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VIA ELECTRONIC MAIL DELIVERY

Vermillion County Area Plan Commission
Attn: Penney Carpenter, Executive Director
Vermillion County Courthouse
255 S. Main Street, Room 205
Newport, IN 47966

Dear Members of the Commission,

This letter accompanies the revised commitments offered by River's Edge Generating, LLC, the developer of a proposed natural gas power plant (the "Project") in Vermillion County. The Project seeks to rezone 424 acres from General Agriculture (A1) to High Impact (HI). This letter summarizes the commitments requested by the Vermillion County Area Plan Commission staff ("Staff"), explains the Project's responses, and identifies the reasons for any requested commitments not being included in the proposed Commitments instrument enclosed with this letter. Some responses reflect legal advice we have provided to the Project.

I. Planning and Intergovernmental Agreements

A. Comprehensive Plan Updates

Staff has requested a commitment to fund an update to the Comprehensive Plan. The Project has not received notice or any indication from the Board of Commissioners that such an update will be approved or funded. The proposed Commitments instrument does not include mention of comprehensive plan update funds.

The Project has made known its desire to enter into an Economic Development Agreement ("EDA") with the Board of Commissioners of Vermillion County in connection with a Tax Increment Financing ("TIF") arrangement. A TIF would capture tax increment revenues for investment in the County to the benefit of the Project and the County at large. If the Board of Commissioners of Vermillion County desires for the Project to dedicate payments to a designated fund for an update to the Vermillion County Comprehensive Plan, then the Project can discuss such use of funds with the Board of Commissioners when economic development discussions commence.

With respect to Edgar County, Illinois, we have advised the Project not to directly pay funds for a comprehensive plan update for jurisdictional reasons which are explained in the following section. However, jurisdictional issues aside, it bears noting that Edgar County, IL does not maintain a comprehensive plan nor a comprehensive or unified zoning ordinance. Rather, the

Edgar County Board adopts relevant standalone ordinances to govern land use as the Board deems fit, such as with the solar ordinance adopted in June 2025.

B. Illinois Jurisdiction

Staff has requested that the Project make a commitment to fund an update of the Edgar County, IL comprehensive plan and provide economic development agreement payments or other compensation to Edgar County, IL. The Project has no objections to Vermillion County entering into a revenue-sharing agreement with Edgar County, IL. Nor does the Project have any objection to the Edgar County, IL government spending any funds received from the Vermillion County, IN government to develop a comprehensive plan, or use funds in any other manner approved by the Edgar County Board. However, we have advised the Project not to enter into an independent economic development agreement with Edgar County, IL because doing so will create jurisdiction[1] within the State of Illinois for the Project where none will otherwise exist. No portion of the Project lies in the State of Illinois, thus there is no reason for the Project to enter into a contract that will need to adhere to the laws of the State of Illinois, be adjudicated in the courts of the State of Illinois, and possibly create tax liability within the State of Illinois.

Again, because Vermillion County itself is a unit of government and immune from some or all of the aforementioned jurisdictional considerations, the Project has no objections to Vermillion County negotiating a benefits-sharing agreement with other government units, including those in other states.

II. Environmental Participation and Reporting

A. IDEM Standing

Staff has requested that the Project disclose Indiana Department of Environmental Management ("IDEM") filings and give the County standing to comment. The Project's proposed commitments do include a commitment to provide copies of IDEM applications to the County, but we have advised the Project that it does not have the ability to grant the County standing with IDEM – nor does any other private company or resident.

IDEM has authority pursuant to Ind. Code § 13-14-2-3(2) to "*(2) Conduct, convoke, attend, or participate in official or unofficial conferences or hearings within or outside Indiana concerning any matter within the scope of the power and duties of the board or the department.*"

[1] Jurisdiction is defined in Black's Law Dictionary as "1. A government's general power to exercise authority over all persons and things within its territory; esp., a state's power to create interests that will be recognized under common-law principles as valid in other states; 2. A court's power to decide a case or issue a decree; 3. A geographic area within which political or judicial authority may be exercised; 4. A political or judicial subdivision within such an area." JURISDICTION, Black's Law Dictionary (12th ed. 2024).

While state law grants broad and far-reaching power for IDEM to intervene and participate in environmental matters, it does not create a similar right for local governments to exercise the same power with respect to IDEM permitting. In fact, the Home Rule Act expressly withholds such power in Ind. Code § 36-1-3-8(7), which states: "*Sec. 8. (a) Subject to subsection (b), a unit does not have the following:…(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.*"

That said, Vermillion County is presumably able to file public comment with the agency on any filings for which public comment is accepted.

