

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

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| In the Matter of the Petition of |) | |
| ANP Bellingham Energy Company |) | EFSB 97-1 |
| for Approval to Construct |) | |
| a Bulk Generating Facility and |) | |
| Ancillary Facilities |) | |
| _____ |) | |

FINAL DECISION
ON COMPLIANCE

M. Kathryn Sedor
Hearing Officer
October 18, 1999

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The Energy Facilities Siting Board hereby determines that ANP Bellingham Energy Company has complied with Conditions A.1 and A.2 of the Siting Board's Final Decision in ANP Bellingham Energy Company, EFSB 97-1 (1998) and, consequently, that ANP's proposed project meets the standard of review for viability set forth in the ANP Bellingham Decision.

I. INTRODUCTION

On August 18, 1998, the Energy Facilities Siting Board ("Siting Board") conditionally approved the Petition of ANP Bellingham Energy Company ("ANP" or "Company") to construct a 580 megawatt natural gas-fired, combined-cycle independent power plant on approximately 20 acres of a 125-acre parcel of land in the Town of Bellingham, Massachusetts, which would commence commercial operation in the year 2000 ("proposed project"). ANP Bellingham Energy Company, EFSB 97-1, at 1, 32, 171-173 (1998) ("ANP Bellingham Decision").

On September 23, 1999, and October 12, 1999, ANP submitted to the Siting Board filings pertaining to: (1) the Company's compliance with the conditions of the ANP Bellingham Decision relating to project viability; and (2) notice of a project change relating to emissions limitations for ammonia and NO_x.

II. THE ANP BELLINGHAM DECISION

A. Project Viability

In the ANP Bellingham Decision, the Siting Board set forth its standard of review for viability, stating 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 Bellingham Decision at 66; ANP Blackstone Energy Company, EFSB 97-2/98-2, at 73 (1999) ("ANP Blackstone Decision"); Berkshire Power

Development, Inc., 4 DOMSB 221, at 328-329 (1996) ("Berkshire Power Decision").¹

In order to meet the first test of viability, a project 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 Bellingham Decision at 66; ANP Blackstone Decision at 73; Berkshire Power Decision at 328-329.

In order to ensure that ANP's proposed project is likely to be constructed within applicable time frames and be capable of meeting performance objectives, the Siting Board in the ANP Bellingham Decision directed the Company to provide: (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 A.1"); and (2) an executed interconnection agreement between ANP and New England Power Company ("NEPCo") providing the project with access to the regional electrical transmission system ("Condition A.2"). ANP Bellingham Decision at 171.²

¹ On November 25, 1997, the Governor signed into law Chapter 164 of the Acts of 1997 ("Electric Restructuring Act") which, inter alia, altered the scope of the Siting Board's review of electric generating facility proposals. See St. 1997, c. 164, §§ 204, 210. Consistent with the changes to its statutory mandate, the Siting Board no longer conducts a stand alone review of project viability for generating facility proposals. Notice of Inquiry with Regard to the Siting Board's Standard of Review for Generating Facility Viability, EFSB 98-1 (August 17, 1998).

² In addition to the viability-related Conditions, the Siting Board imposed six conditions pertaining to construction and operation of the proposed project. See n.9, below.

B. Project Change Notification

In addition to imposing viability-related Conditions, the Siting Board in the ANP Bellingham Decision required ANP to notify the Siting Board of any changes to the proposed 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 173-174.

III. THE COMPANY'S COMPLIANCE FILINGS

On September 23, 1999, ANP submitted to the Siting Board a filing pertaining to: (1) the Company's compliance with the conditions of the ANP Bellingham Decision relating to project viability; and (2) notice of a project change relating to emissions limitations for ammonia and NO_x ("Initial Compliance Filing"). On October 12, 1999, ANP submitted to the Siting Board a second filing pertaining to project viability ("October 12 Compliance Filing").

