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December 2, 2014

**VIA HAND DELIVERY**

Ms. Ingrid Ferrell  
Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

12:40 PM DEC 02 2014 PSC EXEC SEC DIV

Re: Case No. 14-1221-E-CS  
MOUNDSVILLE POWER, LLC  
Application for a Siting Certificate to Authorize the  
Construction and Operation of a Wholesale Electric  
Generating Facility and Related Transmission Support  
Line of less than 200 kV and associated Interconnection  
Facilities in Marshall County, West Virginia

Dear Ms. Ferrell:

Enclosed for filing in the above-referenced case are the original and twelve copies of a Joint Stipulation and Agreement for Settlement (the "Joint Stipulation") executed by all of the parties in this case (Mr. Vince Trivelli authorized the undersigned to execute the Joint Stipulation on his behalf). The Joint Stipulation resolves all of the issues present in this case.

Please do not hesitate to contact me if you have any questions regarding this filing or require additional information.

Very truly yours,

Lee F. Feinberg (WV State Bar No. 1173)  
Susan J. Riggs (WV State Bar No. 5246)

SJR.rcs.6761298

Enclosures

cc: Certificate of Service

WEST VIRGINIA | PENNSYLVANIA



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**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 14-1221-E-CS**

**MOUNDVILLE POWER, LLC**

**Application for a Siting Certificate to Authorize the  
Construction and Operation of a Wholesale Electric  
Generating Facility in Marshall County, West Virginia**

**JOINT STIPULATION AND AGREEMENT FOR SETTLEMENT**

Pursuant to W. Va. Code §§ 24-1-7, 24-2-1(c) and 24-2-11c and Rules 12 and 13 of the Public Service Commission of West Virginia's (the "Commission") *Rules of Practice and Procedure*, Moundville Power, LLC ("Moundville Power"), the Staff of the Public Service Commission of West Virginia ("Staff"), the West Virginia State Building and Construction Trades Council, AFL-CIO ("Building Trades"), the Independent Oil and Gas Association of West Virginia, Inc. ("IOGA", and together with Moundville Power, Staff, and the Building Trades, the "Parties") join in this Joint Stipulation and Agreement for Settlement ("Joint Stipulation") and propose and recommend to the Commission that it approve and adopt this settlement among the Parties of all issues raised in Case No. 14-1221-E-CS, on the terms and conditions set forth below. The Joint Stipulation resolves all of the issues in this proceeding, and recommends that the Commission grant Moundville Power its requested electric generating facility siting certificate and any and all other necessary approvals required by the Commission for the construction and operation of a wholesale electric generating facility, including the related transmission support line, associated interconnection facilities, and other necessary appurtenances, subject to the conditions set forth in this Joint Stipulation. In support of the Joint Stipulation, the Parties submit the following:

## I. PROCEDURAL HISTORY

1. On July 3, 2014, Moundsville Power filed with the Commission an Application for a Siting Certificate pursuant to West Virginia Code §§ 24-2-1(c) and 24-2-11c to authorize the construction and operation of a natural-gas fired wholesale electric generating facility of approximately 549 MW (the “Facility” or the “Project”) in Marshall County including an approximately 500-foot 138 kV (less than 200,000 volts) related transmission support line, associated interconnection facilities, and other necessary appurtenances as more particularly described in the Application and attached documents.

2. On July 16, 2014, the Building Trades filed a petition to intervene.

3. On July 30, 2014, Staff filed its Initial Joint Staff Memorandum.

4. On August 8, 2014, IOGA filed a petition to intervene. On August 12, 2014, Mountaineer Gas Company (“MGC”) filed a petition to intervene but withdrew the same on August 22, 2014.

