

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)
GUERNSEY POWER STATION, LLC for a)
Certificate of Environmental Compatibility and) Case No. 16-2443-EL-BGN
Public Need for an Electric Generating Facility)
in Guernsey County, Ohio)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Guernsey Power Station, LLC (“GPS” or “Applicant”), Aspire Energy, LLC (“Aspire”) and Staff of the Ohio Power Siting Board (“OPSB Staff”) who represent the parties to this proceeding, submit this Joint Stipulation and Recommendation (“Joint Stipulation”) for adoption by the Ohio Power Siting Board (“Board” or “OPSB”). Ohio Administrative Code (“Ohio Adm.Code”) 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 (“Parties” or in the singular “Party”), and to recommend that the Board approve and adopt this Joint Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters raised by the OPSB Staff pertinent to the approval and construction of the Guernsey Power Station an 1,100 MW natural gas-fired combined-cycle power plant in Guernsey County, Ohio and its associated facilities (“Project” or “Facility”).

This Joint Stipulation 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 Parties have engaged in settlement discussions related to the topics raised in this proceeding. This Joint Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

II. JOINT STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The Project includes the construction and operation of natural gas-fired combined-cycle generating facility with a nominal capacity of up to 1,100 MW located in Guernsey County along the east side of Puritan Lane and south of Seneca Lane. The site located approximately 0.5 mile to the east of Marietta Road (State Route 821) and is generally bounded by Seneca Lane to the north and Wills Creek to the south, a private railroad spur to the west, and I-77 to the east. GPS intends to deliver construction materials directly to the construction project vicinity. GPS would use about 9.8 acres in the northwestern corner of the facility site and another 15-acre parcel to the north of Seneca Lane as temporary construction laydown/staging areas for material and equipment storage, construction trailers, and parking. GPS may install lighting in its temporary construction parking area.

The Parties recommend that the Board approve GPS' Application subject to the conditions in the Staff Report of Investigation issued on July 10, 2017 as listed below.

- (1) The facility shall be installed at the Applicant's proposed site as presented in the application and as modified and/or clarified by supplemental filings, replies to data requests and the recommendations in the Staff Report of Investigation.
- (2) 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 conduct separate preconstruction meetings for each stage of construction.

- (3) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff, for review to ensure compliance with this condition, one set of detailed engineering drawings of the final project design, including the facility, 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.
- (4) If the Applicant makes any changes to the project layout after the submission of final engineering drawings, the Applicant shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes will be subject to Staff review to ensure compliance with all conditions of the certificate, prior to construction in those areas.
- (5) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications 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 specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (6) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (7) The Applicant shall not operate the facility above 1,100 MW. If additional capacity above 1,100 MW is anticipated, the Applicant shall submit an amendment to the Board requesting an increase in capacity. The amendment shall include the PJM System Impact Study of the proposed increase in capacity.
- (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 docket in the case record 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) The Applicant shall not commence any construction of the facility until it has a signed Interconnection Service Agreement with PJM Interconnection, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely. The Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the signed Interconnection Service Agreement.
- (11) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff a copy of its public information program that informs affected property owners and tenants of the nature of the project, specific contact information of Applicant personnel who are familiar with the project, the proposed timeframe for project construction, and a schedule for restoration activities. The Applicant shall give notification to property owners and tenants at least 30 days prior to construction.
- (12) At least 30 days prior to the facility becoming operational, the Applicant shall provide to Staff a copy of the complaint resolution procedure to address potential public grievances resulting from facility operation, including noise from the facility. The resolution procedure must describe how the public can contact the Applicant and how the Applicant will work to mitigate or resolve any issues with those who submit either a formal or informal complaint. The Applicant must immediately forward all complaints to Staff.
- (13) Prior to the commencement of related construction, the Applicant shall prepare a landscape and lighting plan or plans that addresses the aesthetic and lighting impacts of the facility, including minimum berm heights (if any) and lighting locations. The Applicant shall consult with adjacent property owners regarding this plan and provide the plan to Staff for review and confirmation that they comply with this condition.
- (14) Prior to the commencement of construction, the Applicant shall finalize coordination of the assessment of potential effects of the proposed facility on cultural resources, if any, with Staff and the Ohio Historic Preservation Office (OHPO). If the resulting coordination discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion in the National Register of Historic Places, then the Applicant shall submit a modification or mitigation plan to Staff. Any such mitigation effort, if needed, shall be developed in coordination with the OHPO and submitted to Staff for review.
- (15) The Applicant shall adhere to seasonal cutting dates of October 1 to March 31 for the removal of trees three inches and greater in diameter to avoid impacts to Indiana bats and Northern long-eared bats, unless coordination with the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS) allows a different course of action.
- (16) The Applicant shall contact Staff, the ODNR, and the USFWS, within 24 hours if state or federal 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, Staff, and the ODNR in coordination with the USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the construction activities with respect to wildlife from exercising their legal authority over the facility consistent with law.

