

**BEFORE
THE OHIO POWER SITING BOARD**

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In the Matter of the Application of)	
Cinergy Capital & Trading, Inc. for a)	
Certificate of Environmental)	Case No. 00-637-EL-BGN
Compatibility and Public Need for the)	
West End Electric Generating Station,)	
Located in Cincinnati, Ohio.)	

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant, Cinergy Capital & Trading ("Applicant" or "CC&T") and the Staff of the Ohio Power Siting Board ("Staff") submit this Joint Stipulation and Recommendation ("Stipulation"), which is intended by the parties¹ to resolve all matters raised by Applicant's September 28, 2000 application (the "Application") for a Certificate of Environmental Compatibility and Public Need for the West End Electric Generating Station (the "Facility"). The Stipulation is a result of discussions between the parties, who agree that this Stipulation is amply supported by the record and is 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 in accordance with this Stipulation.

II. STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by Applicant subject to the following conditions:

- (1) The facility be installed on the Applicant's preferred site as presented in the Application filed on September 28, 2000 and supplemental data submitted in this case.

¹ Note that no other parties have formally intervened in this proceeding.

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- (2) The Applicant shall utilize the equipment described in the Application in Sections 4906-13-04(B) and (C).
- (3) The Applicant shall utilize the mitigative measures described in the Application, unless modified by conditions to the certificate or applicable federal and state permits.
- (4) The Applicant shall properly install erosion and sedimentation control measures at the project site. All such erosion control measures shall be inspected after each rainfall event and promptly repaired as necessary.
- (5) The Applicant shall install standard noise mitigation devices, such as enclosures and sound deadening materials, as described in the Application.
- (6) Prior to commencing construction of the generating facility, the Applicant shall make application to the Board to obtain approval for the necessary gas transmission pipeline to the extent such approval is required by law.
- (7) The Applicant shall install appropriate measures to contain 110% of the oil in the transformers should a leak occur.
- (8) The Applicant shall test for and dispose of any contaminated soil, any other hazardous material and all construction debris in approved landfills in accordance with Ohio EPA regulations.
- (9) Prior to construction, the Applicant shall obtain all permits and authorizations required by Federal and State entities, including an NPDES Permit for control of stormwater runoff during construction (if applicable) and permits to install Air Contaminant Sources. A copy of each permit or authorization, including terms and conditions, shall be provided to the Staff within seven (7) days of receipt. Fifteen days prior to construction, the Storm Water Pollution Prevention Plan (if required) shall be submitted to the Staff for review and acceptance, such response to be provided within seven (7) days if possible.
- (10) The Applicant shall design and install a fire protection system in accordance with the National Fire Protection Association standards.
- (11) The Applicant shall coordinate with fire, safety and emergency personnel during all stages of the project to promote efficient and timely emergency preparedness and response. Additionally, the Applicant shall coordinate with local building officials with regard to the construction of structures not directly related to the operation of the generating facility.
- (12) The Applicant shall not commence operation of the facility until it has obtained and submitted to the Staff for review, a signed Interconnection Agreement with Cinergy.
- (13) For non-firm capacity, the Applicant, or its designated operator/agents, will seek and contract for transmission through the OASIS as specified in FERC Orders 888, 889, and any subsequent OASIS-related orders or through any successor OASIS system.

- (14) The construction and ongoing maintenance of the natural gas handling system and associated facilities shall comply in all respects with state and federal laws and regulations pertaining to gas pipeline safety.
- (15) The Applicant shall provide to the Staff the following information as it becomes known:
 - (a) The date on which construction will begin;
 - (b) The date on which construction was completed; and
 - (c) The date on which the facility began commercial operation.
- (16) At least thirty (30) days before the pre-construction conference, the Applicant shall submit to the Staff, for review and approval, three sets of construction drawings of the certificated facility, including all construction laydown areas, so that the Staff can determine that the final project design is in compliance with the terms of the certificate. Staff and the Applicant shall use their best efforts to resolve any and all issues with respect to the construction drawings before and/or during the pre-construction conference. Construction cannot commence until Staff has formally approved the designs.
- (17) The Applicant shall conduct a pre-construction conference prior to the start of any project work, which the Staff shall attend, to discuss how environmental concerns will be satisfactorily addressed.
- (18) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five (5) years of the date of journalization of the certificate.

