

**BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS**

IN RE: RILEY POWER INC.

C2008-09

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president, and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia (hereinafter the "Board") and Riley Power Inc., (hereinafter at times "Respondent"), and its legal counsel for the purpose of agreeing to a resolution of the Board's Complaint C2008-09 against Respondent. As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The Board is a state entity created by West Virginia Code § 30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to West Virginia Code § 30-13-1 *et seq.*
2. Riley Power Inc., a Massachusetts corporation, is a corporate affiliate of Babcock Power Services Inc. (BPS), a Delaware corporation, both of which have their principal offices in the State of Massachusetts.
3. Eric N. Balles is the Sr. Vice President - Technology for Respondent and has the power and authority to make admissions and otherwise act on behalf of Respondent.
4. Respondent, through counsel, provided information to the Board concerning its activities, the activities of BPS, and the activities of a company in the same corporate family as Respondent in connection with and in response to

Complaint C2007-16, which Complaint will be dismissed as part of the resolution of C2008-09.

5. The Board, in its discretion and as part of the resolution of this Complaint, will not initiate a complaint against BPS although the Board asserts that there is evidence that BPS has offered to provide engineering services in the State of West Virginia in the form of engineered products, i.e., products customized for a purchaser located in West Virginia, which BPS has denied.

6. During 2005 and 2006, Riley Power admits it worked with several utility and industrial customers located in West Virginia on thirteen (13) different projects, at least one of which continued after 2006.

7. The Board finds the work on each project constitutes one separate count each of practicing engineering in West Virginia without a certificate of authorization (COA), which Riley Power has disputed.

8. Respondent admits it did not have valid COA in 2005, 2006 or 2007 based on its good-faith belief and contention that no COA was required for the products and services it supplied in West Virginia.

9. This consent order is the result of negotiations between the parties both prior to and after the service of C2008-09.

10. Despite the cooperation of Respondent and related entities with regard to resolving the issues of concern to this Board, resolution took more than a year, and the Board does not find mitigation of culpability inasmuch as Respondent did not initially take remedial action during the pendency of this matter, i.e., Respondent made no initial attempt to obtain a COA from this Board.

11. Respondent has since obtained a COA from this Board, however, and the Board acknowledges that Respondent's initial decision not to obtain a COA during the pendency of this matter was based on Respondent's good faith belief

and right to defend its position that it did not and does not practice engineering in West Virginia and therefore did not and does not require a COA.

12. The parties agree that the Board has previously taken the position that engineered products customized for a purchaser located in West Virginia constitutes the practice of engineering and therefore requires a COA, but the Board acknowledges Respondent's contention it was not aware of the Board's position until after the filing of Complaint C2007-16 and the ensuing negotiations between the parties.

13. The Board, in its discretion, will not initiate a complaint against any individual engineer(s) who acted on Respondent's behalf to design products customized for a purchaser located in West Virginia although the Board asserts it is within the Board's power to bring such complaints.

14. Respondent has waived its right to a hearing on this matter and other rights set forth in W. Va. Code §§ 30-13-1 *et seq.* and the procedural rules of the Board.

15. The Board has incurred expenses in connection with this investigation and Complaint, as well as the related Complaint C2007-16, in the amount of at least three thousand three hundred fifty dollars (\$3,350.00) and therefore finds it appropriate to impose administrative costs.

16. Respondent agrees to pay these administrative costs in connection with the disposition of this matter.

CONCLUSIONS OF LAW

17. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. West Virginia Code § 30-13-17.

18. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board." West Virginia Code § 30-13-21(b); *see also* W. Va. Code § 30-13-21(d)(4).
19. The Board is authorized to assess related costs, including administrative costs, for each count or separate offense in an amount set by the Board. W. Va. Code § 30-13-21(d)(4), 7 CSR 1-14.4.
20. Practicing or offering to practice engineering without a valid COA is an action that would subject a firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 CSR 1.15.1.
21. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.

CONSENT OF RESPONDENT

By affixing his signature hereon, Eric N. Balles agrees to the following on behalf of Respondent Riley Power Inc.:

22. Respondent has been represented by counsel and agrees to be bound by the representations made by its counsel in correspondence related to C2008-09 and this Consent Order.
23. Respondent is aware of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives its right to do so.
24. Respondent intelligently and voluntarily waives its right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.

25. Respondent accepts for purposes of this Consent Order that it is the Board's position that engineered products customized for a purchaser located in West Virginia constitute the practice of engineering and require a COA, but otherwise maintains and has not waived its position stated in response to the investigation or Complaint in this matter.