B. EPA Standing

As with granting the County standing with respect to IDEM or other State permitting, we have advised the Project that it does not have the ability to grant the County standing with the Environmental Protection Agency ("EPA") or any other federal agency – nor does any other private company or resident have such an ability.

Again, Vermillion County is presumably able to file public comment with the agency on any filings for which public comment is accepted.

C. Greenhouse Gas Emission and Capture Reporting

Staff has requested that the Project make a commitment to provide greenhouse gas emission and capture reports also filed with the EPA. Emissions data is public record and the County may obtain the Project's emissions data at any time it wishes from the EPA – as may any resident of Vermillion County. Reports are available at https://campd.epa.gov/. With respect to capture reports, the Project will not be a greenhouse gas capture facility and will have no such reporting requirements with the EPA. There may be other types of natural gas facilities in the United States who do make such filings, but this Project will not engage in capture activity nor have related capture reporting obligations.

III. Financial Terms and Enforcement

A. Payment in lieu of Taxes ("PILOT") and Tax Increment Financing

Staff has requested that the Project commit to making PILOT payments, with a minimum amount enumerated, in the event that the State's depreciation floor for energy assets (*i.e.*, utility distributable property) is set lower than thirty percent (30%) of the depreciable cost of such property. At present, under Indiana law, the Project Project's utility distributable property would be subject to the 30% depreciation floor. The 30% depreciation floor for personal property belonging to a light, heat, or power company was restored by House Enrolled Act 1406 (HEA 1406)(2026), after being temporarily lifted following the promulgation of Senate Enrolled Act 1 (SEA 1)(2025).

Staff also requested that the Project commit to not asking for or receiving an amount greater than twenty percent (20%) of any TIF revenue generated in a given year, assuming a TIF district is later established around the Project area. Ind. Code § 36-7-14, -14.5, and -25 govern the creation and use of TIF district establishment and fund utilization. At present, there is not a TIF in place for the Project, but as noted above, the Project intends to pursue TIF-related discussions with the Board of Commissioners in the future.

We have advised the Project that decisions regarding a depreciation floor safeguard and TIF revenue allocation are issues, similar to comprehensive plan funding, which belong to the authority of the Board of Commissioners and which are more appropriately addressed during economic development discussions following a rezone approval.

B. Commitments Violations

Staff has requested that the Commitments instrument include enforcement consequences. The Commitments document states that, "*These Commitments may be enforced, jointly or severally, by the Board of Commissioners of Vermillion County, Indiana, the Plan Commission of Vermillion County, Indiana, or the Board of Zoning Appeals of Vermillion County, Indiana.*" Even if the Commitments did not include clear enforcement language, Article 10 of the Vermillion County UDO authorizes the County to undertake enforcement actions for zoning violations and states: "*The following options, as described in subsequent sections, may be used to enforce the Unified Development Ordinance: Request to stork work; Stop work order; Enforcement as a common nuisance; Request to remedy; Bring action to local court to invoke any legal, equitable, or special remedy;* ***Bring action to local court to enforce a condition, covenant, or commitment****; Bring action to local court to request a prohibitory or permanent injunction to restrain; Bring action to local court to request a mandatory injunction to remove a structure; Impose a fine for violations; Bring action to a local court to invoke a fine for violations; or Any remedy or actions set forth in Indiana Code, common law, or other applicable State regulations.*" Vermillion County is clearly not without strong enforcement powers.

IV. Facility Design, Water Use, and Permitting

A. Facility Cooling Design

Staff has requested that the Project use a cooling system which will minimize water consumption. With their comments, Staff made reference to a hybrid air-cooled condenser used with wet cooling towers and indicated such a technology is in use at Tenaska's Frontier Generating Station in Grimes County, TX. For absolute clarity, the Texas facility does not employ a hybrid system; rather, it is cooled with wet evaporative cooling tower technology similar to other assets in Tenaska's fleet.

The Project is reviewing the application of air cooling technology. This technology would materially increase project capital costs and reduce plant efficiency, which will impact the

financial viability and competitiveness of the Project, thus the Project is unable to make a technology-specific commitment as part of its rezoning request.

