

ELEA Exposed

A Report on Public Bribery, Bid Rigging, and a Kickback

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(LEA COUNTY, NM) -- The public record exposed raw details of how the Eddy-Lea Energy Alliance had received a pay-to-play kickback from nuclear firm Holtec International in 2016.

The Eddy-Lea Energy Alliance: A History In Brief

The Eddy-Lea Energy Alliance LLC was formed as a public entity just one decade earlier in 2006 and is equally owned by the cities of Carlsbad and Hobbs and the counties Eddy and Lea of New Mexico. Their original agenda had been to site a plethora of experimental nuclear facilities in "[Nuclear Alley](#)," to include an advanced burner reactor and a recycling plant in western Lea County on roughly 960 acres of land sited over 14 miles due north-northeast of the Waste Isolation Pilot Plant ([WIPP](#)).

That land parcel, spotted from just north of U.S. Highway 62, is nestled approximately halfway from both Hobbs and Carlsbad between a collection of salt lakes - a geography known as [Laguna Valley](#). The public LLC, often referred to as ELEA, had secured the [surface estate](#) to their desired land from a local rancher for a price tag of [\\$1,000,000](#) with tax monies from their public members [in 2009](#). The purchase of the land was prefaced by an environmental scoping [report](#) that had been developed in 2007 over a budgeted period of 90 days. Research for the scoping report was funded from a 1.6 million dollar federal [grant](#) budget issued to ELEA from the U.S. Department of Energy, although the scoping report admitted of having been in-part spun off of existing environmental research from the USDOE's previously established WIPP project site.

Unsurprisingly, this grandiose all-at-once-grab of experimental manufacturing facilities met national opposition and fizzled out, but the idea would eventually be narrowed down to what logically needed to be built first: a centralized storage facility for consolidating a large quantity of spent nuclear fuel. The fuel could then be accumulated into unprecedented quantities from reactors across the nation into a purportedly "interim" storage facility, thus paving a way forward for credence to be given to

ELEA's wider vision of developing a local manufacturing center to indefinitely host a variety of experiments on the nation's spent nuclear fuel in southeastern New Mexico.

The Partnership: A Not-So Honest Endeavor

As of April in 2015, ELEA had partnered with Holtec to materialize the national nuclear waste facility. The [partnership](#) between the two had originally been pitched as structured around the state's Local Economic Development Act. ELEA had cited this [law](#), the LED Act, in their official [bylaws](#) as fundamental to their governmental authority and expressed purpose.

But by August of that same year, ELEA and Holtec had entirely dismissed the idea of basing their public-private partnership on the LED Act. Had the partnership been based on the LED Act, Holtec would have seen financial clawbacks and regular public reporting to comply with New Mexico's law.

Rather, ELEA preferred to develop a work-around scheme over the coming months - a solution that oversaw a competitive public bidding process to convey the land without the use of the LED Act. The scheme went a little something like this:

'Twas the day after Christmas, when Lea County's administration issued a [notice](#) on behalf of ELEA in three local newspapers requesting any qualified entities to submit their proposals for the purpose of buying public land to operate and develop the interim nuclear waste storage facility. Respondents had to submit their sealed proposal to the county's procurement officer at the end of ten days. A ten day window is considered to be the shortest acceptable timeline for a local government to issue to the public a notice for duly soliciting competitive bids as mandated in [state law](#).

Come the designated day to submit bids, January 5, 2016, a lone sealed [proposal](#) from Holtec was received by Lea County's procurement officer. Included within Holtec's "proprietary" proposal was a kickback of a land and revenue sharing agreement that had been drafted and offered in secret to the nuclear firm by ELEA's tax-funded attorney several months earlier. This single proposal would then be found by the directors of ELEA as completely in compliance, satisfying all of their requirements, before being unanimously [approved](#) by the board of directors on January 15, 2016.

Receiving a bribe by public officer is a third-degree felony [crime](#) in New Mexico; and, additionally, co-conspirators are each guilty of a fourth-degree felony for committing the [crime](#) of conspiracy.

The Kickback: A Land Purchase Option Agreement

A lengthy and minimally redacted [invoice](#), exposed by a public records request, had evidenced an unlawful bid rigging conspiracy wherein public officers of ELEA had received a bribe in the form of an option agreement kickback from the executives of Holtec at the conclusion of what should have been, by [state law](#), a competitive public bidding process.

The [kickback](#), an agreement dubbed as a Land Purchase Option Agreement, had been drafted by the Albuquerque-based Rodey law firm in late August of 2015, as evidenced from the firm's invoice billed to New Mexican taxpayers via ELEA. That invoice detailed how the Rodey law firm had sent revisions of the option agreement to Holtec with ELEA's ideal revenue sharing provisions under 'Section 8'.

