

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

In the Matter of the Petition of)	
ANP Blackstone Energy Company)	EFSB 97-2
for Approval to Construct)	
a Bulk Generating Facility and)	
Ancillary Facilities)	

In the Matter of the Petition of)	
ANP Blackstone Energy Company)	EFSB 98-2
and Boston Edison Company)	
for Approval to Construct)	
Two 1.1 Mile 345 kV Overhead)	
Transmission Lines and Ancillary)	
Facilities)	

FINAL DECISION
ON COMPLIANCE

M. Kathryn Sedor
Hearing Officer
May 17, 1999

APPEARANCES: Edward L. Selgrade, Esq.
Law Offices of Edward L. Selgrade, Esq.
200 Wheeler Road, 4th Floor
Burlington, Massachusetts 01803
FOR: ANP Blackstone Energy Company
Petitioner

Michael J. Connolly, Esq.
Hinckley, Allen & Snyder
28 State Street
Boston, Massachusetts 02109-1775
FOR: ANP Blackstone Energy Company
Petitioner

John M. Fulton, Esq.
Assistant General Counsel
Boston Edison Company
800 Boylston Street
Boston, Massachusetts 02199-8003
FOR: Boston Edison Company
Petitioner

John A. DeTore, Esq.
Rubin & Rudman
50 Rowes Wharf
Boston, Massachusetts 02110
FOR: IDC Bellingham
Interested Person

Josephine Beauchamp
7 Spruce Street
Blackstone, Massachusetts 01504
Interested Person

David S. Rosenzweig, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110
FOR: Cabot Power Corporation
Interested Person

Tamie Chassie
46 Mendon Street
Blackstone, Massachusetts 01504
Interested Person

Patricia LoTurco
93 Walnut Road
Wrentham, Massachusetts 02093
FOR: Wrentham Research Group
Interested Person

Marc A. Silver, Esq.
Sherburne, Powers, Holland & Knight
One Beacon Street
Boston, Massachusetts 02108
FOR: Ocean State Power
Interested Person

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	Page 1
A.	<u>Project Viability Conditions</u>	Page 1
B.	<u>Project Change Notification</u>	Page 2
II.	<u>PROJECT VIABILITY CONDITIONS</u>	Page 2
A.	<u>Standard of Review</u>	Page 2
B.	<u>Project Construction</u>	Page 2
1.	<u>The Company's Compliance Filings</u>	Page 3
C.	<u>Interconnection to the Regional Electric Transmission Grid</u>	Page 5
D.	<u>Findings on Viability</u>	Page 5
III.	<u>PROJECT CHANGE NOTIFICATION</u>	Page 5
IV.	<u>DECISION</u>	Page 6

The Energy Facilities Siting Board hereby APPROVES the Petition of ANP Blackstone Energy Company to construct a 580 megawatt generating facility and ancillary facilities in Blackstone and Mendon, Massachusetts.

I. INTRODUCTION

On January 14, 1999, the Energy Facilities Siting Board ("Siting Board") conditionally approved the Petition of ANP Blackstone Energy Company ("ANP" or "Company") to construct a 580 megawatt natural gas-fired, combined-cycle independent power plant on approximately 31 acres of a 157-acre parcel of land in the Town of Blackstone, Massachusetts, which would commence commercial operation in the year 2000 ("project"). ANP Blackstone Energy Company/Boston Edison Company, EFSB 97-2/98-2 (1999) ("ANP Blackstone Decision").¹

A. Project Viability Conditions

In the ANP Blackstone Decision, the Siting Board found that, upon compliance with two pre-construction conditions ("Conditions"), the Company's proposed project is likely to be viable. ANP Blackstone Decision at 240, Condition A. To establish viability, ANP was required to provide to the Siting Board, prior to the commencement of construction: (1) an executed engineering, procurement and construction contract ("EPC Contract") between ANP and ABB Power Generation, Inc. ("ABB"), or a comparable entity, containing provisions that would provide reasonable assurance that the project would perform as a low-cost, clean power producer ("Condition One"); and (2) an executed interconnection agreement between ANP and BECo providing the project with access to the regional transmission system ("Condition Two"). Id. at 80-81. The Siting Board stated that final approval of the proposed project would be dependent upon the Company's compliance with these pre-construction