B. Water Usage

Staff has requested that the Project disclose information regarding the Project's water consumption. We have advised the Project that such a commitment is unnecessary because Significant Water Withdrawal Facilities are registered with the State of Indiana and such facilities' water consumption reports are public records available online. The Department of Natural Resources ("DNR") publicly available information includes both reports and an interactive map. The interactive map available on the DNR website shows the approximate locations of the thirty (30) Significant Water Withdrawal Facilities in Vermillion County presently operating. The map is available with a legend that identifies which uses are energy production, industry irrigation, public supply, rural use, and miscellaneous. The primary Significant Withdrawal uses in Vermillion County at present appear to be public supply, irrigation, energy production, and industry. The downloadable facility report identifies fifty-five (55) entries for Vermillion County, though some are multiple wells for a single facility user or single wells drawing from multiple sources.

Additionally, Staff has requested that the Project commit to remedying damage to any private well within proximity that goes dry due to the Project's water usage, but this protection already exists in state law. Ind. Code § 14-25-4-8 authorizes the owner of a water well that no longer furnishes its normal supply to request an immediate DNR investigation into whether a significant groundwater withdrawal facility is responsible for the impairment. DNR must initiate an investigation within twenty-four (24) hours after receiving written complaint from a nonsignificant water withdrawal facility or within three (3) business days after receiving written complaint from the significant groundwater withdrawal facility. If DNR concludes that operation of the Project's groundwater withdrawal facility has caused the loss of normal water supply, DNR may restrict the quantity of ground water that may be extracted and order corrective measures to restore water availability to the affected user. Such measures may include temporary or permanent replacement water supplies, restoration or replacement of the affected well, or other remedies deemed appropriate by DNR. In addition, where warranted to protect existing water users, DNR has authority to require modification of Project operations, including restricting or curtailing groundwater withdrawals from the Project's wells. Additionally, Ind. Code § 14-25-4-17 requires the owner of a significant ground water withdrawal facility to compensate other well owners for "failure or substantial impairment" caused by the significant ground water withdrawal facility's withdrawal activities.

As noted above in Section II(A), the State's authority to regulate, investigate, and enforce these statutes preempts local authority to do the same, as pursuant to Ind. Code § 36-1-3-8(7): "*Sec. 8. (a) Subject to subsection (b), a unit does not have the following:…(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.*"

C. Water Use Curtailment

Staff has requested that the Project participate in drought curtailment. We have advised the Project that such a commitment is unnecessary because the Project is subject to the curtailment powers of the State of Indiana. Ind. Code § 14-25-4 and -5 authorize DNR to exercise curtailment orders in the event of a groundwater or surface water shortage. Additionally, Indiana's Water Shortage Plan allows the Governor to declare an emergency pursuant to Ind. Code § 10-14-3 and invoke emergency orders, rules, and regulations. During such an emergency and pursuant to the Water Shortage Plan, the DNR and IDHS may consult with major electric utilities to manage electricity demand, associated water requirements, and conservation through actions such as shifting power generation outside the affected area, increasing generation at plants with lower consumptive water use, and adjusting production and maintenance schedules to reduce water use. Furthermore, the Governor is empowered under such an emergency declaration to mandate water use restrictions, and the Project must comply with any such mandate.

D. Water Source

Staff has requested that the Project commit to its intended water source and provide information regarding water treatment. Tenaska's preferred water source for the Project is the Wabash River and Tributaries Outwash Aquifer System, which can provide a reliable long-term water source, and it is currently in talks with the Vermillion Rise Board to determine if the Project can obtain water from the Rise well system, which draws from the aforementioned Aquifer System. As such, Tenaska has made a commitment to only consider process water supply from the aforementioned source or the Wabash River (*see Commitment 10*). However, prior to selecting a source, Tenaska must conduct hydrogeologic investigation, including well installation and drawdown/pumping testing, to demonstrate that the supply can reliably support the Project without adversely affecting other water users and in compliance with all applicable regulatory and permitting requirements. This study is also incorporated in Commitment 10. Such studies will take several months and require an investment of several hundred thousand dollars to complete – an expense which is unnecessary if the requested rezone is ultimately rejected by Vermillion County. Additionally, and as discussed in the initial public hearing regarding the Project's rezoning request, Tenaska continues to research the use of surface water from the Wabash River and is evaluating its viability as an alternative supply if water from the Aquifer System is not possible. If a Wabash River surface water intake structure is pursued, it would require federal review and approval, including coordination with the U.S. Army Corps of Engineers, and evaluation of potential effects on the navigability and federally-managed interests of the Wabash River.