[Andrew Ryan](#), general counsel for Holtec, had altered parts of the option agreement to give off the faint appearance that it had originated from the nuclear firm. However, Ryan's license to practice law is [based](#) out of New Jersey - quite notable considering how the option agreement, replete with a working knowledge of New Mexican legal expertise, was evidenced by that invoice as having been transmitted over to Holtec by the Rodey law firm before it had received the sloppy laundering job.

Like it or not, New Mexican taxpayers paid for this fraudulent scheme.

After preparing Holtec for a guaranteed bidding success with that kickback, the Rodey law firm had then been tasked with drafting the notice for Lea County's administration to issue to the public. In addition to describing their facility plans in detail, any competitors responding to the county's "RFP" would have only ten calendar days to draft a land purchase and revenue sharing arrangement for their proposal to be deemed responsive; and, unfortunately for everybody else, Holtec had been the only competitor primed well-enough-in-advance with ELEA's kickback arrangement to meet this essential requirement of the RFP which was valued at 25% of the grading weight.

'Section 8', ELEA's iconic revenue sharing provisions, remained intact even after Holtec had kicked back the option agreement as part of its allegedly "competitive" sealed proposal.

The Exchange: Evidence Of Bribery

ELEA's offer and receipt of the kickback agreement became prima facie evidence that executives of Holtec and ELEA took part in a bid rigging conspiracy built upon bribery.

ELEA stood to offer to Holtec, not only an evidently fixed victory over any would-be competitors for purchasing the public land, but also what has become significant financial support from the public's treasury while the nuclear firm remains pushing towards obtaining a federal license to construct and operate their facility: ELEA has placed the local taxpayers on the hook for a financial liability of \$120,000 per year to fund special interest lobbyists.

Now, the state's previous Democrat attorney general, Dr. Gary King, makes public [appearances](#) at the Roundhouse to defend the Holtec facility before the state's legislators. To add division into the mix, Democrat U.S. Congresslady Deb Haaland, Dr. King's former running partner from the state's 2014 gubernatorial race, publicly [opposes](#) Holtec's facility.

By returning the kickback, Holtec was promising to ELEA what they had setup in advance of bidding - ELEA's "preferred" and most generous cut of the future revenues.

Holtec was expected to secretly receive and process ELEA's kickback agreement, which would then be returned to the governmental entity during Lea County's staged public bid. ELEA wanted a large slice of Holtec's pie: whose idea of an equitable return included indemnification from any fault of the facility and a regular payday in consideration that "shall not be less than 30% of gross revenues."

Those revenue sharing provisions that the Rodey law firm had drafted by billing taxpayers to the tune of \$20,000 could be valued to ELEA at over a billion dollars by the end of the advertised 120-year life span of Holtec's project.

Although this kind of behavior may seem acceptable to some, it is unlawful in any of the 50 states for public officials to solicit or receive bribes such as a predetermined kickback arrangement.

The Smoking Gun: Verbal Admissions

John Heaton and Monty Newman, chairs of ELEA and seasoned businessmen with recognizable faces in southern New Mexico politics, had employed the Rodey law firm to broker the kickback. Heaton, a Democrat and a former state representative of New Mexico for Eddy County, has continued to publicly participate in ELEA as its chairman to current day. Newman, a former Hobbs

mayor and resigned director of ELEA, had most-recently lost his bid in the 2018 Republican primary to represent New Mexico's 2nd district for the United States House of Representatives.

During a recorded public meeting of ELEA's board of directors in [June of 2016](#), a payment to the Rodey law firm would finally be approved for facilitating the government kickback after an uneasy discussion was held between the attorney and the directors.

Claiming to have seen the invoice for the first time during the same meeting, ELEA's secretary and mayor of Hobbs, [Sam Cobb](#), indicated some knowledge of the kickback scheme as he inquired from the Rodey Law firm attorney, [Alan Hall](#), slyly asking the following question while being careful not to mention Holtec: "does this [the invoice] cover some of the legal expenses associated with the option agreement, as well?"

Before the attorney could even respond to the mayor's question, Newman and Heaton point-blank interjected, stating respectively: "Oh, yes," and "It's almost all of that." Hall quickly followed up to the responses of the two chairmen by at last confirming that his invoice was almost exclusively billed for legal expenses rendered for facilitating the option agreement kickback.

The fact that the kickback had been included within Holtec's bid was not mentioned at the meeting. In fact, Holtec wasn't mentioned at all during the meeting. It took piecing the puzzle together over a wide arrangement of public records to expose these white-collar crimes.

At the end of the meeting, Newman [announced](#) his resignation from ELEA.