- (17) Construction in Northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1, unless coordination with the ODNR allows a different course of action.
- (18) The stormwater retention pond proposed within the 100-year floodplain shall be designed such that it would not be overtopped by water during a 100-year flood event.
- (19) During construction and maintenance, the Applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or maintenance should only be used where no other options exist, and with prior approval from the Ohio Environmental Protection Agency. Prior to commencement of construction, the Applicant shall submit a plan to Staff for review and confirmation that it complies with this condition, describing the planned herbicide use for all areas in or near any surface waters during initial project construction and/or maintenance.
- (20) The Applicant shall provide a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required, to Staff within seven days of issuance or receipt by the Applicant.
- (21) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.
- (22) The Applicant shall repair damage to government-maintained (public) roads and bridges caused by construction or maintenance activity. Any damaged public roads and bridges shall be repaired promptly to their previous conditions by the Applicant under the guidance of the appropriate regulatory agency. Any temporary improvements shall be removed unless the county engineer request that they remain. The Applicant shall provide financial assurance to the counties that it will restore the public roads it uses to their conditions prior to construction or maintenance. The Applicant shall develop a transportation management plan and enter into a road use agreement with the county engineer prior to construction and subject to Staff review and confirmation that it complies with this condition. The road use agreement shall contain provisions for the following:
 - a) A preconstruction survey of the conditions of the roads.
 - b) A post-construction survey of the condition of the roads.
 - c) An objective standard of repair that obligates the Applicant to restore the roads to the same or better condition as they were prior to construction.
 - d) A timetable for posting of the construction road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.

- (23) 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, hoe ram, and blasting 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. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Administrative Code 4906-5-08(C)(3) (2014), of upcoming construction activities including potential for nighttime construction activities.
- (24) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff for review and confirmation that it complies with this condition an emergency response plan to be used during construction. This plan should be developed in consultation with the fire department(s) having jurisdiction over the area. The Applicant shall coordinate with fire, safety, and emergency personnel during all stages of the project.
- (25) After commencement of commercial operation, the Applicant shall continue to utilize a complaint procedure to evaluate noise complaints and document responses. For locations along Seneca Lane within 1,600 feet of the generating equipment, investigation of the complaint and its outcome, including potential mitigation, will be reviewed by Staff for confirmation that the complaint has been reasonably addressed.
- (26) Prior to commencement of construction, the Applicant shall file a letter with the Board advising that all issues associated with Aspire's natural gas pipeline and associated property rights have been resolved.

B. Exhibits

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

- 1. Applicant Exhibit 1, the Application, filed on March 16, 2017;
- 2. Applicant Exhibit 2, a copy of the Proof of Service of the Application on local public officials and libraries along with the list of property owners and adjacent property owners, as filed on May 17, 2017;
- 3. Applicant Exhibit 3, Proof of Publication filed on June 15, 2017 in accordance with Ohio Revised Code Section ("R.C. 4906.06(C) for the publication of the description of the application and the hearing dates, published on May 31, 2107 in the *Daily Jeffersonian*;

4. Applicant Exhibit 4, Proof of Publication filed August 10, 2017 in accordance with Ohio Adm. Code 4906-3-10(A) for the second publication of the description of the application and the hearing dates, published on August 2, 2017 in the *Daily Jeffersonian*;
5. Applicant Exhibit 5, the “Updated Direct Testimony of Michael King” filed on August 21, 2017.
6. Joint Exhibit 1, this “Joint Stipulation and Recommendation” signed on behalf of the Applicant, Aspire and OPSB Staff;
7. OPSB Staff Exhibit 1, “Staff Report of Investigation,” issued on July 31, 2017;