5. By Order dated September 5, 2014, the Commission granted the Building Trades’ and IOGA’s petitions to intervene, granted MGC’s withdrawal of its petition to intervene, and also established a procedural schedule for the matter which called for the filing of Moundsville Power’s direct testimony on September 11, 2014, the filing of Intervenor direct testimony and rebuttal testimony to Moundsville Power on October 2, 2014, the filing of Staff direct and rebuttal testimony on November 5, 2014, a deadline for discovery requests of November 12, 2014, a site visit and public comment hearing on November 19, 2014, the filing of Moundsville Power’s rebuttal testimony, and the filing of intervenors’ rebuttal testimony to Staff and other intervenors on December 2, 2014, a deadline to file a proposed order of witnesses for the evidentiary hearing and any motion(s) to excuse witnesses on December 4, 2014, and an

evidentiary hearing to begin on December 9, 2014, and continuing on December 10 and 11, 2014, if necessary. Relative to the site visit, the Commission ordered the Parties to file, no later than November 12, 2014, a proposed list of locations to be visited, and thereafter, at least three business days prior to the site visit, to jointly file a written description of each viewpoint. The Order further required Moundsville Power to cause to be published, one time during the period of November 5-12, 2014, in Marshall and Kanawha Counties, a Notice of Public Comment Hearing. The Order also required Moundsville Power to cause to be published, one time during the period of November 25-December 2, 2014, in Marshall and Kanawha Counties, a Notice of Evidentiary Hearing. The Order also granted the waiver of certain certificate filing requirements and certain other Commission filing, reporting, and other requirements that are specific to regulated public utilities.

6. Moundsville Power filed the Direct Testimonies of John P. Black, P.E., Andrew W. Dorn, Jr., Matthew J. Dorn, CPA, David Mark Kiser, Laidley Eli McCoy, Ph.D., Karri Rogers, Tom S. Witt, Ph.D., and Jessica L. Yeager on September 11, 2014.

7. On October 2, 2014, the Building Trades filed the Direct Testimony of Steve White and the Direct Testimony of Michael Jin.

8. On various dates, the Staff filed discovery requests to Moundsville Power, and Moundsville Power answered the same, on various dates, by discovery responses.

9. On November 6, 2014, Staff filed the Direct Testimonies of Josh Allen, Eric F. deGruyter, Karen A. McClure, and Donald E. Walker. In its Direct Testimony, Staff recommended the Commission adopt various conditions to a Siting Certificate granted Moundsville Power in this case.

10. The Parties jointly filed the Viewpoints and Viewpoint Descriptions for the Commission View on November 7, 2014.

11. On November 14, 2014, Moundsville Power filed affidavits of publication reflecting that publication of the Notice of Public Comment Hearing occurred on November 6, 2014, in *The Moundsville Daily Echo* (Marshall County) and *The Charleston Gazette* (Kanawha County).

12. The site visit was conducted as scheduled on November 19, 2014, and the public comment hearing was also held as scheduled on November 19, 2014.

13. Moundsville Power filed the Rebuttal Testimonies of John P. Black, P.E. and Andrew W. Dorn, IV on December 2, 2014.

14. During the pendency of this case, over 430 letters and postcards in support of the Project have been filed with the Commission, with no letters or postcards in opposition to the Project having been filed.

15. The Parties have engaged in settlement discussions encompassing the issues raised in this case. Based on those discussions, the Parties have reached agreement that a siting certificate for the Project should be granted to Moundsville Power with the conditions being proposed to the Commission herein, and have reached the settlement embodied in this Joint Stipulation which they recommend to the Commission for adoption.

## **II. SETTLEMENT**

16. The Parties agree that the Commission should approve the Memorandum Agreement dated June 27, 2014, between Moundsville Power, LLC, the Upper Ohio Valley Building and Construction Trades Council, AFL-CIO, and the Building Trades (collectively the "Signatories"), and make clear that the Commission anticipates that all representations and

commitments made by the Signatories therein shall be kept by the Signatories. The Signatories further agree that the Commission should make clear that its approval of the Memorandum Agreement does not mean the Commission is the proper forum to resolve any disputes that may arise from operating under such Agreement.

17. The Parties agree and recommend to the Commission that the Siting Certificate requested by Moundsville Power in this case be granted to Moundsville Power, and that the Siting Certificate be subject to the following conditions:

