



STATE OF CONNECTICUT	)	Order No. 2594
	)	
Vs.	)	
	)	
WATERBURY GENERATION, LLC.	)	
	)	

CONSENT ORDER

- A. With the agreement of Waterbury Generation, LLC (Respondent), the Commissioner of Energy and Environmental Protection (Commissioner) finds the following:
1. The Respondent owns and operates an electric generating facility at 160 Washington Street in Waterbury, CT (premises).
  2. The Respondent owns and operates a nominal 96 MW simple-cycle turbine at the premises. The Respondent operates the turbine under New Source Review (NSR) Permit #192-0300.
  3. The premises is not a major source of any pollutant. Pursuant to RCSA Section 22a-174-33(a)(10)(C), the premises is a Title V source because the turbine is subject to 40 CFR Parts 72 to 78, inclusive. The Respondent operates the premises under Title V Permit #192-0304-TV.
  4. NSR Permit #192-0300 requires the Respondent to conduct emissions testing every five years. The Respondent conducted emissions testing on June 30, 2014. Subsequent testing was, therefore, required by June 30, 2019. The Respondent conducted emissions testing while firing natural gas on October 5, 2019, and while firing ultra-low-sulfur kerosene on October 8 and 14, 2019.
  5. On September 12, 2019, the Commissioner issued NOV #18990 alleging that the Respondent failed to conduct the required five-year emissions testing by the due date, in violation of RCSA Section 22a-174-3a(h) and NSR Permit #192-0300.
  6. In letters dated August 6, September 24, and October 30, 2020, and May 5, 2021, the Respondent informed the Commissioner that, due to a programming error in the data acquisition and handling system (DAHS), the programmable logic controller for the continuous emissions monitoring system (CEMS) was incorrectly interpreting the fuel flow signal output from the distributed control system (DCS). This programming error caused the DAHS to record a heat input rate lower than the actual heat input rate and consequently caused the Respondent to underreport mass emissions of certain pollutants.

Issued Date: 7/16/2023



7. Waterbury Generation recalibrated the DAHS to the proper range on October 22, 2020 and confirmed that the DAHS was properly reading the DCS data.
8. On February 10, 2022, the Commissioner issued NOV #18214 alleging that the Respondent failed to meet the general operating requirements found in 40 CFR 75.10, which caused the facility to underreport emissions during the years of 2009 to 2020, inclusive.
9. The Respondent is subject to the Regional Greenhouse Gas Initiative (RGGI) carbon dioxide (CO<sub>2</sub>) emission budget program under RCSA Section 22a-174-31.
10. In accordance with RCSA Section 22a-174-31(b)(3)(A), the Respondent is required to hold in its RGGI compliance account CO<sub>2</sub> allowances in a quantity at least equal to (i) its emissions during each three-year control period and (ii) half of its emissions during each annual interim control period.
11. As a result of the scaling error, the Respondent under-reported CO<sub>2</sub> emissions and failed to hold sufficient CO<sub>2</sub> allowances in its compliance account during the 2009-2011 (shortfall: 11,649 tons) and 2015-2017 (shortfall: 9,337 tons) control periods and the 2015 (shortfall: 1,776 tons) and 2016 (shortfall: 4,461 tons) interim control periods, with a total CO<sub>2</sub> allowance shortfall of 27,223 tons.
12. On February 10, 2022, the Commissioner issued NOV #18215 alleging that the Respondent failed to hold sufficient CO<sub>2</sub> allowances in its compliance account by the applicable CO<sub>2</sub> transfer deadlines between the years of 2009 and 2019, inclusive, in violation of RCSA Section 22a-174-31(b)(3)(A).
13. In accordance with the method of calculating the deduction of CO<sub>2</sub> allowances for excess emissions pursuant to RCSA Section 22a-174-31(g)(5)(G), the Commissioner determined that the Respondent was required to retire 69,195 tons of CO<sub>2</sub> allowances.
14. The Respondent surrendered 11,469 tons of CO<sub>2</sub> allowances on March 14, 2022, and 57,546 tons of CO<sub>2</sub> allowances on September 14, 2022, meeting its obligation under RCSA Section 22a-174-31(g)(5)(G).
15. In the letter dated May 5, 2021, the Respondent informed the Commissioner of 153 previously unreported deviations from the permitted short-term nitrogen oxides (NO<sub>x</sub>) emissions limits that had occurred between January 2016 and December 2020, inclusive.
16. On February 10, 2022, the Commissioner issued NOV #18216 alleging that the Respondent exceeded the emissions limits in Section V of NSR Permit #192-0300 and failed to report such emissions exceedances in a timely manner as required by Section IV.B.5 of NSR Permit #192-0300.
17. By virtue of the facts set forth above, the Respondent has violated NSR Permit #192-0300, Title V Permit #192-0304-TV, RCSA Section 22a-174-3a(h), RCSA Section 22a-174-31(b)(3)(A), and 40 CFR 75.10.