A. Project Viability

Among other documents, the Company's Initial Compliance Filing included a draft, unexecuted Equipment Supply Contract between ANP and ABB ("Draft Equipment Supply Contract"), and a draft, unexecuted Construction Contract between ANP and ABB ("Draft Construction Contract") (collectively, "Draft Contracts").^{3,4} As part of its Initial Compliance Filing, ANP represented to the

³ The Company's Initial Compliance 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 cover letter, titled "Initial Pre-Construction Compliance Filing" (Exh. HO-V-39); the Draft Equipment Supply Contract (Exh. HO-V-39.1); the Draft Construction Contract (Exh. HO-V-39.2) and its attached "Technical Scope of Work": Volume 1 (Exh. HO-V-39.3) and Volume 2 (Exh. HO-V-39.4); a final, executed interconnection agreement between ANP and NEPCo (Exh. HO-V-39.5) and an attached three-page letter from New England Power Services to the FERC (Exh. HO-V-39.5a); a conditional air plan approval issued by the Massachusetts Department of Environmental Protection ("DEP") (Exh. HO-V-39.6); and a proposed notice letter from ANP to local residents regarding off-site visual impact mitigation (Exh. HO-V-39.6).

⁴ In its Initial Compliance Filing, the Company requested confidential treatment for the Draft Equipment Supply Contract, the Draft Construction Contract, and the Technical

Siting Board that on or before October 8, 1999, the Company would file final, executed copies of the Draft Contracts, and that the executed contracts would be identical in most material aspects to the Draft Contracts included in the Company's Initial Compliance Filing (Exh. HO-V-39, at 3).⁵ In its October 12 Compliance Filing, ANP submitted to the Siting Board: (1) a final, executed Construction Contract between ANP and ABB, signed on October 11, 1999 ("Construction Contract"); (2) a final, executed Equipment Supply Contract between ANP and ABB, signed on October 11, 1999 ("Equipment Supply Contract") (collectively, "Executed Contracts"); and (3) a four-page cover letter, enumerating the differences between the Draft Contracts and the Executed Contracts.^{6,7}

A review of the Draft 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 at 336. For example, Section 1.1 of the Construction Contract (definition of "Anticipated Commercial Operation Date") and Exhibit G provide for a guaranteed construction duration (HO-V-39.2, at 1, Exh. G). Section 14 provides for comprehensive reliability, performance and compliance testing (id. at 29-34). Section 18 provides operational guarantees for heat rate, output, availability, and noise and air emissions levels (id. at 46-49). Section 16 provides for liquidated damages for failure to achieve substantial completion of the

Scope of Work, Parts One and Two. The Company's request for confidentiality is granted with respect to these documents.

⁵ The Company stated that the only anticipated material difference between the Executed Contracts and the Draft Contracts "is the completion of the fixed aggregate lump sum price and of interrelated factors associated with the construction schedule" (Exh. HO-V-39, at 3).

⁶ The four-page cover letter, dated October 12, 1999 (Exh. HO-V-40) states that the Executed Contracts are substantially the same as the Draft Contracts in all material respects, with the exception of certain pricing-related provisions previously identified in the Company's Initial Compliance Filing (Exh. HO-V-40, at 1-2). See also, n.5, above.

⁷ In its four-page cover letter, ANP requested confidential treatment for the executed Equipment Supply Contract (Exh. HO-V-40.1) and the executed Construction Contract (Exh. HO-V-40.2)(Exh. HO-V-40, at 1). The Company's request for confidentiality is granted with respect to the Executed Contracts.

project by guaranteed completion dates and for failure to achieve operational guarantees, and provides for bonuses for early completion, and for improved heat rate, output and availability (id. at 38-42). Section 19 provides for warranties (id. at 49-53). Section 26 contains insurance coverage requirements (id. at 63-67).

Based on its review of the Draft Construction Contract and the Draft Equipment Supply Contract, the Siting Board finds that these documents, taken together, contain provisions that provide reasonable assurance that the proposed project will perform as a low cost, clean power producer. Based on its review of the Executed Contracts, the Siting Board further finds that the Executed Contracts are substantially as the Draft Contracts in their relevant and material provisions. Consequently, the Siting Board finds that ANP has complied with Condition A.1 of the ANP Bellingham Decision.