¹ In the ANP Blackstone Decision, the Siting Board also approved the joint Petition of ANP and Boston Edison Company ("BECo") to construct two new 1.1 mile 345 kilovolt overhead transmission lines in the Towns of Blackstone and Mendon, Massachusetts.

conditions. Id. at 240.²

B. Project Change Notification

In addition to imposing viability-related Conditions, the Siting Board in the ANP Blackstone Decision also required the Company to notify the Siting Board of any changes to the project, other than minor variations, so that the Siting Board could decide whether to inquire further into any issue associated with a particular change. Id. at 242.

II. PROJECT VIABILITY CONDITIONS

A. Standard of Review

The Siting Board determines that a proposed non-utility generator is likely to be a viable source of energy if (1) the project is reasonably likely to be financed and constructed so that the project will actually go into service as planned, and (2) the project is likely to operate and be a reliable, least-cost source of energy over the planned life of the proposed project. ANP Blackstone Decision at 73; ANP Bellingham Energy Company, EFSB 97-1, at 66 (1998) ("ANP Bellingham Decision"); Berkshire Power Development, Inc., 4 DOMSB 221, 328-329 (1996) ("BPD Decision").

In order to meet the first test of viability, the proponent must establish (1) that the project is financially, and (2) that the project is likely to be constructed within applicable time frames and will be capable of meeting performance objectives. In order to meet the second test of viability, the proponent must establish (1) that the project is likely to be operated and maintained in a manner consistent with appropriate performance objectives, and (2) that the proponent's fuel acquisition strategy reasonably ensures low-cost, reliable energy resources over the planned life of the proposed project. ANP Blackstone Decision at 73; ANP Bellingham Decision, EFSB 97-1, at 66; BPD Decision, 4 DOMSB at 328-329.

B. Project Construction

² In addition to the viability-related Conditions, the Siting Board imposed five conditions pertaining to construction and operation of the project. See n. 6, below.

With respect to ANP's construction strategy, the Siting Board considered in the underlying proceeding whether the project is reasonably likely to be constructed and go into service as planned. ANP Blackstone Decision at 74. The Siting Board reviewed an outline of the then agreed-to provisions of the Company's proposed EPC Contract with ABB. Id. at 77-78; Exh. HO-RR-8.1(Confidential). The Siting Board found that, to demonstrate that the project was reasonably likely to be constructed and go into service as planned, ANP would need to submit an executed EPC Contract between ANP and ABB, or a comparable entity, containing provisions that would provide reasonable assurance that the project would perform as a low-cost, clean power producer. Id. at 81.

1. The Company's Compliance Filings

On April 16, 1999, ANP submitted its initial compliance filing relative to the two pre-construction Conditions.³

On May 5, 1999, ANP filed a supplement to its Initial Compliance Filing ("May 5 Filing"). The Company's May 5 Filing included a draft, unexecuted Equipment Supply Contract between ANP and ABB ("May 5 Equipment Supply Contract"), and a draft, unexecuted Construction Contract between ANP and ABB ("May 5 Construction Contract").⁴ As part of its May 5 filing, ANP represented to the Siting Board that on May 10, 1999, the Company would file a final, executed copy of the Equipment Supply Contract and of the Construction Contract, in substantially the same form as provided in the May 5 Filing (Exh. HO-V-44, at 1; Exh. HO-V-44.3 (Confidential) at 1).

³ The April 16 Filing consisted of the following documents, each of which shall be entered into the record of the underlying proceeding as an Exhibit: a seven-page letter, titled "Compliance Filing" (Exh. HO-V-43); a draft, unexecuted, EPC contract between ANP and ABB (Exh. HO-V-43.1); a final, executed, Interconnection Agreement Between ANP and BECo (Exh. HO-V-43.2); and a proposed DEP conditional air plan approval (Exh. HO-V-43.3).