26. Respondent represents that it has not sold engineered products customized for a purchaser located in West Virginia other than in connection with the projects referenced in Paragraph 6 above and agrees that it will not sell such products in West Virginia unless and until Respondent obtains the required COA, nor sell such products in West Virginia at any time Respondent does not have a valid COA.

27. Respondent represents that it has notified its parent company and affiliates regarding the Board's position that engineered products customized for a purchaser located in West Virginia constitute the practice of engineering and require a COA.

28. Respondent agrees to pay a civil penalty in the amount of three thousand two hundred fifty dollars (\$3,250.00) as part of the agreed disposition of this matter.

29. Respondent accepts the findings set forth above and agrees to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

30. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.

31. Respondent acknowledges that proof of any misrepresentation made in connection with this matter may result in the rescission of this agreement, the

reinstatement of this Complaint and/or the reinstatement or initiation of complaints against related entities, the summary revocation of any certificate of authorization which may be issued to Respondent, 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.

32. Respondent acknowledges this Consent Order, Complaint C2008-09, Complaint C2007-16, and written submissions of Respondent to the Board regarding both complaints, are public records.

33. Respondent agrees that the sum and substance of the Complaint C2008-09 and this Consent Order in part or in their entirety may be set forth on the Board website, summarized in the next annual newsletter of the Board, and reported to the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

ORDER

34. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-13-22(b) and that Complaint C2007-16 be dismissed.

35. The Board **ORDERS** Respondent to pay a civil penalty in the total amount of Three Thousand Two Hundred and Fifty Dollars (\$3,250.00).

36. The Board **ORDERS** Respondent to pay administrative costs in the amount of Three Thousand Three Hundred Fifty Dollars (\$3,350.00).

37. The civil penalty imposed herein must be paid within thirty (30) days of the date of the signature of the Board President, 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.

38. The administrative costs imposed herein must be paid within thirty (30) days of the date of the signature of the Board President, such amount to be made payable to the W. Va. P.E. Board for transfer into the funds of the W. Va. P.E. Board.
39. The Board **ORDERS** that neither Respondent, the Respondent in C2007-16, nor BPS shall perform or offer to perform engineering work in the State of West Virginia as defined under West Virginia law, including the sale or offer of sale of customized, engineered products to purchasers located in West Virginia, unless and until that entity obtains a COA from this Board.
40. The Board **ORDERS** that this Consent Order be published on the Board website, summarized in the next annual newsletter of the Board, and reported to the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
41. Any violation of the terms of this Consent Order that may be established in accordance with West Virginia law shall be immediate cause for summary revocation of Respondent's West Virginia COA and further disciplinary action by the Board.
42. This Consent Order concerns only the acts or omissions of Respondent as described herein, and does not affect the rights of the Board with respect to any other entity, nor the rights of any other entity with respect to any action by the Board, except as provided in paragraph 46 hereto.
43. Nothing in this Consent Order may be the subject of any appeal or other civil or administrative action brought by Respondent, although the Board may take such action as may be necessary to enforce the terms of this Consent Order and Respondent may respond to and/or defend against any such action.

44. 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 upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$6,600.00), together with pre-judgment interest from the date of the Board 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.

45. This matter shall be closed and Complaint C2007-16 shall be dismissed upon execution of this Consent Order by both parties, and the full payment of the civil penalty and administrative costs agreed to herein,.

46. Upon execution of this Consent Order and full payment of the civil penalty and administrative costs agreed to herein, as to all matters which come under the jurisdiction of this Board, the Board agrees to release and discharge Respondent, the Respondent in Complaint C2007-16, and BPS from any disciplinary action initiated by the Board based on any act or omission occurring on or before the date of execution of this Consent Order, which was made known to the Board by Respondent, the Respondent in Complaint C2007-16, BPS and/or an agent or counsel of any of these during the course of these disciplinary proceedings or the proceedings in Complaint C2007-16.

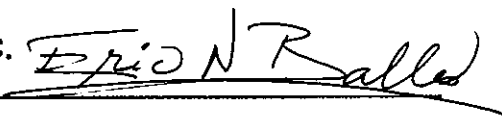
47. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers and does not

evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

**WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS**

By 
LEONARD J. TIMMS, P.E.
Board President

Date: July 22, 2008

RILEY POWER INC.
By 
ERIC N. BALLEs,
Sr. Vice President - Technology

Date: 17 July 2008