

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **ROLLING
HILLS GENERATING, LLC** for an Amendment)
of a Certificate of Environmental Compatibility)
and Public Need for the Rolling Hills Generating) Case No. 12-1669-EL-BGA
Station, Combined-Cycle Conversion Project,)
Vinton County)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Rolling Hills Generating, LLC (“Applicant”) and the Staff of the Ohio Power Siting Board (“OPSB Staff”), at times collectively referred to as “the Parties,” submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Ohio Power Siting Board (the “Board” or “OPSB”). Ohio Administrative Code (“OAC”) Rule 4901-1-30, provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below (the “Signatory Parties”) and to recommend that the Board approve and adopt this Stipulation and Recommendation (“Stipulation”), as part of its Order on Certificate Amendment in this proceeding, resolving all matters pertinent to amendment of the Applicant’s Certificate of Environmental Compatibility an Public Need issued in Case No. 00-1616-EL-BGN to convert the existing facility to a combined-cycle combustion turbine facility.

This Stipulation meets the standards set forth by the Ohio Supreme Court in *Industrial Energy Consumers of Ohio Power Co. v. Pub. Util Comm.* (1994), 68 Ohio St.3d 559. It is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy,

serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding.

The Application for and Amendment (“Amendment Application”) was filed with the Board on June 1, 2012. It was subsequently supplemented on October 11, 2012 and November 21, 2012. The Staff Report was issued on January 14, 2013 and thereafter the Parties engaged in a number of settlement discussions related to only a few of the issues set forth in the Staff Report. This Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus is entitled to careful consideration by the Board. Accordingly, the parties recommend that the Board issue an Order on Certificate Amendment for the Rolling Hills Generating Station (“RHGS”).

II. STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The proposed project is located in Wilkesville Township, Vinton County, Ohio. The project is located on property that had been previously acquired for the existing RHGS, which encompasses approximately 182 acres and is located north of the village of Wilkesville, Ohio. The RHGS was originally certified by the OPSB on June 18, 2001 and became commercially operational between March and May 2003. Since then, the RHGS has functioned as a natural gas-fired peaking facility capable of producing 800 megawatts of electricity in simple-cycle mode. The Applicant proposes to convert four of the five existing simple-cycle turbines into two combined-cycle power blocks, leaving one of the original units in simple-cycle operation. In the process of converting this facility, the Applicant proposes constructing two parallel 16-mile water lines, one 30-inch diameter for water intake, and one 16-inch diameter for wastewater discharge between the facility and the Ohio River. The proposed conversion is estimated to cost

approximately \$865 million and would result in a combined-cycle natural gas-fueled generating facility with a capacity of 1,414 MW. The Applicant proposes to commence construction for the conversion in the first quarter of 2014 and begin commercial operation in the summer of 2016.

The Parties recommend that the Board issue an Order on Certificate Amendment as requested by Rolling Hills Generating, LLC subject to the following conditions:

- (1) The facility shall be installed at the Applicant's proposed site as presented in the Amendment Application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in the Staff Report of Investigation.
- (2) The Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report of Investigation.
- (3) The Applicant shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report of Investigation.
- (4) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may stage separate preconstruction conferences for project phases if necessary.
- (5) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, including the switchyard, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically referenced electronic data. The final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.
- (6) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to Staff in hard copy and as

geographically referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas shall be subject to Staff review and acceptance, to ensure compliance with all conditions of the certificate, prior to construction in those areas.

- (7) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built drawings for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built drawings for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built drawings. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (8) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (9) As the information becomes known, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (10) Prior to commencement of construction, the Applicant shall prepare a Phase I cultural resources survey program for archaeological work within the new construction disturbance area. The Applicant shall provide a copy of the survey program to Staff for review and confirmation that it complies with this condition.
- (11) The Applicant shall adhere to seasonal cutting dates of September 30 through April 1 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved.
- (12) OPSB Staff, the ODNR Division of Wildlife (DOW), and the USFWS shall be contacted within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, OPSB Staff, and the DOW in coordination with the USFWS. Nothing in this provision shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.
- (13) At least 30 days prior to the preconstruction conference, the Applicant shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction and operation. The complaint resolution procedure must provide that the Applicant will work to resolve or mitigate any issues with those who submit either a formal or informal complaint and that the Applicant will provide monthly updates on the status of all complaints to Staff.

