

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 5th day of September, 2014.

CASE NO. 14-1221-E-CS

MOUNDSVILLE POWER, LLC, Buffalo, New York.

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.

COMMISSION ORDER

The Commission sets the procedural schedule and grants several procedural motions.

BACKGROUND

On July 3, 2014, Moundsville Power, LLC applied for a Siting Certificate, pursuant to W. Va. Code § 24-2-11c, to construct and operate a 549-megawatt (MW) baseload combined cycle electric wholesale generating plant about three miles south of Moundsville between State Route 2 and the Ohio River on a 37.2-acre portion¹ of the Allied-Hanlin-Olin Superfund Site. Moundsville Power will also construct a 138-kilovolt (kV) transmission line from the new plant. Total construction cost is estimated at \$615 million. Application for Siting Certificate at 1-5 & attachments.

Moundsville Power asserted that additional generating capacity is needed in the PJM² power market. Close to the proposed plant, the 541-MW R.E. Burger Plant in Shadyside, Ohio, has closed and the 713-MW Kammer Plant outside of Moundsville will close. In the Ohio River Valley, 3,970 MW is scheduled to close by 2015. Moundsville

¹ The plant will occupy about seventeen acres. The site has been used for industrial purposes for more than sixty years.

² PJM Interconnection Association, a regional transmission organization (RTO), coordinates the movement of electricity through all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia; operates a wholesale electricity market; and manages a long-term regional electric transmission planning process to maintain the reliability of the power supply system.

Power will directly fund significant upgrades to more than nine miles of local power grid infrastructure as required by PJM. The plant will generate enough electricity to power some 325,000 homes. Id.

The facility will use General Electric (GE) equipment. A natural gas-ethane blend will fuel two combustion turbine generators to generate electricity. The second generation cycle will use the combustion turbine exhaust to produce steam which will, in turn, be used to generate electricity. The plant will have cooling towers, a water treatment building, a maintenance building and other structures. Cooling water will come from the Ohio River. A switchyard will be built on the north end, and a 500-foot transmission line will deliver the electricity to the Washington Substation of American Electric Power (AEP), located across State Route 2. Id.

Moundsville Power estimated that construction will begin in late 2015 to spring 2016 and should be substantially complete by October 2017. The plant should be in-service by June 1, 2018. Id.

The site is close to several natural gas production and processing facilities and transmission pipelines. The plant will burn a blend of 25 percent ethane and 75 percent natural gas. Ethane is a natural gas by-product from processing local wet gas that usually is transported to Louisiana for processing. The fuel blend to be used by the plant is not available from the local natural gas distribution companies or natural gas suppliers. Id.

A third party will build, own and operate a 4.8-mile dedicated pipeline that will convey the plant's fuel from a blending station near the Texas Eastern Pipeline. Pipeline construction is planned for 2016-17. A separate certificate application may be needed for this intrastate gas transmission line and will be filed by the pipeline operator. Id.

Moundsville Power has an exclusive option to purchase the site, with closing expected in March 2015. The plant and site will be transferred to the Marshall County Commission and leased back to facilitate the property tax abatement under an agreement with the Marshall County Commission and the Marshall County Board of Education that will result \$4.2 million in payments in lieu of taxes (PILOT) and \$39.3 million in lease payments to Marshall County Commission during a thirty-year period, along with a \$970,000 upfront payment. Moundsville Power will be subject to state corporate net income tax or Moundsville Power's members will be subject to state personal income tax on a flow-through basis. Id.

Moundsville Power asserted that the project will provide 400 union construction jobs and three permanent jobs for local workers. The economic impact for the state is estimated to be more than \$800 million during construction and more than \$280 million annually during operations. Id.

Moundsville will operate the plant as an exempt wholesale generator (EWG) as defined under Section 32(a) of the federal Public Utility Holding Company Act of 1935.

Moundsville Power asserted that neither the generating plant nor the transmission line will provide retail utility service to the public, and there will be no impact to West Virginia ratepayers. Rates charged for electricity sold by the plant will be subject to regulation by the Federal Energy Regulatory Commission (FERC), pursuant to Section 205 of the Federal Power Act. Moundsville Power intends to file a market-based rate schedule with FERC that will allow sales at negotiated rates.