B. Exhibits

Subject to the terms and conditions of this Stipulation, the parties stipulate and recommend that the following items be admitted into the evidentiary record as exhibits:

- 1. Company Exhibit 1: the Application, filed by CC&T on September 28, 2000.
- 2. Company Exhibit 2: a copy of the Proof of Service of the Application on public officials and libraries, filed by CC&T on February 13, 2001.
- 3. Company Exhibit 3: a copy of the Proof of Notice and brief description of construction plans served on property owners, filed by CC&T on April 12, 2001.
- 4. Company Exhibit 4: the Proof of Publication of the first public notice, filed by CC&T on March 16, 2001.

5. Company Exhibit 5: the Proof of Publication of the second public notice, filed by CC&T on May 3, 2001.
6. Staff Exhibit 1: the Staff Report of Investigation, filed April 24, 2001.
7. Joint Exhibit 1: this Stipulation and Recommendation, to be filed by CC&T and the Staff.

C. Other Terms and Conditions

If the Board does not accept this Stipulation and Recommendation without material alteration or addition, Applicant and the Staff shall have the right within thirty days of the Board's order either to file an application for rehearing or to terminate and withdraw the Stipulation by filing a notice with the Board. If an application for rehearing is filed, and if the Board does not accept the Stipulation in its entirety, without material alteration or addition, on rehearing, then either party may terminate and withdraw the Stipulation by filing a notice with the Board within ten days of the Board's order or entry on rehearing. On notice of termination and withdrawal by either party pursuant to this paragraph, the Stipulation shall be void and shall not be binding on either of the parties and shall not constitute any part of the record in this proceeding. Applicant and the Staff further agree that if the Stipulation is terminated and withdrawn, hearing time should be promptly provided in order to litigate fully the issues in this proceeding and to argue their positions with respect to such issues to the Board after hearing.

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 agreement 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 one is contrary to the intentions of the parties in entering into this agreement.

III. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties agree that the record in this case contains sufficient probative evidence for the Board to make the following findings of fact and conclusions of law and recommend that the board adopt these findings of fact and conclusions of law:

A. Findings of Fact

1. Cinergy Capital & Trading, Inc. is an Indiana corporation that has formed a single-purpose entity, CinCap X, LLC, a limited liability company organized under the laws of the state of Delaware, to develop the proposed West End Electric Generating Station.
2. The proposed West End Electric Generating Station is a "major utility facility" as defined in Ohio Revised Code (ORC) Section 4906.01(B)(1).
3. On April 6, 2000, CC&T filed a motion for waivers of certain filing requirements under ORC Section 4906.06(A) and Rules 4906-1-13 and 4906-5-04(B) of the Ohio Administrative Code ("OAC").
4. A public informational meeting was held in Cincinnati, Ohio on August 15, 2000.
5. By Entry of April 28, 2000, the Administrative Law Judge granted in part and denied in part the requested waivers.
6. The Application was filed on September 28, 2000.
7. On February 2, 2001, the Board notified CC&T that the Application had been certified as complete.
8. On February 9, 2001, CC&T sent copies of the Application to public officials and libraries. On February 13, 2001, CC&T filed proofs of service of the certified Application pursuant to Rules 4906-5-07, OAC.
9. The Application complies with the requirements of OAC Chapter 4906.13.
10. The Administrative Law Judge issued an Entry on February 21, 2001, finding that the effective date of the filing of the Application was September 29,

