

BEFORE THE WEST VIRGINIA STATE BOARD  
REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: BIS TEPSCO INC

C2012-08

CONSENT ORDER

COMES NOW the West Virginia State Board of Registration for Professional Engineers, by Edward L. Robinson, P.E., its President (hereinafter the "Board") for the purpose of agreeing to disciplinary action to be taken against BIS TEPSCO INC (hereinafter the "Respondent Firm"). As contained herein, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of the same, does hereby FIND the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent Firm is organized under the laws of the State of Texas, with its principal place of business in Grand Prairie, Texas.

3. Kenny Edwards, as a Vice-President of BIS TEPSCO INC, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm with respect to the matters set forth in this Consent Order.

4. Based on a comity application filed by one of its employees in late September 2011 and subsequent investigation by Board staff, the Board determined that Respondent Firm had offered to practice engineering in West Virginia prior to qualifying for a Certificate of Authorization ("COA") or receiving same.

5. Although the applicant was the engineer that had offered to practice engineering in West Virginia, he promptly applied for licensure (which comments thereon initiated this Complaint) and qualified for and received licensure in the State of West Virginia; the applicant also provided all information requested by the Board and was otherwise open and cooperative during the investigation.

6. After the applicant's licensure in October 2011, Respondent Firm qualified for a COA in West Virginia, but did not apply for or receive same until January 30, 2012, at which time they were issued COA #C-04250.

7. The Board initiated Complaint Number C2012-O8 at a regular meeting of the Board, but, under the totality of the circumstances set forth above, moved to proceed only as to Respondent Firm.

8. An Agent for Respondent Firm promptly contacted the Board's attorney, admitted the allegations of the Complaint, and agreed to its settlement, thereby waiving Respondent Firm's right to file a response to same, all of which mitigated the violation and minimized the costs incurred by the Board.

9. Respondent Firm represents that it has neither performed nor offered to perform any engineering work in West Virginia but for the offer which gave rise to this Complaint.

10. The Board, in its discretion, will not assess administrative costs although the Board finds that it incurred such costs and it is within its power to assess such costs as set forth in West Virginia Code ' 30-13-21(d)(4) and West Virginia Code R. ' 7-1-14.4.

## CONCLUSIONS OF LAW

11. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code ' 30-13-1 *et seq.*

12. The Board may assess civil penalties against any person who violates any provision of West Virginia engineering law in an amount to be determined by the Board, considering such factors as the Board deems relevant. W.Va. Code ' 30-13-21(b) and (d); W.Va. Code R. ' 7-1-15.4.

13. Offering to practice engineering, as defined by W. Va. ' 30-13-1 *et seq.*, without a valid Certificate of Authorization, to which Respondent Firm has admitted herein, is an action that could subject Respondent Firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5000.00). W.Va. Code R. ' 7-1-15.1.

### CONSENT OF RESPONDENT FIRM

Kenny Edwards, as a Vice-President of BIS TEPSCO INC, by affixing his signature hereto, agrees to the following:

14. Respondent Firm is aware of its right to be represented by counsel and is aware of its option to pursue this matter through appropriate administrative and/or Court procedures, but intelligently and voluntarily waives its right to do so in the event that this Consent Order is approved by the Board.

15. Respondent Firm admits it offered to practice engineering in the State of West Virginia without the required Certificate of Authorization, acknowledges the findings set forth above, agrees to settle this matter in accordance with the terms set forth herein, and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint, or compulsion.

16. Respondent Firm acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of

Board action on Complaint Number C2012-08. This paragraph is binding on the parties hereto, even in the event that the Board does not approve this Consent Order.

17. Respondent Firm acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent Firm authorizes the Board to review and examine all investigative file material concerning Respondent Firm prior to or in conjunction with consideration of this Consent Order. This paragraph is binding upon the parties even if the Board does not approve this Consent Order.

18. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding upon the parties even if the Board does not approve this Consent Order.

19. Respondent Firm acknowledges that the Board may reject this proposal, notice and complete the hearing, and, upon final adjudication, impose such disciplinary action or civil penalty pursuant to West Virginia Code §30-13-21 as it deems appropriate.

Should this occur, Respondent Firm retains the right to appeal the Board's decision with respect to disciplinary action or civil penalty to the circuit court.

20. Upon acceptance by the Board, this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative action between the parties except an action to enforce the terms of this Consent Order.

21. Respondent Firm understands that the complaint and any other written materials in the file which are public records must be made available upon legal request in accordance with the West Virginia Freedom of Information Act.

22. Respondent Firm agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

23. Respondent Firm acknowledges that proof of any misstatement or misrepresentation made on its behalf in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia Engineering law.

### ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as a settlement and compromise of Complaint C2012-08 pursuant to West Virginia Code ' 30-13-22(b).

2, The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for offering to practice engineering in West Virginia prior to qualifying for a Certificate of Authorization or receiving same.

3. The Board further **ORDERS** Respondent Firm to pay the civil penalty imposed herein within thirty days (30 days) of the date Respondent Firm receives notice



of the Board President's signature hereon, such amount to be made payable to the W. Va.

P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.

4. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

6. If the civil penalty imposed herein is not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed upon herein (\$250.00), together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the

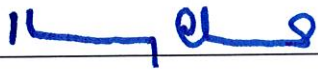
date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

7. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein.

8. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers and does not evidence compliance or the failure to comply with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance or failure to comply be implied.

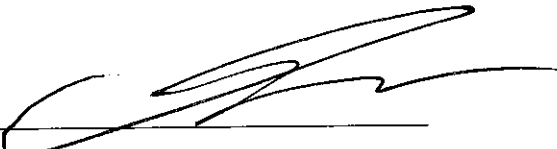
AGREED TO BY:

BIS TEPSCO INC

	<u>4-24-2012</u>
Kenny Edwards	DATE
Its Vice-President	

WEST VIRGINIA STATE BOARD OF REGISTRATION

FOR PROFESSIONAL ENGINEERS

By  \_\_\_\_\_ DATE 3/23/12  
EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT

ENTERED into the records of the West Virginia State Board of Registration for

Professional Engineers this 24<sup>TH</sup> day of MAY, 2012.

PREPARED BY:

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*Counsel for the West Virginia Board of  
Registration for Professional Engineers*