The Center Of Excellence: Heaton's Strong Arm

The unsung beneficiary to this bid rigging conspiracy has been a nonprofit located in Carlsbad, NM known as [Center of Excellence](#).

Since [incorporating](#) in 2004 as Center of Excellence for Hazardous Materials Management, or CEHMM for short, the group has claimed to promote excellence in hazardous materials management. Aside from CEHMM's initial board of directors, [public records](#) have indicated the corporation has effectively seen one principal chairman during the nonprofit's 15-plus years of existence: ELEA's John Heaton.

CEHMM is an important piece of the puzzle because Holtec's proposal had included this [statement](#): "Holtec will partner with a qualified local company to develop Environmental Report. Holtec is currently reviewing proposals and will select a partner in short order."

One outcome of ELEA's receipt of the pay-to-play kickback scheme was that CEHMM found themselves newly employed by Holtec to provide the environmental reporting for their license application before the Nuclear Regulatory Commission.

Worse yet, Heaton had not disclosed his knowledge that the success of CEHMM's bid for environmental reporting with Holtec would be contingent upon ELEA's approval of Holtec's bid. Heaton had a [fiduciary duty](#) to recuse himself from any action and discussion on Holtec's bid, yet the public record never indicated that he ever disclosed any real or potential conflicts of interest.

When ELEA approved Holtec's bid, under the leadership of John Heaton and Monty Newman, employees of CEHMM would find themselves comfortably employed for several years to come.

In addition to helping Holtec with environmental reporting, CEHMM can be likened as Heaton's muscle for ELEA's waste project. He and his personnel show up in respectable number during [NRC site inspections](#) with their ATVs, stickered 4x4s and loaded trailers, surveying equipment, and, yes, even [portable bathrooms](#).

The Mainstream News: A Total Media Blackout

Nick Maxwell, a resident of Lea County, had [complained](#) seven months ago to the state's elected auditor requesting for a special investigation to probe into the uncovered bid rigging scheme. Maxwell issued a press release that had been sent to major news outlets in New Mexico and elsewhere on the same day as submitting his complaint, and, to date, no reporting from the mainstream media has been published to inform the public. Even less have any investigative news outlets provided any details of the exposed procurement fraud, a case made by public records.

ELEA's less-than-competitive dealing with Holtec, essentially a "billion-dollar insider bid rigging job", should have seen big news coverage but none has been given.

The Hobbs News-Sun, Lea County's largest news outlet, has been good to ELEA to completely cover-up the scheme, never printing a story about the filing of the procurement complaint by Maxwell.

Two months after Maxwell [self-publicized](#) his complaint, ELEA held a quarterly public meeting on [September 11, 2019](#). A [report](#) was syndicated nationwide by the Associated Press, based on the local reporting from Curtis Wynne of the News-Sun, promoting Heaton's "push" for Holtec's facility in an article where he was quoted from the meeting as saying:

"We're at the final push. I think this is not the time to be weak of heart." Heaton had followed up with his hopeful highlights of how Holtec's license application would advance with the NRC by around March of 2020, even [hinting](#) that the Albuquerque Journal would propagate supportive journalism.

Perhaps coincidentally, the Albuquerque Journal had afterwards published a short series featuring John Heaton as one of the ten recipients for a distinguished public service award during an event attributed to the New Mexico Governor; although, it has been [disclosed](#) by her office that she does not actually appoint any members of the awards selection council.

No drop of a hint was given in that national AP report of ELEA's bid rigging conspiracy. Of note, reporter Wynne had been around when ELEA approved the bidding process on [December 22, 2015](#).

The Recent Events: An End In Sight?

On February 1, 2020, Heaton sat front and center before a house committee as the first legislative memorial expressing opposition to Holtec's project was presented for discussion and ultimately approved for more consideration inside of the legislature. During public comment, as has often been the case when input is solicited over Holtec's project, Heaton would be requested multiple times to conclude [his lengthy defense](#) of the nuclear facility. Heaton's defense of the facility has frequently included disparagement of his conceived opponents, many of whom are concerned citizens of the state, criticizing them as fearmongering "outsiders" to southeastern New Mexico politics while himself honking off as the nuclear industry's golden goose.

This past Thursday, the state's auditor [posted](#) on social media to "watch for Larry Barker Investigative Report on Tuesday!" while declaring his ongoing commitment to the people of New Mexico for accountability, transparency, and excellence in government.

[Larry Barker](#), a well-known Albuquerque-based investigative reporter for the news outlet [KRQE](#), frequently reports on the most relevant stories of government waste and abuse in the state.

Could ELEA finally be held to account for their actions against the public trust? Only time can tell.

#JusticeForNewMexicans

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