A public meeting was conducted on May 5, 2014, to discuss the project, noise, odors and visibility, and thirty-eight residents of the Washington Lands area participated. Trees will be planted to create a visual barrier from existing homes. A portion of the 180-foot stacks will be visible. State, local and community leaders have expressed considerable support for the project. Id.

Moundsville Power asserted that it was not a public utility within the meaning of W. Va. Code § 24-2-11 and does not believe that need for the facility, nor Tariff Rule 42 exhibits should be addressed by the Commission. Therefore, Moundsville requested a waiver of the Commission filing requirements to provide certain information, including the utility service rendered, proposed rates, project construction costs, project financing and estimates of operating revenues and expenses, and the information required by Tariff Rule 42 (e.g., statements of net income, operating revenues, depreciation, West Virginia jurisdictional rate base, plant in service and capital structure). And, because Moundsville will not be regulated by the Commission as a public utility, it requested a waiver of all the Commission's filing and reporting requirements, meter requirements, customer relations, inspections and tests, standards and quality of service, promotional practices, consumer reimbursement program, uniform accounting requirements, and the requirement to allow Commission inspection of books, papers, reports and statements that are specific to regulated public utilities whose practices impact captive ratepayers. Id.

Moundsville Power provided its *pro forma* financial statements under seal as proprietary and confidential. A redacted version was attached to the Siting Certificate Application as Exhibit 21. Id.

Other pleadings

On July 8, 2014, the Commission required Moundsville Power to publish notice of its Siting Certificate Application one time in Marshall and Kanawha Counties, as required by W. Va. Code § 24-2-11c(a). Notice of Filing Order at 1-3.

On July 10, 2014, Moundsville Power filed a Motion for Protected Treatment of the *pro forma* financial statements that were filed under seal pursuant to Rule 4.1.f of the Commission Rules of Practice and Procedure, 150 C.S.R. Series 1. Rule 3.1.1.2 of the Commission Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30, requires the applicant to provide *pro forma* financial statements for the start-up phase and for the first five years of operation of the proposed project.

Moundsville Power asserted that this financial information was generated at significant effort, no outside party could reproduce the information on its own, the data is commercially sensitive and holds considerable commercial value, public disclosure of this information would unduly harm Moundsville Power, and similar financial information has been granted protection by the Commission in previous siting certificate cases. Motion for Protective Treatment at 1-7 & supporting Affidavit of Andrew W. Dorn, citing Pinnacle Wind Force, LLC, Case No. 09-0360-E-CS (Comm'n Order at 10 Sept. 15, 2009); AES Laurel Mountain, Case No. 08-0109-E-CS (Comm'n Order at 12 April 9, 2008); Beech Ridge Energy, LLC, Case No. 05-1590-E-CS (Comm'n Order at 12 May 5, 2006); Beech Ridge Energy II LLC, Case No. 12-1196-E-CS (Comm'n Order at 6 Dec. 21, 2012).

On July 16, 2014, West Virginia State Building and Construction Trades Council, AFL-CIO (Trades Council) filed a Petition to Intervene. On August 8, 2014, the Independent Oil and Gas Association of West Virginia, Inc. (IOGA) filed a Petition to Intervene.

On July 21, 2014, Moundsville Power filed an Affidavit of Publication to establish that the required notice was published on July 15, 2014, in *The Moundsville Daily Echo* in Marshall County. Ltr. at 1 & attachment.

On August 4, 2014, Moundsville Power filed an Affidavit of Publication to establish that the required notice was published on July 21, 2014, in the *Charleston Gazette* in Kanawha County. Ltr. at 1 & attachment.

On August 11, 2014, Moundsville Power filed a Joint Motion for Procedural Schedule, in which Moundsville Power, Commission Staff, Trades Council and IOGA asked the Commission to adopt this agreed procedural schedule:

Moundsville Power direct	Friday September 12, 2014
Intervenor direct testimony & rebuttal to Moundsville Power	Friday October 3, 2014
Staff direct testimony & rebuttal to Moundsville Power and Intervenor	Friday November 7, 2014
Public comment hearing	One day during weeks of November 10 or 17, 2014
Deadline for discovery requests	Friday November 14, 2014
Moundsville Power rebuttal to all	Friday December 12, 2014
Intervenors' rebuttal to Staff & other intervenors	Friday December 12, 2014
Evidentiary hearing	Wednesday to Friday, January 21-23, 2015
Initial briefs	Friday February 13, 2015
Reply briefs	Friday February 27, 2015
Last day for Commission Order	Wednesday April 29, 2015

On August 12, 2014, Mountaineer Gas Company filed a Petition to Intervene. Moundsville Power and Staff both opposed Mountaineer's request for intervention. On August 22, 2014, Mountaineer filed a Motion to Withdraw its Petition to Intervene.

