

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Petition of Brockton Power Company, LLC for Approval to Construct a 350 MW Combined Cycle Power Plant in the City of Brockton, Massachusetts and for Zoning Exemptions from the Bylaws of the City of Brockton and for Approval to Construct an Electric Transmission Line in the City of Brockton

EFSB 07-7/D.P.U. 07-58/D.P.U. 07-59

ACTION BY CONSENT

I. INTRODUCTION

On August 3, 2016, Brockton Power Company, LLC, (“Brockton Power”) filed with the Energy Facilities Siting Board (“Siting Board”) a request for an interim extension of the Siting Board’s approval of Brockton Power’s petition to construct a generating facility (“Project”) in the City of Brockton. Brockton Power Company, LLC, EFSB 07-07 (2009) (“Initial Approval”). The Initial Approval expires on August 7, 2016, unless Brockton Power begins construction of the Project by that date. Brockton Power states that it has been unable to commence construction due to two unresolved matters: (1) the pendency of an administrative proceeding before the Massachusetts Department of Environmental Protection (“DEP”) involving the Conditional Approval of Major Comprehensive Plan Application (“Air Permit”) issued by the DEP to Brockton Power; and (2) a civil action brought by the Brockton City Council against the Mayor of Brockton in Plymouth County Superior Court seeking a declaration that the Mayor acted unlawfully in agreeing to sell water from the Advanced Wastewater Reclamation Facility in Brockton to Brockton Power for use in the cooling tower. These two matters are referred to, collectively, as the “Litigation”.

II. REQUEST FOR INTERIM EXTENSION

In support of its request for an interim extension, Brockton Power asserts that the pendency of the Litigation has halted development of the Project and resulted in Brockton Power’s inability to commence construction. Brockton Power further asserts that: (1) as a practical matter, the commencement of Project construction requires final or almost final design and engineering plans; (2) as a result of the Litigation, the design and engineering plans cannot be considered sufficiently final to begin construction; (3) the outcome of the Litigation will determine whether the Project may be constructed as originally designed and engineered and approved by the Siting Board; and (4) the outcome of the Litigation may preclude Project construction and/or operation altogether.

Due to this uncertainty, Brockton Power states that it cannot represent to the Board whether the Project will be built as proposed and approved, whether the Project will require

modification before it can be constructed, or whether it will even remain viable. Consequently, Brockton Power asserts that granting an interim extension of the Initial Approval is a pragmatic action that will allow the Litigation to proceed while preserving the status quo. Brockton Power maintains that such action may also conserve time and resources of Brockton Power and the Siting Board. Specifically, Brockton Power states that if it were to present a formal extension request in the coming weeks, it would be required to submit environmental analyses and other evidence. Brockton Power argues that the Siting Board might need to review such evidence a second time if the Litigation results in Project changes requiring Siting Board approval. Therefore, Brockton Power asserts that processing a request for an interim extension is, at this time, preferable to processing a formal request for an extension.

Brockton Power states that it is requesting an extension for up to twelve months. By the end of the twelve months, Brockton Power will either (1) request a formal extension of the Initial Approval for full Siting Board review on the merits of its request, or (2) abandon or modify the Project that was previously approved by the Siting Board.

III. DECISION

The Siting Board's regulations authorize the Siting Board to render any decision (except final decisions in an adjudicatory proceeding) by issuing an Action by Consent if the Siting Board, in its discretion, "determines that expeditious action is necessary." 980 C.M.R. § 2.07(1). Under the Siting Board's regulations, a proposed Action by Consent shall be deemed to have been taken when the document and copies bearing the signatures of all Siting Board members are returned to the Chairman. **A proposed Action by Consent shall become void if it does not receive all required signatures before the beginning of any meeting of the Siting Board held pursuant to 980 C.M.R. § 2.07 [emphasis added].** The Siting Board finds that expeditious action is necessary in this case to avoid expiration of the Initial Approval. Accordingly, as provided by 980 C.M.R. § 2.07, the Siting Board issues this Action by Consent.

The Energy Facilities Siting Board's grant of an interim extension of the Initial Approval of Brockton Power's Project, based on the circumstances of this request, is subject to the following conditions: (a) Brockton Power must apprise the Siting Board, in writing, of the status of the Litigation at two-month intervals beginning two months from the date of this Action by Consent; (b) the Siting Board may, in its discretion, require Brockton Power, upon 30 days written notice, to submit a request for a formal extension of the Initial Approval, and if such a request is not submitted as required this interim extension will terminate without any further action by the Siting Board; and (c) the Siting Board may, in its discretion, upon 30 days written notice and Brockton Power's opportunity to comment on the termination, terminate the interim extension for such reasons as it deems appropriate. This interim extension expires on the last day of February 2017, after ISO-NE conducts its forward capacity auction number 11 ("FCA 11"), unless the interim extension is terminated sooner pursuant to clauses (b) or (c) above. Brockton Power will notify the Siting Board whether or not it obtained a capacity obligation through FCA 11 within seven days of when the auction is conducted. Furthermore, if Brockton Power seeks any additional extensions of time, Brockton Power shall file such request at least fourteen days prior to the expiration of the deadline to be extended.

Signed:

 DESIGNATED CHAIRMAN
FOR
Date 8/5/16
Matthew A. Beaton
Chairman, EFSB
Secretary, Executive Office of Energy & Environmental Affairs

Angela M. O'Connor Date
Chairman, Department of Public Utilities

Jollette A. Westbrook Date
Commissioner, Department of Public Utilities

Judith Judson Date
Commissioner, Department of Energy Resources

Martin Suuberg Date
Commissioner, Department of Environmental Protection

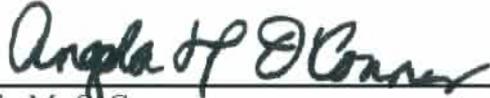
Jay Ash Date
Secretary, Executive Office of Housing and Economic Development

Joseph C. Bonfiglio Date
Public Member, Labor

Signed:

Matthew A. Beaton
Chairman, EFSB
Secretary, Executive Office of Energy & Environmental Affairs

Date



August 5, 2016

Angela M. O'Connor
Chairman, Department of Public Utilities

Date

Jollette A. Westbrook
Commissioner, Department of Public Utilities

Date

Judith Judson
Commissioner, Department of Energy Resources

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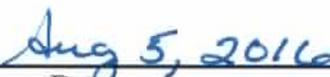
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Commissioner, Department of Energy Resources

 *August 6, 2016*
Martin Suuberg Date
Commissioner, Department of Environmental Protection

Jay Ash Date
Secretary, Executive Office of Housing and Economic Development

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 , Designee

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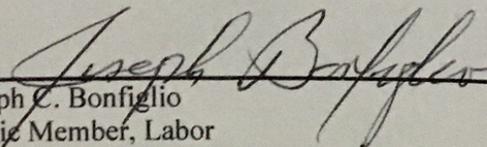
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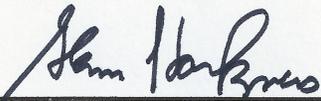
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Jay Ash
Secretary, Executive Office of Housing and Economic Development

Date


Joseph C. Bonfiglio
Public Member, Labor

8/5/2016
Date



6 AUGUST 2016

Glenn Harkness, PE
Public Member, Energy

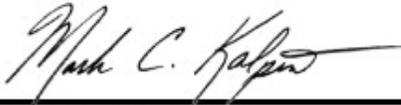
Date

Mark C. Kalpin, Esq.
Public Member, Environmental

Date

Glenn Harkness, PE
Public Member, Energy

Date



Mark C. Kalpin, Esq.
Public Member, Environmental

August 5, 2016

Date