⁴ The May 5 Filing consisted of the following documents, each of which will be entered into the record as an Exhibit: a two-page letter, titled "Compliance Filing" and Exhibit A thereto (Exh. HO-V-44); a draft, unexecuted, Equipment Supply Contract between ANP and ABB (Exh. HO-V-44.1); a draft, unexecuted, Construction Contract between ANP and ABB (Exh. HO-V-44.2); and a two-page letter, titled "Terms and Forms of Agreements" dated May 4, 1999, signed by ANP and ABB (Exh. HO-V-44.3).

On May 11, 1999, the Company filed a second supplement to its Initial Compliance Filing ("May 11 Filing"). The Company's May 11 Filing included an executed Equipment Supply Contract and an executed Construction Contract, both of which were signed by ANP and ABB on May 10, 1999 ("May 10 Equipment Supply Contract" and "May 10 Construction Contract"). As part of its May 11 Filing, ANP represented to the Siting Board that the May 10 Equipment Supply Contract and the May 10 Construction Contract were substantially the same in all material aspects as the Contracts provided in the May 5 filing (Exh. HO-V-45, at 1).⁵

A review of the May 10 Construction Contract shows that it contains the type of guarantee, incentive and penalty provisions which the Siting Board has recognized in previous decisions as ensuring timely and quality construction. See, Berkshire Power Decision, EFSB 96-4, at 336. For example, Section 1.1 of the May 10 Construction Contract (definition of "Anticipated Commercial Operation Date") and Exhibit G provide for a guaranteed construction duration (HO-V-45.2, at 1, Exh. G). Section 14 provides for comprehensive reliability, performance, and compliance testing requirements (id. at 29-33). Section 16 provides for liquidated damages for failure to achieve substantial completion of the project by the guaranteed completion date (id. at 38-42). Section 18 provides operational guarantees for heat rate, output, availability, and noise and air emissions levels (id. at 46-49). Sections 16.2, 16.3 and 16.4 provide for liquidated damages for failure to achieve operational guarantees (id. at 39-40). Sections 16.8 and 16.10 provide for an early completion bonus and bonuses for improved heat rate, output and availability (id. at 42). Section 19 provides warranties (id. at 49-53). Section 26 provides for insurance requirements (id. at 63-66).⁶

⁵ The Company's May 11, 1999 Filing consisted of the following documents, each of which will be entered into the record as an Exhibit: a two-page letter, titled "Filing of Executed EPC Contracts" (Exh. HO-V-45); the May 10 Equipment Supply Contract and Exhibits thereto (Exh. HO-V-45.1); the May 10 Construction Contract and Exhibits thereto (HO-V-45.2); and the "Technical Scope of Work", Volumes 1 and 2 (Exh. HO-V-45.3).

⁶ The Company requested confidential treatment for the draft EPC Contract (Exh. HO-V-43.1), for the May 5 Equipment Supply Contract (Exh. HO-V-44.1), the May 5 Construction Contract (Exh. HO-V-44.2), the May 4, 1999 "Terms and Forms of Agreement" letter (Exh. HO-V-44.3), the May 10 Equipment Supply Contract (Exh. HO-V-45.1), the May 10 Construction Contract (Exh. HO-V-45.2) and the two Volumes of the Technical Scope of Work (Exh.'s HO-V-45.3, 45.4, 45.5). With the exception of the

Based on its review of the May 10 Equipment Supply Contract and the May 10 Construction Contract, the Siting Board finds that the protections reflected in the guarantees, warranties, incentives and penalties in the Construction Contract, together with the Equipment Supply Contract, ensure that ANP's project is likely to be constructed on schedule and to perform as expected.

C. Interconnection to the Regional Electric Transmission Grid

The Siting Board found in the underlying proceeding that to establish that the proposed project is likely to be capable of being dispatched as expected, ANP must submit an executed interconnection agreement between ANP and BECo. ANP Blackstone Decision at 80.

ANP's Initial Filing included a final Interconnection Agreement executed by the Company and BECo on March 19, 1999 (HO-V-43.2).

