive, each year, the peaking unit shall, in addition to meeting the 24-hour emission limit in Table 22-1 of Section 22a-174-22 of the Regulations, meet a non-ozone season emission limit of 0.15 lb/MMBtu. Prior to October 1, 2006, 2007, and 2008, DP shall estimate and acquire the amount of DERCs or allowances required for such non-ozone season needed to comply with Section 22a-174-22(e)(3) of the Regulations as follows:

Estimated DERCs (tons) use = [Estimated fuel use in MMBtu from October 1 through April 30 x (allowable emission rate in lbs/MMBtu – (0.95 x 0.15 lb/MMBtu))] ÷ 2000 lbs/ton

7. Delete paragraph C.2.d. and substitute the following therefor:

No later than May 31 of 2007 and 2008, in addition to the DERCs retired pursuant to paragraph C.2.a. of this Trading Agreement and Order, DP shall calculate and permanently retire DERCs used in the preceding non-ozone season as follows:

Actual DERCs (tons) used = [Actual fuel use in MMBtu from October 1 through April 30 x (allowable emission rate in lbs/MMBtu – (0.95 x 0.15 lb/MMBtu))] ÷ 2000 lbs/ton

8. Delete paragraph C.6. and substitute the following therefor:

(a) Annual DERC Report. No later than March 1 of every year after issuance of this Trading Agreement and Order, DP shall submit in writing to the Commissioner, a record of each sale or other transfer of DERCs for the previous calendar year. DP shall also include actual NOx emissions from the peaking unit and the amount of all DERCs used (including serial numbers (if assigned) and DERCs purchased from other facilities). These reports shall be

on forms prescribed by the Commissioner and shall be in monthly increments, and by ozone and non ozone seasons.

(b) For the Non-ozone season: No later than July 30 of every year after issuance of this Trading Agreement and Order, DP shall submit in writing to the Commissioner the non-ozone season fuel consumption and amount of all DERCs used (including serial numbers (if assigned) and approved DERCs purchased from other facilities) for the peaking unit during the October through April time period in the previous calendar year. These reports shall be on a form prescribed by the Commissioner.

9. Delete paragraph C.7. and substitute the following therefor:

Allowance Use. Pursuant to Section 22a-174-22(d)(3) of the Regulations, DP may use NOx allowances, until May 1, 2009, for the peaking unit pursuant to Section 22a-174-22(j) of the Regulations to achieve all or a portion of the reductions required by Section 22a-174-22 of the Regulations. Any allowance used for compliance with Section 22a-174-22(e) of the Regulations shall be subject to all restrictions and/or requirements applicable to DERCs contained in this Trading Agreement and Order;

a. In order for DP to use NOx allowances, DP shall create a general account or use an existing compliance account or overdraft account in EPA's NOx Allowance Tracking System ("NATS"); and

b. Each allowance used for compliance with Section 22a-174-22 of the Regulations shall be equivalent to one discrete emission reduction credit. Allowances shall be considered used for compliance with Section 22a-174-22 of the Regulations when they are transferred from the facility's NOx general account in the NATS or the facility's NOx compliance account in the NATS to the CT State NOx Retirement Account (Account ID CT0000000300 in the NATS).

10. Delete paragraph C.8. and substitute the following therefor:

DERC Shortfall. At a minimum, DERCs required shall be adjusted upwards by 100% if DERCs are not in DP's possession for use prior to the first day of each month or applicable season. However, nothing in this Trading Agreement and Order shall affect the Commissioner's authority to institute any proceeding or take any other action to require additional upward adjustment, based on the gravity of any alleged noncompliance or violation of law. DP shall permanently retire the quantity of DERCs equivalent to the excess emissions plus a 100% premium

within sixty (60) days of DP's discovery of the DERC shortfall. DP shall certify and report any such DERC retirement to the Commissioner in accordance with paragraph C.30. of this Trading Agreement and Order.

