

COMMONWEALTH OF MASSACHUSETTS  
Energy Facilities Siting Board

---

)

Request of Infrastructure Development	)
Corporation for an Advisory Ruling pursuant	)
to 980 C.M.R. § 3.02(7), Regarding the	)
Noticing of Alternative Sites for Proposed	)
Generating Facilities	)

---

FINAL ADVISORY RULING

I. REQUEST FOR ADVISORY RULING

By letter dated August 15, 1997 ("Request"), John A. DeTore petitioned the Energy Facilities Siting Board ("Siting Board") on behalf of Infrastructure Development Corporation ("IDC") for an Advisory Ruling pursuant to the provisions of 980 C.M.R. § 3.02(7), with respect to the applicability of the Siting Board's current practice of requiring proponents of proposed energy facilities to publish notice of both a preferred and an alternative route or site for such facilities. IDC intends to file with the Siting Board an application to construct a generating facility at a site in Bellingham, Massachusetts.

In the Request, Mr. DeTore argues that neither the Siting Board's statute (G.L. c. 164, § 69J) nor its regulations (980 C.M.R. § 7.04(e)) require notice of both a primary and an alternative site or route (Request at 2-3). He also asserts that the Siting Board's predecessor agency, the Energy Facilities Siting Council ("Siting Council"), previously has waived the practice of requiring two noticed alternative sites with some measure of geographical diversity for certain cogeneration projects, where the petitioner could demonstrate that practical facility site alternatives did not exist (*id.* at 4, *citing*, Altresco Pittsfield, Inc., 17 DOMSC 351, 394 (1988)).

Mr. DeTore also asserts that there is no policy rationale for requiring IDC to notice two sites, and that there are significant advantages associated with noticing only the preferred site (*id.* at 5). In particular, he argues that noticing only a single site for the IDC facility would eliminate the public confusion created by noticing two sites, would avoid disputes regarding the alternative site, and would allow the Siting Board to streamline its review of the proposed facility by focussing on the preferred site (*id.*). He states that IDC is confident that it can demonstrate that its preferred site is superior to the alternatives based on IDC's site selection process, without noticing an alternative site (*id.* at 4).

## II. ANALYSIS

IDC's Request raises two separate but related issues: (1) whether the formal noticing of two sites (that is, the description of two sites in the notice of adjudication published at the commencement of the Siting Board's review) for a proposed generating facility such as IDC is required as a matter of law or Siting Board regulation, or is necessary as a matter of policy; and (2) whether an analysis of two or more potential sites for IDC's proposed generating facility is necessary to demonstrate that the proposed facility meets the requirements for approval set forth in G.L. c. 164, § 69J.

With regard to the first issue, the Siting Board can find nothing in its statute or its regulations that requires the noticing of more than one site for a generating facility. In fact, the Siting Board has an established practice of requiring only a single noticed site for proposed cogeneration facilities if the proponent: (1) has a steam sales agreement with existing steam purchaser(s) sufficient to qualify it for qualifying facility ("QF") status; and (2) has a proposed site fully within the property boundaries of the principal steam host. MASSPOWER, Inc., 20 DOMSC 301, 382 (1990); see also Cabot Power Corporation, 2 DOMSB 241 (1994), Altresco Lynn, Inc., 2 DOMSB 1 (1993), Eastern Energy Corporation, 22 DOMSC 188 (1991), West Lynn Cogeneration, 22 DOMSC 1 (1991). The Siting Board therefore concludes that the formal noticing of two alternative sites for a proposed generating facility is not required as a matter of law or Siting Board regulation.

The Siting Board notes that it can only approve sites or routes that have been formally noticed. Consequently, the Siting Board typically notices multiple sites or routes for a proposed facility so that it may approve the proposed facility on an alternative site or route if the preferred site or route fails to meet the Siting Board's standards for approval. However, as a practical matter, the developer of an independent power project ("IPP") may have no intention of building the proposed facility at its noticed alternative site if the primary site is rejected. In such cases, the noticing of an alternative site may serve little practical purpose. Moreover, it may create unnecessary concern for people living near the noticed alternative site, who are led to believe that the developer may have plans to construct a power plant in their neighborhood. The Siting Board therefore concludes that the formal noticing of two alternative sites for a proposed generating facility is not necessary as a matter of policy, unless a developer needs or wishes to submit two or more potential sites for Siting Board approval.

To address the second issue, the Siting Board must look to the purpose of its review. The Siting Board has a statutory mandate to implement the energy policies in G.L. c. 164, §§ 69H-69Q to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, §§ 69H and 69J. Further, G.L. c. 164, § 69J requires the Siting Board to review alternatives to planned projects, including "other site locations." In implementing this statutory mandate and requirement, the Siting Board requires a petitioner to show that its proposed facilities' siting plans are superior to alternatives, and that its proposed facilities are sited at locations that minimize costs and

environmental impacts while ensuring supply reliability. Berkshire Power Development, Inc., 4 DOMSB 221, 347 (1996).

Typically, the Siting Board has required petitioners to make this showing in two ways, both of which involve the analysis of a noticed alternative site or route. First, the petitioner must demonstrate that it has examined a reasonable range of practical facility siting alternatives by meeting a two-pronged test: it must establish that it (1) developed and applied a reasonable set of criteria for identifying and evaluating alternatives in a manner which ensures that it has not overlooked or eliminated any alternatives which are clearly superior to the proposal, and (2) identified at least two noticed sites or routes with some measure of geographic diversity. Id. at 347-348. Additionally, the petitioner must show that proposed facilities are sited at locations that minimize costs and environmental impacts by demonstrating that the proposed site for the facility is superior to the noticed alternative on the basis of balancing cost, environmental impact and reliability of supply. Id. at 358.