After the period of initial operation, updates may be provided on a semi-annual basis. The complaint resolution process must include procedures for handling construction and operational noise complaints, as well as mitigation plans for any noise complaints for which validly measured operational noise levels exceed the levels permitted in the original certificate at existing residences. The Applicant shall provide the complaint resolution procedure to Staff, for review and confirmation that it complies with this condition, prior to the preconstruction conference.

- (14) Prior to commencement of construction, the Applicant shall obtain all required transportation permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, or road and parking access restrictions necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to the County Engineer, ODOT, local law enforcement, and health and safety officials. This coordination shall be detailed as part of final traffic plan submitted to OPSB Staff prior to the pre-construction conference for review and confirmation that it complies with this condition.
- (15) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving and hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary.
- (16) The Applicant shall not commence construction of the facility until it has a signed Interconnection Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system.
- (17) Prior to the Board's decision, the Applicant shall submit to the Staff, for review and approval, the PJM System Impact Study.
- (18) The Applicant shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (19) Prior to the commencement of construction of the proposed facility, the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. Copies of permits and authorizations for the facility, including documentation necessary to interpret the permits and authorizations, shall be provided to OPSB Staff within ten working days of issuance or receipt by the Applicant. Additionally, the Applicant shall provide the Staff with a copy of all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required for

surface waters associated with the construction of ancillary intake and waste water discharge lines and intake/outfall structures at the Ohio River.

B. Exhibits

Subject to the terms and conditions of this Stipulation, the Applicant and OPSB Staff agree, stipulate, and recommend that the following exhibits submitted in this docket be marked and admitted into the record in this proceeding, and that cross examination is waived thereon:

- (1) Company Exhibit 1, the Amendment Application was filed on June 1, 2012;
- (2) Company Exhibit 2, Proofs of Publication filed on July 19, 2012 for the notice of the amended application as published on June 13, 2012 in the *Gallipolis Daily Tribune* and *The Daily Sentinel* and published on June 20, 2012 in the *Vinton County Courier*;
- (3) Company Exhibit 3, the Amendment Application with supplements as filed on October 11, 2012;
- (4) Company Exhibit 4, the Amendment Application with supplements as filed on November 21, 2012;
- (5) Company Exhibit 5, a copy of the Proof of Service of Application on local public officials and libraries served on June 4, 2012 and filed on January 15, 2013;
- (6) Staff Exhibit 1, "Staff Report of Investigation," issued January 14, 2013;
- (7) Joint Exhibit 1, this "Joint Stipulation and Recommendation" signed on behalf of the Staff and the Applicant.

C. Other Terms and Conditions

- (1) This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation or imposes additional conditions or requirements upon the parties, each party shall have the right, within thirty (30) days of the Board's order, to file an application for rehearing with the Board. Upon rehearing by the Board, each party shall have the right, within ten (10) days of the Board's order on rehearing, to file a notice of termination of, and withdrawal from, the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such an event, a hearing shall go forward, and the parties shall be afforded the opportunity to present evidence

through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

- (2) The parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue. The parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

A. Findings of Fact

- (1) Rolling Hills Generating, LLC is a private equity investment owned by TPF II, L.P., which is a private equity fund managed by Tenaska Capital Management, LLC.
- (2) The RHGS qualifies as a major utility facility defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) The RHGS was originally certified by the OPSB on June 18, 2001.
- (4) On June 1, 2012, the Applicant filed the Amendment Application.
- (5) On July 19, 2012 the Applicant filed Proofs of Publication of the notice of the Amendment Application that were published on June 13, 2012 in the *Gallipolis Daily Tribune* and *The Daily Sentinel* and published on June 20, 2012 in the *Vinton County Courier*.
- (6) On July 25, 2012, the Applicant filed a motion for waiver regarding publication requirements which set forth a reasonable basis for the requested waiver.
- (7) On October 11, 2012 the Applicant filed a set of updates and revisions to it Amendment Application.