DISCUSSION

The Commission will modify the proposed procedural schedule to conduct the evidentiary hearing December 9-11, 2014, and make minor corresponding adjustments to the proposed schedule to accommodate the earlier hearing date. The Commission also will add a visit to the plant site to the procedural schedule, as well as a deadline to file a proposed order of witnesses for the evidentiary hearing and any motion(s) to excuse witnesses.

The Commission should require that notice of the public comment and evidentiary hearings be published one time in Marshall and Kanawha Counties. Moundsville Power should file the Affidavits of Publication promptly upon their receipt.

The Siting Certificate Application makes mention of an unnamed third party that will construct, own and operate a dedicated intrastate gas transmission line to deliver the blended fuel to the Moundsville Power generating plant. The pre-filed testimonies should provide more information about this pipeline and the third party as soon as that information is known. Furthermore, the testimonies should address whether any Commission proceedings will be needed to resolve whether the gas transmission either as an intrastate transmission line or a bypass facility line must be granted a certificate of convenience and necessity by the Commission, and if so, who will file such proceedings and the expected filing date of any such proceeding(s).

The Commission will conduct the site visit in accordance with these guidelines:

1. Transcription. The site visit will not be recorded or transcribed.
2. Transportation. Persons participating in the site visit should arrange their own transportation and pay their own costs. A Moundsville Power representative will serve as a lead in directing the participants to the various Viewpoints.
3. Participation. The number of individuals participating should be limited to facilitate the Commission's ability to conduct the site visit:

Commission Staff

Counsel 2

Other Representatives 2

Moundsville Power

Counsel 2

Other Representatives 2

Trades Council

Counsel 2
Other Representatives 2

IOGA

Counsel 2
Other Representatives 2

The parties are not required to have the maximum number of individuals participate. The Commission does not intend for any other individuals to participate beyond those listed above, the Commission and its counsel.

4. Viewpoints. No later than November 12, 2014, the parties will file a proposed list of locations to be visited and advise whether four-wheel drive vehicles are recommended. At least three business days prior to the site visit, the Parties will jointly file a written description of each Viewpoint. If the Parties cannot agree on a description, each Party may submit a brief separate description of the Viewpoint and its relationship to the project. At each Viewpoint, the Parties will summarize the written submission and then answer any questions from the Commission.

It is reasonable to grant the Petitions to Intervene filed by Trades Council and IOGA. It is likewise reasonable to grant the Mountaineer Motion to Withdraw its Petition to Intervene.

Moundsville Power requested a waiver for Commission certificate filing requirements for

[C]ertain information including the utility service rendered, proposed rates, project construction costs, project financing and estimates of operating revenues and expenses, and the information required by Tariff Rule 42 (e.g., statements of net income, operating revenues, depreciation, West Virginia jurisdictional rate base, plant in service and capital structure).

Moundsville Power asserted that the generating plant will not be regulated by the Commission as a public utility and, therefore, also requested a waiver of

[A]ll the Commission's filing and reporting requirements, meter requirements, customer relations, inspections and tests, standards and quality of service, promotional practices, consumer reimbursement program, uniform accounting requirements, and the requirement to allow Commission inspection of books, papers, reports and statements that are specific to regulated public utilities whose practices impact captive ratepayers.

No party has objected to this Moundsville Power request. The Commission will grant Moundsville Power's request for a waiver of certificate filing requirements to the extent that the information relates to ratemaking for a certificate project of a cost-of-service based public utility. EWG rates are subject to regulation by FERC pursuant to the Federal Power Act and not subject to review by this Commission, so we have previously held that when EWGs seek certificates to construct projects that will sell electricity on the wholesale market, the cost of service ratemaking issues will not be before the Commission. E.g., Mt. Storm Wind Force, LLC, Case No. 01-1664-E-CN (Comm'n Order at 3-4 Feb. 28, 2002). Accordingly, all filing requirements related to the ratemaking implications of certificate applications filed by cost-of-service based utilities, including the Rule 42 Exhibit, will be waived.