C. Other Terms and Conditions

This Joint 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 Joint 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 the Board upholding the material modification of the Joint Stipulation in its entry on rehearing, any Party may terminate or withdraw from the Joint Stipulation by filing a second application for rehearing with the Board within thirty (30) days of the Board’s entry on rehearing. The second application shall be limited in scope to a party giving notice of exercising its right to terminate and withdraw from the Joint Stipulation to the Board, and requesting an evidentiary hearing with all appertaining rights of process, as if the Joint Stipulation had never been executed. Prior to any Party seeking rehearing or terminating and withdrawing from the Joint Stipulation pursuant to this provision, the Parties agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of the Board or proposes a reasonable equivalent thereto to be submitted to the Board for its consideration. Upon a second application for rehearing being filed giving notice of termination or withdrawal by any Party, pursuant to the above provisions, the Joint Stipulation

shall immediately become null and void. In the event the Board accepts this Joint Stipulation without material modification, the Parties waive all rights to appeal or rehearing.

III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Joint 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. The Facility qualifies as a “major utility facility” defined in R.C. 4906.01(B)(1)(c).
2. On December 27, 2016, the Applicant filed a pre-application notification letter and requested a waiver from the requirements set forth in Ohio Adm.Code 4906-3-03 and 4906-7-27(C), pertaining to the site selection study and a cross-sectional view and test borings.
3. The Administrative Law Judge, by Entry dated January 26, 2017, granted Applicant’s request for waivers.
4. Applicant formally submitted its Application for Certificate of Environmental Compatibility and Public Need on March 16, 2017.
5. On May 17, 2017, Applicant filed a copy of the Proof of Service of the Application on local public officials and libraries along with the list of property owners and adjacent property owners.
6. On June 15, 2017 and August 10, 2017, Applicant filed a copy of the Proofs of Publication in accordance with Ohio Adm.Code 4906-5-09(A) and (B) for the publication of the description of the Application and the hearing dates in the *Daily Jeffersonian*.
7. The Staff Report was filed on July 31, 2017.
8. A local public hearing, pursuant to R.C. 4906.08(C) was held on August 15, 2017 at the Meadowbrook High School at which 20 individuals testified in favor of the Project.
9. An adjudicatory hearing was held on August 23, 2017 in Columbus, Ohio where a Joint Stipulation and Recommendation was presented by the Applicant, Aspire, and Staff.

10. Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2).
11. Adequate data on the project has been provided to determine that the Facility described in the 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 R.C. 4906.10(A)(3)
12. Adequate data on the project has been provided to determine that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability, as required by R.C. 4906.10(A)(4).
13. Adequate data on the project has been provided to determine that the Facility will either comply with, or is not subject to, the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
14. Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
15. Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the R.C. that is located within the site of the proposed Facility, as required by R.C. 4906.10(A)(7).
16. Adequate data on the project has been provided to determine that the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).
17. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

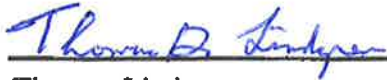
- (1) Guernsey Power Station, LLC is a "person" under R.C. 4906.01(A).
- (2) The proposed Facility is a major utility facility as defined in R.C. 4906.01(B)(1).

- (3) The Application complies with the requirements of Ohio Adm.Code Chapter 4906-3.
- (4) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility under R.C. 4906.10(A)(2).
- (5) The record establishes that the Facility 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 R.C. 4906.10(A)(3).
- (6) The record establishes, as required by R.C. 4906.10(A)(4), that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability.
- (7) The record establishes, as required by R.C. 4906.10(A)(5), that to the extent that any of them are applicable, construction of the proposed Facility 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 waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code
- (8) The record establishes that the Facility will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
- (9) The Facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
- (10) The record establishes that the Facility incorporates maximum feasible water conservation practices, as determined by the Board, considering available technology and the nature and economics of the various alternatives consistent with R.C. 4906.10(A)(8).
- (11) Based on the record, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility which includes the conditions in the Staff Report of Investigation, as presented and modified, by the Joint Stipulation and Recommendation.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER
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Summary: Stipulation Joint Stipulation and Recommendation submitted by Assistant Attorney General Thomas Lindgren on behalf of the Staff of the Ohio Power Siting Board. electronically filed by Kimberly L Keeton on behalf of Ohio Power Siting Board