- a. At least 30 days prior to beginning construction or any activity on a particular component part of the Project Moundsville Power shall provide to Staff (but is not required to file) a copy of the detailed plans for such particular component part.
- b. At least 30 days prior to beginning construction or any activity on the Project, Moundsville Power shall file a verified statement that provides proof that all permits, approvals, certifications, notices, and consultations required prior to the start of construction or activity have been obtained, including the following:
  1. Air Quality Permit
  2. State Historic Preservation Office (SHPO) Approval
  3. U.S. Fish and Wildlife Service Section 7 Consultation
  4. WV DNR Lands Inquiry
  5. Department of the Army Encroachment Permit (wetlands and jurisdictional waterways on property)
  6. State 401 Water Quality Certification (wetlands and jurisdictional waterways on property)
  7. WV DNR Stream Activity Permit
  8. Site Plan Approval, Grading Permit, Erosion and Sediment Control Plan Approval
- c. After the filing of the verified statement in Condition b above, and upon Moundsville Power's construction of additional component parts of the Project, Moundsville Power shall file, at least 30 days prior to beginning construction or any activity on each component part of the Project, a verified statement that provides proof that all permits, approvals, certifications, notices, and consultations required prior to the start of any construction or any activity for such component part have been obtained; provided, however, that some permits, such as the heavy haul and building permits, are not available until immediately before the activity, and they will be submitted as soon as practicable.

- d. Fuel for the Project will be delivered through a blending station and pipeline to the plant, constructed, operated and owned by a third party (the "Pipeline Project"). Prior to the beginning of construction on any component part of the Pipeline Project, Moundsville Power shall file a verified statement that provides proof that binding contracts are in place for:
  - 1. Installation and construction of adequate natural gas/ethane delivery points, including FERC certificates, if required, for new delivery points on interstate pipelines and/or ethane pipelines.
  - 2. Construction of appropriate natural gas/ethane blending facilities.
  - 3. Construction and operation of the pipeline necessary to deliver the blended (or non-blended) fuel to the plant site, including all necessary measurement and pressure regulation equipment.
  - 4. An adequate fuel supply.
- e. The verified statement filed in connection with Condition d above shall also provide proof that all options for, or rights of way, and all required permits necessary for the construction and operation of such component part of the Pipeline Project have been obtained.
- f. Moundsville Power shall file a copy of its Interconnection Agreement between Moundsville Power and PJM before commencing construction.
- g. Moundsville Power shall plant in a staggered pattern along the West Virginia Route 2 right of way, trees and shrubs, using native plants to the extent possible, including White Pine, American Holly and Pitch Pine, between six and eight feet tall, and underlying evergreen and densely growing shrubs (Black Haw, Witchhazel, Spicebush and Eastern Wahoo) between one and three feet tall. Moundsville Power may use some native deciduous trees (such as Red Maple, Sugar Maple, Big Tooth Aspen, Northern Red Oak, White Oak, Shellbark Hickory and River Birch) between six and eight feet tall for variety and seasonal variation. Approximately 200 trees and 100 shrubs will be planted.
- h. Care of the trees and shrubs shall be incorporated into the operations and maintenance plan for the site. Any tree or shrub that does not survive will be replaced in kind.
- i. Moundsville Power shall conduct plant communications via telephone or two-way radio and not via a public address system.

- j. Moundsville Power, and its contractors, shall stagger the hours of construction and operation to minimize the project's impact on traffic conditions near the site, including school bus travel on Route 2.
- k. Moundsville Power shall provide an independent expert report on the amount needed to decommission the facility and post a Letter of Credit ("LoC"), purchase a bond or surety, or place the present value of such an amount in an escrow fund prior to beginning operation. Moundsville Power recognizes that the plant value far exceeds the decommissioning costs in the first five (5) years of its service life. Nevertheless, the initial LoC, bond or surety, or escrow account shall be no less than \$250,000 to cover the cost of soliciting and engaging a decommissioning company.

The report shall be updated thereafter as mutually agreed between Moundsville Power and the Marshall County Commission, but no less frequently than every five (5) years thereafter. The decommissioning fund amount may vary over time depending on changes in the estimated market or salvage value of the Project, the estimated cost of dismantling the plant and the expected ongoing life of the project.

Moundsville Power will provide the report to the Marshall County Commission and request its approval or concurrence of the evaluative expert and each of the periodic reports. The decommissioning fund shall not be part of Moundsville Power's assets.

Within ninety (90) days of any report that requires a contribution to the decommissioning fund, Moundsville Power will increase the LoC, or bond or surety, or make that contribution into an escrow account held by an agent pursuant to an escrow agreement between Moundsville Power and the Marshall County Commission. Reductions to, or withdrawal from, the decommissioning fund shall not be allowed sooner than ninety (90) days after the Marshall County Commission has been offered the opportunity to review the report. The methods for deposits to and disbursements from the decommissioning fund shall be established within and governed by the LoC, bond or surety, or escrow agreement. Furthermore, the LoC, bond or surety, or escrow agreement must clearly reflect the role of the Marshall County Commission and state that the obligations set forth in the agreement apply to Moundsville Power, its successors and assigns.