However, the Siting Board has long recognized that these showings can be made without reference to a noticed alternative site. In Altresco Pittsfield, the Siting Council stated that in cases involving proposed cogeneration facilities, "if the facility proponent can establish that a second practical facility site does not exist, the Siting Council does not require the identification of two geographically diverse sites". In MASSPOWER, the Siting Council clarified this exemption, stating that a noticed alternative site would not be required if a cogeneration proponent: (1) had a steam sales agreement with existing steam purchaser(s) sufficient to qualify it for QF status; and (2) had a proposed site fully within the property boundaries of the principal steam host. MASSPOWER, 20 DOMSC at 382. The Siting Council emphasized that, whether or not a noticed alternative site is required, it would review the petitioner's site selection process to ensure that clearly superior sites have not been overlooked or eliminated.<sup>1</sup> Id. The Siting Council also stated that even where there are no practical alternatives to a proposed site, the Siting Council must nevertheless determine whether the proposed facilities are consistent with ensuring a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Id. at 384. The Siting Board expanded on this requirement in Altresco Lynn, stating that in cases where noticed alternative(s) are not required, the facility proponent must still demonstrate that the proposed site for the facility will minimize environmental impacts, and that an appropriate balance will be achieved among conflicting environmental concerns as well as among environmental impacts, cost and reliability. Altresco Lynn, 2 DOMSB at 176.

IDC's Request essentially asks the Siting Board to expand its current exemption from the noticed alternative site requirement to include a generating facility that is an IPP rather than a cogenerator. The Siting Board notes that its modified review standards for cogenerators are

---

<sup>1</sup> The scope of the site selection review included the petitioner's selection of a steam host, as well as the selection of a site in the vicinity of the chosen steam host.

based on the assumption that cogeneration projects closely tied to an existing steam host do not have practical facility siting options, and therefore do not have the ability to minimize their cost and environmental impacts through selection of the best possible site. IDC is in a qualitatively different position; because it is not proposing a cogeneration project, it may select from a broad range of potential sites with widely varying costs and environmental impacts. Thus, a more extensive analysis of siting alternatives may be required in order to demonstrate that IDC's siting plans are superior to alternatives, and that its proposed facility is sited at a location that minimizes cost and environmental impacts while ensuring supply reliability.

In particular, in the absence of a noticed alternative, the Siting Board's review of the site selection process would need to be expanded to include a qualitative comparison of the cost, reliability, and environmental impacts of the small number of best-ranked sites that remain in the final stage of IDC's site selection process. Such a comparison would be considerably less extensive than the current review of the noticed alternative site, since there would be no need to develop a record to support the approval of the proposed facility at the alternative site. However, it would need to be detailed enough to make clear the cost, environmental, and reliability advantages and disadvantages of each site that remained in the final stage of the site selection process, and to provide a basis for an evaluation of whether IDC, through site selection, design, and mitigation, has minimized the cost and environmental impacts of its proposed project.

### III. ADVISORY RULING

Accordingly, after due consideration of the stated facts and the foregoing analysis, the Siting Board hereby rules as follows:

- (1) The formal noticing of two sites for a proposed generating facility such as IDC is not required as a matter of law or Siting Board regulation, and is not necessary as a matter of policy. Consequently, the Siting Board will permit IDC to notice only its preferred site.
- (2) In order to demonstrate that its proposed facility meets the requirements for approval set forth in G.L. c. 164, § 69J, IDC must demonstrate that its proposed facilities' siting plans are superior to alternatives, and that its proposed facility is sited at a location that minimizes costs and environmental impacts while ensuring supply reliability. Specifically, IDC must make the following showings:
  - (a) that it has examined a reasonable range of practical facility siting alternatives by meeting a two-pronged test: it must establish that it (1) developed and applied a reasonable set of criteria for identifying and evaluating alternatives in a manner which ensures that it has not overlooked or eliminated any alternatives which are clearly superior to the proposal, and (2) identified at least two potential facility sites with some measure of geographic diversity;

- (b) that its proposed facility is sited, designed, and mitigated in a manner that will minimize cost and environmental impacts; and
  - (c) that an appropriate balance will be achieved among conflicting environmental concerns as well as among environmental impacts, cost and reliability.
- (3) In order to facilitate the Siting Board's review of the site selection process, IDC's filing should include a description of each site that remained in the final stage of IDC's site selection process. Such description should include sufficient information on environmental impacts and costs to compare the best-ranked alternative sites to the preferred site. The scope of the environmental and cost information to be provided may vary, depending on the merits of each site relative to the preferred site; however, the filing should include site specific information regarding at a minimum the most important physical, natural resource, community and land use characteristics and cost factors related to each site. Where a comparison involves conflicting advantages for two sites, the filing should include site-specific information about the advantages of each of the sites, not just the issues favoring the preferred site. Finally, the filing should indicate for each site which major disadvantages could be minimized through appropriate design and mitigation measures, and which are inherent to the site.

The Siting Board notes that, in choosing to notice a single preferred site, IDC accepts two sets of risk. First, since the Siting Board can approve only a noticed site, IDC risks having its project rejected entirely if it cannot demonstrate that its proposed project at the preferred site is consistent with the Siting Board's mandate to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Second, since IDC would be the first IPP to be reviewed without reference to a noticed alternative site, it faces the burden of meeting a standard of review that has not been tested on other similar projects. Should IDC wish to avoid these risks, it may choose to notice and analyze an alternative site.

Signed:

---

Diedre Shupp Matthews, Director

---

Robert P. Rasmussen, General Counsel

This ruling was approved by a majority vote of the Energy Facilities Siting Board at its September 16, 1997 meeting.