Because Moundsville Power will not operate as a cost-of-service based public utility with captive ratepayers, the Commission also will waive its filing and reporting requirements, meter requirements, customer relations, inspections and tests, standards and quality of service, promotional practices, consumer reimbursement program, uniform accounting requirements, and the requirement to allow Commission inspection of books, papers, reports and statements that are specific to regulated public utilities whose practices impact captive ratepayers.

Similarly, no party has objected to the Moundsville Power request for protected treatment for the *pro forma* financial information that was filed under seal. The Commission has previously accorded confidentiality for this type of financial information filed by EWG certificate applicants. In an earlier EWG proceeding, we wrote,

By law, Beech Ridge must only obtain a siting certificate from the Commission. Generally, Beech Ridge will operate in the competitive wholesale environment, where the PSC does not have continuing jurisdiction over operations, rates, and so forth. Instead, Beech Ridge, to the extent it is regulated, will answer to the Federal Energy Regulatory Commission. The Commission agrees with Staff that Beech Ridge has sufficiently asserted that, under these circumstances, its financial data is highly proprietary and amounts to a trade secret. Accordingly, the Commission should grant permanent protective treatment for the financial data, as Beech Ridge has requested.

Beech Ridge Energy, LLC, Case No. 05-1590-E-CS (Comm'n Order at 8 (Concl. of Law No. 4) May 5, 2006).

Consistent with our earlier decisions, the Commission concludes that the *pro forma* financial data submitted by Moundsville Power in Exhibit 21 to the Siting Certificate Application is highly proprietary and amounts to a trade secret. We will grant the motion for protected treatment.

FINDINGS OF FACT

1. Moundsville Power has filed a Siting Certificate Application, pursuant to W. Va. Code § 24-2-11c, to construct and operate a 549-MW baseload combined cycle electric wholesale generating plant about three miles south of Moundsville. Moundsville Power will also construct a 500-foot 138-kilovolt (kV) transmission line from the new plant to an AEP substation. Application for Siting Certificate at 1-5 & attachments (July 3, 2014).
2. The parties proposed a procedural schedule to process this matter. Joint Motion for Procedural Schedule at 1-3 (Aug. 11, 2014).

CONCLUSIONS OF LAW

1. The proposed procedural schedule should be modified to accommodate an evidentiary hearing to be conducted December 9-11, 2014, and to add a visit to the plant site.
2. The Commission should require that notice of the public comment and evidentiary hearings be published one time in Marshall and Kanawha Counties.
3. It is reasonable to grant the Petitions to Intervene filed by Trades Council and IOGA.
4. It is reasonable to grant the Mountaineer Motion to Withdraw its Petition to Intervene.
5. The Moundsville Power request for a waiver for Commission certificate filing requirements and certain Commission information requirements that are specific to regulated public utilities whose practices impact captive ratepayers should be granted.
6. The Moundsville Power motion for protected treatment for the *pro forma* financial information that was filed under seal should be granted.

ORDER

IT IS THEREFORE ORDERED that the following procedural schedule is adopted:

Moundsville Power direct testimony, 4 p.m.	Thursday September 11, 2014
Intervenor direct testimony and rebuttal testimony to Moundsville Power, 4 p.m.	Thursday October 2, 2014
Staff direct testimony and rebuttal testimony to Moundsville Power and Intervenors, 4 p.m.	Thursday November 6, 2014
Deadline for discovery requests	Wednesday November 12, 2014
Site visit, 1:30 p.m.	Wednesday November 19, 2014

Public comment hearing, 6 p.m., Marshall County Courthouse, Circuit Courtroom, Second Floor, 600 7 th Street, Moundsville, West Virginia	Wednesday November 19, 2014
Moundsville Power rebuttal testimony to all, 4 p.m.	Tuesday December 2, 2014
Intervenors' rebuttal testimony to Staff and other intervenors, 4 p.m.	Tuesday December 2, 2014
Deadline for proposed order of witnesses for the evidentiary hearing and any motion(s) to excuse witnesses	Thursday December 4, 2014
Evidentiary hearing, 9:30 a.m., Howard M. Cunningham Hearing Room, Commission headquarters, 201 Brooks Street, Charleston, West Virginia	Tuesday December 9, 2014, continuing December 10 and 11, 2014, if necessary
Initial briefs	Thursday January 8, 2015
Reply briefs	Thursday January 22, 2015
Last day for Commission Order	Wednesday April 29, 2015

IT IS FURTHER ORDERED that Moundsville Power shall publish notice of the public comment hearing one time in Marshall and Kanawha Counties during the period of November 5-12, 2014. Moundsville Power may use the notice attached to this Order. Moundsville Power shall file the Affidavits of Publication promptly upon their receipt.