Pursuant to Sections 1 and 2 of the Interconnection Agreement, BECo has agreed to design, construct, own, operate and maintain the transmission lines from the proposed project to its existing Line 336, as well as other interconnection reinforcements required by NEPOOL for electrical integration of the proposed project with the NEPOOL transmission grid (Exh. HO-V-43.2, at 1-4).

Based on the Interconnection Agreement, the Siting Board finds that ANP's proposed project is ensured access to the regional transmission system.

D. Findings on Viability

The Siting Board finds that ANP has complied with Condition Two by providing the Board with a copy of the Interconnection Agreement between ANP and BECo, dated March 19, 1999.

The Siting Board finds that ANP has complied with Condition One by providing the Siting Board with copies of the May 10 Equipment Supply Contract and the May 10 Construction Contract.

III. PROJECT CHANGE NOTIFICATION

The Siting Board in the underlying proceeding required ANP to provide notice of any changes

"Terms and Forms of Agreement" letter, the Company's request for confidential treatment is granted.

other than minor variations to the proposed project, so that the Board could determine whether to inquire further into such issues. ANP Blackstone Decision at 242.

In its Initial Compliance Filing, ANP provided the Siting Board with information concerning an improvement in expected air emissions, associated with the proposed conditional air plan approval for the proposed project issued by the Department of Environmental Protection ("DEP") on or about April 15, 1999 (HO-V-43, 43.2).

Pursuant to the proposed DEP conditional air plan approval, the project will reduce its emissions of NO_x and ammonia (so-call "ammonia slip") to 2 ppmvd @ 15 percent O₂ (Exh. HO-V-43.3, Table 1, at 7 (2 ppmvd for NO_x) and Table 2, at 8 (2 ppmvd for ammonia); compare, Exh. HO-EA-4.1, at 4-6 (3.5 ppmvd for NO_x) and at 4-11 (10 ppmvd for ammonia).

In the underlying proceeding, the Siting Board found that ANP had demonstrated that emissions of criteria and other pollutants, including NO_x and ammonia, associated with the proposed project would be consistent with minimizing impacts on the existing air quality. ANP Blackstone Decision at 111. The reported project change, if implemented, will result in lower levels of NO_x and ammonia emissions from the generating facility than the levels reviewed and approved by the Siting Board. Accordingly, because the reported change will reduce the environmental impacts of the Company's project, the Siting Board finds that this change does not require further inquiry.

IV. DECISION

The Siting Board finds that ANP has complied with Conditions One and Two pertaining to project viability, and therefore has satisfied Condition A of the ANP Blackstone Decision.⁷

In addition, consistent with the Siting Board's directive to ANP to inform the Siting Board of any changes to the Company's proposed project, other than minor variations, ANP has informed the Siting Board of one such change and the Siting Board has found that this

⁷ The Siting Board notes that ANP remains obligated to comply with Conditions B through F of the ANP Blackstone Decision during construction and operation of the project. ANP Blackstone Decision at 240-242. The Siting Board also notes that ANP has provided the Board with documentation of its compliance with the visual impact mitigation program notice requirement of Condition D (HO-V-44, at 1).

change requires no further inquiry.

Accordingly, the Siting Board APPROVES the Petition of ANP Blackstone Energy Company to construct a 580 megawatt electric generating facility and ancillary facilities in Blackstone, Massachusetts.

M. Kathryn Sedor
Hearing Officer

Dated this 17th day of May, 1999

APPROVED by the Energy Facilities Siting Board at its meeting of May 17, 1999 by the members and designees present and voting: Janet Gail Besser (Chair, EFSB/DTE); James Connelly (Commissioner, DTE); W. Robert Keating (Commissioner, DTE); and John Malena (for Carolyn Boviard, Director, Department of Economic Development).

Janet Gail Besser
Chair

Dated this 17th day of May, 1999.

Appeal as to matters of law from any final decision, order or ruling of the Siting Board may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Siting Board be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Siting Board within twenty days after the date of service of the decision, order or ruling of the Siting Board, or within such further time as the Siting Board may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the clerk of said court. (Massachusetts General Laws, Chapter 25, Sec. 5; Chapter 164, Sec. 69P).