2001. The Entry also set a local public hearing for May 10, 2001, and an adjudicatory hearing for May 14, 2001.

11. On March 16, 2001, CC&T filed proof of publication of the first public notice required by Rule 4906-5-08(B)(1), OAC.
12. On April 12, 2001, CC&T filed proof of the letter mailing to homeowners required by Rule 4906-5-08(B)(3), OAC.
13. The Staff Report was filed on April 24, 2001.
14. On May 3, 2001, CC&T filed proof of publication of the second public notice required by Rule 4906-5-08(B)(2), OAC.
15. A local public hearing was held on May 10, 2001, in Cincinnati, Ohio.
16. An adjudicatory hearing was held on May 14, 2001, at which time the Stipulation and Recommendation was filed unopposed.
17. Adequate information was provided to determine the need for the Facility, as required by ORC Section 4906.10(A)(1).
18. Adequate information was provided to determine the nature of the probable environmental impact of the Facility, as required by ORC Section 4906.10(A)(2).
19. Adequate information was provided to determine that the preferred site contained in the Application represents the minimum adverse environmental impact, considering the available technology and the nature and economics of the various alternatives and other pertinent considerations, as required by ORC Section 4906.10(A)(3).
20. Adequate information has been provided to determine that the facility is sited to be consistent with plans for expansion for the regional power grid and would serve the interest of electric system economy and reliability, as required by ORC Section 4609.10(A)(4).
21. Adequate information has been provided to determine that the Facility will comply with ORC Section 4561.341, as required by ORC Section 4906.10(A)(5). With the issuance of its air permit, upon which this Stipulation and Recommendation is in part conditioned, Applicant will have provided adequate information to establish that the Facility will comply with ORC Chapters 3704, 3734 and 6111, all regulations and standards adopted thereunder, and ORC Sections 1501.33 and 1501.34 and 5461.32, as required by ORC Section 4906.10(A)(5).

22. Adequate information has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by ORC Section 4906.10(A)(6).
23. Adequate information has been provided to determine the impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under ORC Chapter 929 that is located within the preferred and alternate sites, as required by ORC Section 4906.10(A)(7).
24. Adequate information has been provided to determine that the Facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives, as required by ORC Section 4906.10(A)(8).
25. The record evidence is sufficient to enable the Board to make an informed decision.

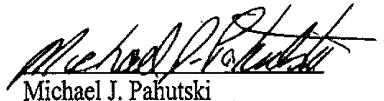
Conclusions of Law

1. CC&T is a person under Ohio Revised Code Section 4906.01 (A).
2. CC&T's Facility is a major utility facility under Ohio Revised Code Section 4906.01 (B)(1).
3. CC&T's application complies with Ohio Administrative Code 4906-13 requirements.
4. The record establishes the need for the Facility under Ohio Revised Code Section 4906.10(A)(1).
5. The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the facility under Ohio Revised Code Section 4906.10(A)(2).
6. The record establishes 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 Ohio Revised Code Section 4906.10(A)(3).
7. The record establishes the Facility is consistent with regional plans for expansion of the electric power grid of the electric system serving this state and interconnected utilities and that the Facility will serve the interests of electric system economy and reliability as required by Ohio Revised Code Section 4906.10(A)(4).
8. The record establishes, as required by Ohio Revised Code Section 4906.10(A)(5), that construction of the Facility on the preferred site will comply

with Ohio Revised Code Chapters 3704, 3734, and 6111 and Ohio Revised Code Sections 1501.33, 1501.34 and 4561.32, and all rules and standards adopted under these chapters and sections.

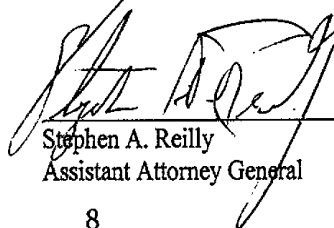
9. The record establishes the Facility will serve the public interest, convenience, and necessity under Ohio Revised Code Section 4906.10(A)(6).
10. The Facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under Ohio Revised Code Section 4906.10(A)(7).
11. The facility will comply with water conservation practice under Ohio Revised Code Section 4906.10(A)(8).
12. Based on the record, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance for the Facility at the preferred site.

CINERGY CAPITAL AND TRADING, INC.



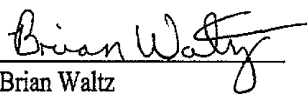
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