Because the water source remains undetermined and subject to further research and potential federal permitting, the Project is unable to make a specific water source commitment as part of its rezoning request.

E. Air and Water Permitting Compliance

Staff has requested that the Project commit to being in full compliance with air and water discharges within six (6) months after the Certificate of Occupancy has been issued and/or after

electricity is flowing to the grid. We have advised the Project that it is required to be in compliance with all federal permitting laws, regulations, and permit-specific guidance at all times or will otherwise be subject to penalties and enforcement actions under federal law. Just as Staff advised at the first public hearing for this rezoning request that it is unnecessary for the Project to commit to following the local ordinances of Vermillion County, it is unnecessary for the Project to commit to following the environmental protection laws of the United States government – an entity with substantial penalty and enforcement mechanisms to deal with compliance failures.

V. Community Commitments, Compliance History, and Zoning

A. Emergency Response Funding

Staff has requested that the Project commit to additional emergency response funding. The Project has already committed to an annual donation of $200,000.00 to the Helt Township Fire Department (*see Commitment 17*).

If the Board of Commissioners wish to negotiate for dedicated funds to be distributed to other emergency services agencies within the County, such a request can be discussed as part of the economic development negotiations.

B. Good Neighbor Program

Staff has requested that the Project commit to a Good Neighbor program which will offer compensation to neighboring property owners and include purchase offers above market rates to homeowners who no longer wish to live in the area. We have advised the Project that such a commitment in the Commitments instrument is unnecessary for the following reasons: 1) the program is already being developed with several offers in discussion, 2) agreements between economic development projects and neighboring landowners have historically been confidential in nature, and 3) neither the Board of Commissioners nor the Area Plan Commission has constitutional authority to enforce private agreements between the Project and neighboring landowners, as such authority rests with the Indiana courts under the separation of powers doctrine which undergirds American constitutional law.

C. Tenaska's Regulatory Performance

Staff has requested that the Project provide responsive information regarding allegations made in public testimony at a previously held Board of Commissioner's meeting regarding Tenaska's regulatory performance in other jurisdictions, and specifically the public comments alleging Tenaska Westmoreland Generating Station ("TWGS") compliance status for multiple quarters. The TWGS facility was not out of continuous compliance for twelve (12) consecutive quarters, as represented by the commenters or the eNGO blog post referenced in their remarks. The violations referred to by the commenters were addressed and closed by Pennsylvania Department of Energy ("PA DEP") staff, however those same violations were not closed out by the EPA in its public facing databases. The Integrated Compliance Information System for Air

(ICIS-Air) is a computer-based repository that contains both emissions and detailed compliance, permit, and enforcement records for stationary sources of air pollution regulated under the Clean Air Act by the EPA and/or state and local air regulatory agencies. Enforcement and Compliance History Online (ECHO) is EPA's public-facing platform that presents compliance and enforcement information for states, regulated entities, and the public. It integrates data from multiple EPA systems, including ICIS-Air, to provide searchable, downloadable, and dashboard views of environmental compliance. ICIS-Air is the system that stores and manages the compliance data; ECHO is the interface that makes the data accessible to the public and other stakeholders. Because ICIS-Air was not updated to reflect resolution of the violations at TWGS, the compliance data available to public was not accurate. Upon the PA DEP's realization of this issue, steps were taken to have ICIS-Air updated to reflect that the violations at TWGS have been addressed.

D. Zoning District Reversion

Staff has requested the Project commit to a shorter period of time than ten (10) years during which the Project will not contest an action by Vermillion County APC to initiate a rezone ordinance to revert the Real Estate's zoning district to the General Agriculture (A1) Zoning District. We have advised the Project not to commit to a short contestation period because Ind. Code § 36-7-4-1109 allows for land use vested rights to run for a maximum of ten (10) years during the development of a new land use.

Conclusion

This cover letter and accompanying Commitments instrument represent the final offer of commitments which the Project will be making in accordance with its right to do so under Ind. Code § 36-7-4-1015. The Project respectfully requests that the Area Plan Commission render a favorable recommendation to the Board of Commissioners based upon the evidence presented in support of the rezoning petition and the commitments as submitted.

Sincerely,

Rachel L Conner

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With copies to:

Vermillion County Board of Commissioners
Vermillion RISE Mega Park / Newport Chemical Depot Reuse Authority Board of Directors