- B. With the agreement of Respondent, the Commissioner, acting under §§ 22a-6 and 22a-174 of Connecticut General Statutes, orders the Respondent as follows:
1. Civil penalty. The Respondent shall pay a penalty of \$81,000 as the total penalty to be sought by the Commissioner for those, and only those, violations described in Paragraph A.4 through A.17 of this Consent Order. This penalty is payable as follows: On or before thirty (30) days after issuance of this Consent Order, the Respondent shall pay \$40,500 in accordance with paragraph B.2 of this Consent Order, and the Respondent shall pay \$40,500 as a Supplemental Environmental Project in accordance with paragraph B.3 of this Consent Order
  2. Payment of penalties. On or before thirty (30) days after the issuance of this Consent Order, the Respondent shall pay \$40,500 by mail or personally delivered to Bureau of Financial and Support Services--Accounts Receivable Office ["F&SS"]. Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the Connecticut Department of Energy and Environmental Protection. The check shall state on its face, "Bureau of Air Management Civil Penalty, Air Enforcement Division, Consent Order #2594.
  3. Statewide Supplemental Environmental Project (SEP) Account Payment.
    - i. On or before thirty (30) days after issuance of this Consent Order, the Respondent shall pay \$40,500 by mail or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services--Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127. The payment shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection." The check shall state on its face, "Statewide SEP Account" and "Consent Order #2594."
    - ii. The Respondent shall not claim or represent any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense. The Respondent shall not seek or obtain any other tax benefit, such as a tax credit, as a result of the payment under this paragraph.
    - iii. If the Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondent shall include a statement that such funding was made in settlement of an enforcement action brought by the Commissioner.
  4. W-9 Requirement: The Respondent shall provide a completed [IRS Form W-9](#) to the Commissioner.
  5. Full compliance. The Respondent shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction.
  6. Approvals. The Respondent shall use best efforts to submit to the Commissioner all documents required by this Order in a complete and approvable form. If the Commissioner

notifies the Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and the Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this Consent Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.

7. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
8. Dates. The date of "issuance" of this consent order is the date the consent 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 consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent 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 consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent 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.
9. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by the Respondent or, if the Respondent is not an individual, by the Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-174-2a(a)(4) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and the Respondent or the Respondent's chief executive officer and each such individual shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is punishable as a criminal offense under Section §53a-157b of the Connecticut General Statutes and any other applicable law."
10. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject the Respondent to an injunction and penalties.
11. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.

12. Notice of transfer; liability of Respondent. Until the Respondent has fully complied with this Consent Order, Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this Consent Order or after obtaining a new mailing or location address. The Respondent's obligations under this Consent Order shall not be affected by the passage of title to any property to any other person or municipality.
13. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondents pursuant to this Consent Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require the Respondents to undertake further investigation or further action to prevent or abate violations or pollution.
14. Respondent's obligations under law. Nothing in this Consent Order shall relieve the Respondent of other obligations under applicable federal, state and local law.
15. No assurance by Commissioner. No provision of this Consent Order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by the Respondent pursuant to this Consent Order will result in compliance.
16. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
17. No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons or municipalities that are not parties to this Consent Order.
18. Notice to Commissioner of changes. Within 15 days of the date the Respondent becomes aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, the Respondent shall submit the correct or omitted information to the Commissioner.
19. Notification of noncompliance. In the event that the Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, the Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, the Respondent shall submit in writing the date, time and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of

the Commissioner, dates by which compliance will be achieved, and the Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

20. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order, unless otherwise specified in this Consent Order or in writing by the Commissioner, shall be directed to:

Robin Baena  
Department of Energy and Environmental  
Protection  
Air Engineering & Enforcement Division  
79 Elm Street  
Hartford, Connecticut 06106-5127

Waterbury Generation, LLC

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Consent Order #2594

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that he/she is fully authorized to enter into this Consent Order and to legally bind Respondent to the terms and conditions of the Consent Order.

*Waterbury Generation, LLC*

DocuSigned by:  
 Signature: *Randall Osteen*  
0D9F9A12A185408...  
 Type Name: Randall Osteen  
 Type Title: General Counsel & Secretary  
 Date: 7/13/2023

Issued as a final order of the Commissioner of Energy and Environmental Protection.

DocuSigned by:  
*Tracy Babbidge*  
6B3C84E91E1E411  
 Tracy R. Babbidge  
 Acting Deputy Commissioner  
 Department of Energy and Environmental Protection

7/16/2023  
 Date

MAILED CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED