

MAR 13 2013

**BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS****WV PE BOARD****IN RE: CHRISTOPHER MIELKE, P.E.
SALIENT POWER ENGINEERING LLC****C2013-07****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 resolve a Complaint seeking disciplinary action against Christopher Mielke (hereinafter "Respondent Mielke") and Salient Power Engineering LLC (hereinafter "Respondent Firm") (together, "Respondents"). 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 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. On or about October 24, 2012, Respondent Mielke filed a comity application for licensure in West Virginia in which he disclosed that Respondent Firm had contracted for engineering services in West Virginia earlier that month.
3. The engineering work in West Virginia is evidenced by a Request for Services (RFS) dated November 20, 2012, which was being negotiated on or about the same time the Respondent Firm entered into a Master Services Agreement (MSA) with the unnamed client, which MSA was dated October 1, 2012, and was not specific to West Virginia.
4. Both the MSA and the RFS were signed by Andrew R. Leoni as President of Respondent Firm.
5. Respondent Mielke applied for licensure on or about October 29, 2012, was issued Professional Engineering License #19956 on November 12, 2012, notwithstanding the

circumstances which gave rise to this Complaint, and activated his licensure (completed the licensure process) on December 3, 2012.

6. Respondent Firm is organized under the laws of the State of Colorado with its principal place of business in Arvada, Colorado.
7. On December 7, 2012, after Respondent Mielke's licensure, Respondent Firm applied for and was issued Certificate of Authorization #C04577 for the period of December 11, 2012 – June 30, 2013, naming Respondent Mielke as its Engineer in Responsible Charge.
8. The Board initiated complaint number C2013-07 at its regular meeting on January 31, 2013, which was served on February 11, 2013.
9. Respondents, by counsel, promptly notified the Board and initiated settlement negotiations rather than filing a response to the Complaint.
10. Respondent Mielke admits that he was involved through the Respondent Firm in the preparation of the Request for Services prior to his completion of the West Virginia licensing process and therefore was offering to practice engineering in West Virginia without a license, in violation of West Virginia engineering law.
11. In mitigation of such unlicensed offer to practice, Respondent Mielke states that he started working on his application for licensure in West Virginia in September of 2012, about the same time negotiations in connection with the MSA and RFS commenced.
12. Respondent Firm admits that the RFS was entered into by Respondent Firm in violation of West Virginia engineering law inasmuch as it was specific to West Virginia and was negotiated and entered into at a time when Respondent Firm did not have nor qualify for a Certification of Authorization because it had no engineer licensed in West Virginia who could act as the Respondent Firm's engineer in responsible charge for purposes of Respondent Firm's required certificate of authorization (COA).
13. In mitigation of their offer to practice engineering in West Virginia, Respondents represent that no designs were stamped or delivered and that the RFS was subsequently canceled.

14. The Board has taken into account the following factors in reaching this settlement:
Respondent Mielke's prompt application to become licensed in West Virginia after offering to practice engineering in this jurisdiction, Respondents' candor with the Board, Respondents' prompt response to and resolution of this Complaint, and the nature of the violation, which did not pose any harm to the public.
15. The Board has incurred more than Five Hundred Dollars in the investigation, initiation and resolution of this Complaint and, in the exercise of its discretion, assesses administrative costs as part of the settlement of this matter.

CONCLUSIONS OF LAW

16. 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.
17. Andrew Leoni, as the President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
18. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-1 et seq., in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.
19. 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. W. Va. Code § 30-13-17.
20. 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." W. Va. Code § 30-13-21(b); see also W. Va. Code § 30-13-21(d)(4).

21. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 et seq., without a license is an action that may subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. § 7-1-15.1.
22. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 et seq., without a valid Certificate of Authorization is an action that may subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5000.00). W. Va. Code R. § 7-1-5.1.
23. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
24. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code § 30-13-21(d) (4) and W. Va. Code R § 7-1-14.4.

CONSENT OF RESPONDENTS

Christopher Mielke, individually, and Andrew Leoni, as President of Salient Power Engineering LLC, by affixing their signatures hereon, agree to the following:

25. Respondents are represented by counsel and are aware of their right to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
26. Respondent Mielke admits that he had not completed the licensure process at the time he was involved in the Respondent Firm's offer of engineering services in the State of West Virginia, in violation of West Virginia engineering law.

27. Respondent Firm admits that it did not have a Certificate of Authority to offer engineering services in the State of West Virginia at the time of the RFS, in violation of West Virginia engineering law.
28. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
29. Respondents acknowledge 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 C2013-07. This paragraph is binding Respondents even in the event that the Board does not approve this Consent Order.
30. Respondents acknowledge 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, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents' activities in West Virginia in consideration of this Consent Order.
31. Should the Board not approve this Consent Order, Respondents waive any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondents even if the Board does not approve this Consent Order.
32. Respondents acknowledge that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
33. Respondents understand that 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 actions except an action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the

circumstances giving rise to same with regard to any future disciplinary matter involving Respondents which may be before this Board.

34. Respondents understand that the complaint and this Consent Order are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
35. Respondents agree 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), but this matter shall only be deemed disciplinary action against Respondent Firm.
36. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.
37. Respondents acknowledge that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondents by the Board, 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 settlement of Complaint number C2013-07 pursuant to West Virginia Code § 30-13-22(b).

2. The Board **ORDERS** that this matter as to Respondent Mielke be dismissed based on the finding that the application process for licensure commenced at approximately the same time as the offer of engineering services, evidencing a good-faith effort to comply with West Virginia engineering law, despite Respondent Mielke's admission that he had not completed the application process prior to his involvement in Respondent Firm's offer to practice engineering in West Virginia.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) in settlement of Complaint #C2013-07 for offering to practice engineering in West Virginia without a certificate of authorization.
4. The Board **ORDERS** Respondent Firm to pay administrative costs in the discounted amount of One Hundred Fifty Dollars (\$150.00).
5. The civil penalty and administrative costs imposed herein totaling Four Hundred Dollars (\$400.00) must be paid within thirty (30) days of the date of entry set forth below, such amount to be made payable to the W. Va. P.E. Board.
6. The Two Hundred Fifty Dollars (\$250.00) in civil penalty shall be transferred to the general fund of the State of West Virginia upon receipt.
7. 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), but this matter shall only be deemed disciplinary action against Respondent Firm.
8. Any violation of the terms of this Consent Order by Respondent Firm shall be immediate cause for further disciplinary action by the Board.
9. If the civil penalty and administrative costs imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a

Judgment Order for the total amount of payment agreed to herein (\$400.00), 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.

10. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty and administrative costs agreed to herein.
11. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondents which may come before this Board.
12. This Consent Order relates solely to matters set forth in West Virginia engineering law 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.

AGREED TO BY:


CHRISTOPHER MIELKE, P.E.

03/11/13
DATE


ANDREW LEONI, President
SALIENT POWER ENGINEERING LLC.

3/11/13
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 19 day of March, 2013.

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

By: _____

**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**

PREPARED BY:

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