IT IS FURTHER ORDERED that Moundsville Power shall publish notice of the evidentiary hearing one time in Marshall and Kanawha Counties during the period of November 25 to December 2, 2014. Moundsville Power may use the notice attached to this Order. Moundsville Power shall file the Affidavits of Publication promptly upon their receipt.

IT IS FURTHER ORDERED that the Petitions to Intervene filed by Trades Council and IOGA are granted.

IT IS FURTHER ORDERED that Mountaineer's Motion to Withdraw its Petition to Intervene is granted.

IT IS FURTHER ORDERED that the Moundsville Power request for a waiver of certain certificate filing requirements is granted. All certificate filing requirements related to the ratemaking implications of certificate applications filed by cost-of-service based utilities, including Rule 42 Exhibit, are waived.

IT IS FURTHER ORDERED that the Commission waives its filing and reporting requirements, meter requirements, customer relations, inspections and tests, standards and quality of service, promotional practices, consumer reimbursement program, uniform accounting requirements, and the requirement to allow Commission inspection of books, papers, reports and statements that are specific to regulated public utilities whose practices impact captive ratepayers.

IT IS FURTHER ORDERED that the Moundsville Power motion for protected treatment of the *pro forma* financial data in Exhibit 21 to the Siting Certificate Application that was submitted under seal is granted.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,



Ingrid Ferrell
Executive Secretary

CLW/sek
141221c.doc

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 5th day of September, 2014.

CASE NO. 14-1221-E-CS

MOUNDSVILLE POWER, LLC, Buffalo, New York.

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.

NOTICE OF PUBLIC COMMENT HEARING

On July 3, 2014, Moundsville Power, LLC filed an application for a Siting Certificate, pursuant to W. Va. Code § 24-2-11c, to authorize the construction and operation of a 549-MW baseload combined cycle electric wholesale generating plant about three miles south of Moundsville. The \$615 million project will be fueled with a blend of 25% ethane and 75% natural gas. Moundsville Power will also construct a 500-foot 138-kilovolt transmission line from the new plant to AEP's Washington substation.

The Public Service Commission of West Virginia has granted petitions to intervene filed by the West Virginia State Building and Construction Trades Council, AFL-CIO and the Independent Oil and Gas Association of West Virginia, Inc.

The Commission will receive public comments on Moundsville Power's proposal at 6 p.m. on Wednesday November 19, 2014, at the Marshall County Courthouse, Circuit Courtroom, Second Floor, 600 7th Street, Moundsville, West Virginia

Persons may also file written comments, addressed to Ingrid Ferrell, Executive Secretary, P.O. Box 812, Charleston, West Virginia 25323. All written comments should be marked with Case No. 14-1221-E-CS.

MOUNDSVILLE POWER, LLC

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 5th day of September, 2014.

CASE NO. 14-1221-E-CS

MOUNDSVILLE POWER, LLC, Buffalo, New York.

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.

NOTICE OF EVIDENTIARY HEARING

On July 3, 2014, Moundsville Power, LLC filed an application for a Siting Certificate, pursuant to W. Va. Code § 24-2-11c, to authorize the construction and operation of a 549-MW baseload combined cycle electric wholesale generating plant about three miles south of Moundsville. The \$615 million project will be fueled with a blend of 25% ethane and 75% natural gas. Moundsville Power will also construct a 500-foot 138-kilovolt transmission line from the new plant to AEP's Washington substation.

The Public Service Commission of West Virginia will conduct an evidentiary hearing upon the application beginning at 9:30 a.m. Tuesday, December 9, 2014, and continuing daily December 10 and 11, 2014, if necessary, in the Howard M. Cunningham Hearing Room at the Commission's headquarters, 201 Brooks Street, Charleston, West Virginia.

The Commission previously conducted a hearing in Moundsville to receive public comment and several letters have been filed with the Commission. Until the final Order is issued in this matter, the Commission will continue to receive written public comment. All written comments should be marked with Case No. 14-1221-E-CS.

MOUNDSVILLE POWER, LLC