- (8) On November 21, 2012, the Applicant filed additional updates to its Amendment Application.
- (9) The Staff Report was filed on January 14, 2013.
- (10) On January 15, 2013, the Applicant filed a copy of the Proof of Service of the Amendment Application on local public officials and libraries that was served on them on June 4, 2012.
- (11) On January 16, 2013, the Administrative Law Judge issued an Entry adopting the procedural schedule, requiring that all expert testimony be filed by February 1, 2013 and that the hearing shall commence on February 6, 2013, and that any applicable stipulations must be filed by February 5, 2013.
- (12) An adjudicatory hearing was held on February 6, 2013, in Columbus, Ohio.
- (13) The basis of need requirement in Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable to this project.
- (14) Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (15) Adequate data on the project has been provided to determine that the proposed RHGS conversion described in the Amendment Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10 (A)(3) of the Ohio Revised Code.
- (16) Adequate data on the project has been provided to determine that, because the project is an electric generation facility, the proposed conversion to the electric generating facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, that the converted RHGS will serve the interests of electric system economy and reliability, and the requirements of Section 4906.10(A)(4) of the Ohio Revised Code are met.
- (17) Adequate data on the project has been provided to determine that the project will either comply with, or is not subject to, the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waste, and air navigation, and all regulations thereunder, as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (18) Adequate data on the project has been provided to determine that the converted RHGS will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.

- (19) Adequate data on the project has been provided to determine what the converted RHGS' impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the site of the proposed converted RHGS, as required by Section 4906.10(A)(7) of the Ohio Revised Code.
- (20) Adequate data on the project has been provided to determine that the converted RHGS as proposed incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives as required by Section 4906.10(A)(8) of the Ohio Revised Code.
- (21) The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

- (1) Rolling Hills Generating, LLC is a "person" under Section 4906.01(A) of the Ohio Revised Code.
- (2) The proposed converted RHGS is a major utility facility as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) Rolling Hill Generating, LLC's Amendment Application complies with the requirements of OAC Chapter 4906-17.
- (4) The requirement for the need for the converted RHGS under Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable.
- (5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the converted RHGS under Section 4906.10(A)(2) of the Ohio Revised Code.
- (6) The record establishes that the converted RHGS represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under Section 4906.10(A)(3) of the Ohio Revised Code.
- (7) The record establishes that the converted RHGS is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4) of the Ohio Revised Code.
- (8) The record establishes, as required by Section 4906.10(A)(5) of the Ohio Revised Code, that to the extent that any of them are applicable, construction of the

proposed converted RHGS will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waste, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.

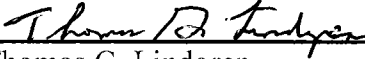
- (9) The record establishes that the converted RHGS will serve the public interest, convenience and necessity under Section 4906.10(A)(6) of the Ohio Revised Code.
- (10) The record establishes that the converted RHGS' impact on the viability as agricultural land of any land in an existing agricultural district is consistent with the requirements of Section 4906.10(A)(7) of the Ohio Revised Code.
- (11) The record establishes that the converted RHGS would incorporate maximum feasible water conservation practices under Section 4906.10(A)(8) of the Ohio Revised Code.
- (12) The record supports the grant of a waiver of the publication time as requested by the Applicant.
- (13) Based on the record, the parties recommend that the Board issue an Order on Certificate Amendment to allow for the conversion of the existing RHGS to a combined-cycle combustion turbine facility.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 4th day of February, 2013.


Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER
SITING BOARD**

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Summary: Stipulation electronically filed by Teresa Orahod on behalf of Rolling Hills Generating, L.L.C.