Each report of the qualified independent third party will also be filed with the Commission as a closed entry in this matter. The Commission retains the right to hire its own evaluative expert to review any of the periodic reports and to take such further action within its jurisdiction as the Commission determines is necessary to protect the public interest.



- l. Moundsville Power shall file evidence of its EWG status from FERC prior to commencing commercial operation.
- m. The siting certificate shall become invalid if Moundsville Power has not commenced a continuous course of construction within five (5) years of the date the final certificate is granted or has not completed construction by the 10<sup>th</sup> year without petitioning the PSC for approval to expand these time frames.
- n. If Moundsville Power seeks to transfer its certificate, Moundsville Power is required pursuant to Siting Rule 7.1 to notify the PSC in writing of the identity of the transferee and submit an affidavit from the transferee attesting to the transferee's willingness to abide by the terms of a siting certificate, as issued. This condition applies at any time – not just in the operational stage.
- o. The PSC directs Moundsville Power to operate the Project within the representations and parameters established in the application and studies included in the Application. If the Project does not operate within those representations and parameters, the PSC may reopen the certificate for further investigation upon receipt of a complaint, the request of Staff, or on its own motion.

18. The Parties agree that the terms and conditions of the agreement between Moundsville Power and the Marshall County Commission relating to the PILOT program do not offend the public interest and the construction and operation of the facility will result in a substantial positive impact on the local economy and local employment.

19. The Parties agree that nothing in this Joint Stipulation shall be interpreted to preclude any of the Parties from taking any position it may choose on any of the issues discussed herein in other siting certificate cases.

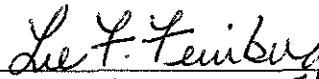
20. This Joint Stipulation is entered into subject to the acceptance and approval of the Commission, and will have no effect whatsoever until and unless approved by the Commission in all of its material terms. It results from a review of all filings in this case, the Parties' prefiled testimony, and discovery and discussion. It reflects compromises by the Parties and the withdrawal of their respective positions asserted in this case, and is being proposed to avoid costly litigation between the Parties. The Parties propose this Joint Stipulation without adopting

any of the compromise positions that may be set forth herein as regulatory principles applicable to future proceedings. The Parties support and recommend this Joint Stipulation as being in the public interest and as a fair, reasonable, and complete resolution of all the issues raised in this proceeding. The Parties acknowledge that it is the Commission's prerogative to accept, reject, or modify any stipulation. In the event that the Joint Stipulation is modified or rejected by the Commission, it is expressly understood that the Parties are not bound to accept the Joint Stipulation as modified or rejected, and that they may avail themselves of whatever rights are available to them under law and the Commission's *Rules of Practice and Procedure*.

WHEREFORE, the Parties, on the basis of the foregoing, respectfully request the Commission issue findings of fact and conclusions of law granting Moundsville Power LLC its Siting Certificate consisting of a natural-gas fired wholesale electric generating facility of approximately 549 MW in Marshall County including an approximately 500-foot 138 kV (less than 200,000 volts) related transmission support line, associated interconnection facilities, and other necessary appurtenances as more particularly described in Moundsville Power's Application, subject to the conditions set forth in this Joint Stipulation.

Respectfully submitted this 14th day of December, 2014.

MOUNDSVILLE POWER, LLC



Lee F. Feinberg (WV State Bar #1173)

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WEST VIRGINIA STATE BUILDING AND  
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INDEPENDENT OIL AND GAS  
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**CERTIFICATE OF SERVICE**

I, Susan J. Riggs, counsel for Moundsville Power, LLC, do hereby certify that on this 2<sup>nd</sup> day of December, 2014, a copy of the “*Joint Stipulation and Agreement for Settlement*” was served upon the following counsel of record as follows:

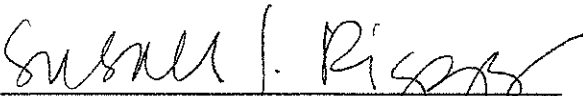
**VIA HAND DELIVERY**

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**VIA U.S. MAIL**

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