11. Delete paragraph C.10. and substitute the following therefor:

FLER Exceedance. Noncompliance with an established FLER shall subject DP to make restitution by matching the quantity of emissions ("true up") caused by the exceedance plus a 100% premium. The true up in tons of DERCs shall be equal to the FLER exceedance in lbs/MMBtu, multiplied by the total heat input during the period of noncompliance divided by 2000 lbs/ton. If the period of noncompliance is not known, the time period from the completion of the last/previous Commissioner witnessed emission test through the date the FLER compliance is achieved as approved by the Commissioner shall be used. However, nothing in this Trading Agreement and Order shall affect the Commissioner's authority to institute any proceeding or take any other action to require additional upward adjustment, based on the gravity of any alleged noncompliance or violation of law. DP shall permanently retire DERCs calculated in accordance with the above plus a 100% premium within sixty (60) days of DP's discovery of the FLER exceedance. DP shall report any FLER exceedance to the Commissioner in accordance with paragraph C.30. of this Trading Agreement and Order.

12. Delete paragraph C.13. and substitute the following therefor:

Extension. No later than May 1, 2009, with respect to the peaking unit, DP shall comply with the requirements of Sections 22a-174-22(d)(1) and 22a-174-22(d)(2)(A) of the Regulations. There is no assurance that the Commissioner will grant a written extension of this Trading Agreement and Order.

13. Delete paragraph C.14. and substitute the following therefor:

Future Compliance Report. On or before September 1, 2008, DP shall submit a report in writing to the Commissioner, as directed in paragraph C.31. of this Trading Agreement and Order, indicating how the facility shall comply with Section 22a-174-22 of the Regulations with respect to the peaking unit on and after May 1, 2009.

14. Delete paragraph C.17. and substitute the following therefor:

Definitions. As used in this Trading Agreement and Order, "Approved DERCs" are those for which the Commissioner has provided written authorization for use in compliance with Section 22a-174-22 of the Regulations; "Commissioner" means the Commissioner or a representative of the Commissioner; "Non-ozone season" means the period from October 1 through April 30 in any given calendar year; "Ozone season" means the period May 1 through September 30 in any given calendar year.

15. Delete paragraph C.18. and substitute the following therefor:

Dates. The date of "issuance" of this Trading Agreement and Order is the date the Trading Agreement and Order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this Trading Agreement and Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Trading Agreement and Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this Trading Agreement and Order, the word "day" as used in this Trading Agreement and Order means calendar day. Any document or action which is required by this Trading Agreement and Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

16. Delete the word "individual" and substitute therefore the word "Section" in paragraph C.30.

17. Delete the name "Mr. Michael LaFleur" in paragraph C.31.

All other terms and conditions of Trading Agreement and Order no. 8181A and Modification 1 issued by the Commissioner acting under Chapter 446c, Sections 22a-6, 22a-171, 22a-174, 22a-176, and 22a-177 of the Connecticut General Statutes shall remain in effect.

DP hereby consents to the entry of this modification to the Trading Agreement and Order without further notice.

Devon Power LLC

Signature: TE Walker

Type Name: THOMAS E. WALKER

Type Title: PLANT MANAGER

Date: 6/6/06

Issued as a modification of an Order of the Commissioner of Environmental Protection.

Gina McCarthy
Commissioner

7/10/06
Date

MAILED CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Certified Document No.

CONFIDENTIAL: ENFORCEMENT STRATEGY
This document contains tentative conclusions and recommendations and does not create any defenses or rights, substantive or procedural.

To: Robert Girard, Assistant Director of Compliance and Field Operations Division

From: Michael LaFleur, APCE III

Subj: Proposed Trading Agreement and Order No. 8181A Mod 2

Date: 4/28/06

Source: Devon Power LLC –Peaking unit

Nature of Problem or Violation: Trading Agreement and Order 8181A expires on May 1, 2007. The order needs to be extended until May 1, 2009 as the facility is still using NOx Trading as a compliance option.

Date of Discovery: NA

Action Proposed: Extend Order to May 1, 2009.

Justification for Proposed Action: Section 22a-174-22 of the Regulations of Connecticut State Agencies (RCSA) allows a source to NOx DERCs for purposes of compliance with section 22a-174-22 of the RSCA.

Relief Sought: N/A

Consultation with Water and Waste Bureaus: Email messages were sent to representatives of the Waste and Water Bureaus on 4/6/06 to facilitate a compliance check. On 4/6/06 Michele Denoia sent a reply stating that recent DMR violations with PERD are being resolved and the Air Bureau may proceed with the extension. On 4/4/06 Gene Macgillis stated that there were no solid waste issues. Marla Butts sent a reply on 4/7/06 stating that there were no issues with the IWRD, and on 4/12/06 Mohamed Deria and Peter Ploch sent an email stating that there were no Hazardous waste issues.

Anticipated Controversy: None