ANP's Initial Compliance Filing also included a final Interconnection Agreement, executed by the Company and NEPCo on February 23, 1999 ("NEPCo Interconnection Agreement") (Exh. HO-V-39.5). Pursuant to the Interconnection Agreement, NEPCo has agreed to own, operate and maintain the interconnection facilities needed to loop the existing 345 kV NEPCo line which traverses the proposed project site (line 303) into the switchyard on the site. NEPCo also has agreed to design and construct other interconnection reinforcements required by NEPOOL for electrical integration of the proposed project with the NEPOOL transmission grid (Exh. HO-V-39.5 (Exh. 1, Table 1); Exh. HO-V-39.5a, at 1-2).

Based on ANP's submittal of the executed NEPCo Interconnection Agreement, the Siting Board finds that ANP's proposed project is likely to be capable of being dispatched as expected and, consequently, that ANP has complied with Condition A.2 of the ANP Bellingham Decision.

B. Project Change Notification

The Siting Board in the ANP Bellingham Decision required ANP to provide notice of any changes other than minor variations to the proposed project, so that the Board could determine whether to inquire further into such issues. ANP Bellingham Decision at 173-174.

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 DEP on or about July 30, 1999 (HO-V-39.6). ANP stated that, pursuant to the DEP conditional air plan approval, the project will reduce its emissions of NO_x (baseload operation) and ammonia ("ammonia slip") to 2 ppmvd @ 15 percent O₂ (Exh. HO-V-39.6, at 5 (Table 1) (2 ppmvd for NO_x during baseload operation, and 2 ppmvd for ammonia);⁸ compare, Exh. HO-EA-4.1 (App. B) (3.5 ppmvd for baseload NO_x) and Exh. BEL 13.2, at 4-3 (Table 4-4) (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 Bellingham Decision at 100, 105. 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 A.1 and A.2 of the ANP Bellingham Decision pertaining to project viability. Consequently, the Siting Board finds that ANP's proposed project meets the standard of review for viability set forth by the Siting Board in the ANP

⁸ The DEP conditional air plan approval provides that the emission rate for ammonia will be zero, but that at the option of ANP, the ammonia emission rate will be 2 ppmvd during the first five years of operation (Exh. HO-V-39.6, at 4, 6 (Table 2)). In accordance with a memorandum of understanding between ANP and DEP incorporated as part of the conditional air plan approval, it will be determined within the five year period whether a zero ammonia technology must be installed at the facility, based on consideration of technical and commercial availability, comparability of cost, and consistency with state and local permits, or whether the facility may continue to operate without installation of such technology (id. at 4, (att. B)).

Bellingham Decision.⁹ In addition, consistent with the Siting Board's directive to ANP in the ANP Bellingham Decision 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 finds that this change requires no further inquiry.¹⁰

M. Kathryn Sedor
Hearing Officer

Dated this 18th day of October, 1999

⁹ ANP remains obligated to comply with Conditions B through G of the ANP Bellingham Decision during construction and operation of the project. See ANP Bellingham Decision at 171-173.

¹⁰ The Siting Board notes that this Decision determines only (1) the Company's compliance with Conditions A.1 and A.2 of the ANP Bellingham Decision, and (2) whether the project change reported by the Company requires further inquiry by the Siting Board. The Decision is not intended to, and does not, re-open any matter finally determined by the Siting Board in the ANP Bellingham Decision.

APPROVED by the Energy Facilities Siting Board at its meeting of October 14, 1999, by the members and designees present and voting: W. Robert Keating (Commissioner, DTE); James Connelly (Commissioner, DTE); John Malena (for Carolyn Boviard, Director of Economic Development); Louis Mandarinini (Public Member); and Janet Gail Besser (Chair, EFSB/DTE).

Janet Gail Besser, Chair
Energy Facilities Siting Board

Dated this 18th day of October, 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).