

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

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GenOn Kendall, LLC)	EFSB 99-4C
Notice of Project Change)	
)	

ACTION BY CONSENT

I. INTRODUCTION

This Action by Consent is taken pursuant to the authority granted to the Chair of the Energy Facilities Siting Board ("Siting Board") under 980 CMR 2.07. Section 2.07 provides the Siting Board with the authority to render a decision via Action by Consent when the Board determines that expeditious action is necessary. 980 CMR 2.07(1).

On December 15, 2000, the Siting Board approved the petition of Mirant Kendall, LLC to upgrade the existing Kendall Square cogeneration facility ("Facility") in Cambridge, Massachusetts. Southern Energy Kendall, LLC, 11 DOMSB 255 (2000) ("Final Decision").¹ On April 29, 2011, the Siting Board received from GenOn Kendall, LLC ("GenOn" or the "Company"), a Notice of Project Change with respect to the Facility.² The Notice of Project Change presents a proposed change in the Facility's cooling water technology as approved in the Final Decision. Specifically, while the Final Decision approved the use of once-through cooling, using a diffuser pipe (to mitigate thermal discharges to the Charles River) and a barrier net (to mitigate impingement and entrainment), the Company now proposes to install an air-cooled condenser and a back-pressure steam turbine ("Project Change"). According to GenOn, an additional steam line is planned to be installed by Veolia Energy Boston, Inc.³ The Project Change is required to bring the Company into compliance with the National Pollution Discharge Elimination System ("NPDES") permit and associated administrative orders issued

¹ Southern Energy Kendall, LLC ("Southern") was the petitioner in the original Siting Board proceeding. Southern subsequently changed its name to Mirant Kendall, LLC and then to GenOn Kendall, LLC.

² GenOn filed its initial Notice of Project Change on April 29, 2011; a supplement to the initial Notice on June 15, 2011; a second supplement on August 25, 2011; and a third supplement on September 23, 2011 (together, the "Notice of Project Change", including Exhibits 1 to 18). The entire Notice of Project Change is hereby moved into evidence in EFSB 99-4C.

³ The new steam line is planned to carry steam from the facility to customers in Boston. GenOn will not construct, own or operate the steam line, and approval for the steam line is not being sought as part of the Notice of Project Change.

for the Facility by the Federal Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection Agency ("MDEP") subsequent to the Final Decision.⁴ The administrative orders contain project schedules which are contingent on the prompt acquisition of all necessary government approvals (Exhs. 3, at 9-11; 5 at 9-11). The Notice of Project Change is the only subject of this Action By Consent.

II. REQUEST FOR PROJECT CHANGE

GenOn's Notice of Project Change responds to two requirements in the Final Decision. First, the Final Decision requires the Company to notify the Siting Board of changes, other than minor variations, to the project as approved (Final Decision, 11 DOMSB at 396). The Final Decision also specifically requires the Company to notify the Siting Board of any substantial changes to the design of the Facility's cooling water intake and discharge technology (Final Decision, 11 DOMSB at 322). This second notification requirement reflects the fact that, at the time of the original EFSB 99-4 proceeding, the Facility's NPDES permit was under review by EPA and DEP, and the cooling water technology to be required for the Facility under the permit had not yet been finally determined. As compared to the cooling water technology approved in the Final Decision, the Project Change will reduce water withdrawals from the Charles River by 95 percent and will otherwise significantly reduce the environmental impacts of the Facility on the Charles River. Withdrawals and discharges of cooling water will be reduced from the 70-80 million gallons per day ("mgd") contemplated by the Siting Board in the Final Decision to no more than 3.2 mgd under normal operating conditions. See Project Change Supplemental Filing at 2, 3 5; 7-8; Exh. 9, 11, 12.

Siting Board staff issued four questions to GenOn on July 11, 2011. After receiving the Notice of Project Change, the City of Cambridge ("City") posed a series of questions to GenOn regarding the noise and heat impacts that might be associated with the Project Change; GenOn performed and provided the requested results of heat and noise modeling (Joint Comments at 1; Notice of Project Change Exhs. 17, 18; see Notice of Project Change, Exh.16; Revised Supp. Response to Question 1).

On July 11, 2011, and August 1, 2011, Siting Board staff issued Memoranda regarding the Notice of Project Change to all of the parties and limited participants in the underlying EFSB 99-4 proceeding. On August 29, 2011, one limited participant, Rae Stiening, filed a letter in support of the Project Change. On September 28, 2011, the City of Cambridge, an intervenor in the proceeding, and GenOn filed "Joint Comments of the City of Cambridge and GenOn Kendall, LLC" ("Joint Comments"), also supporting the Project Change.

III. THE MONITORING AGREEMENT

The record shows that, as projected by GenOn's modeling, the noise and heat impacts of the Project Change will be minimal (Joint Comments at 1; see Notice of Project Change, Exh. 16 and

⁴ In 2010, the EPA issued an NPDES permit modification and DEP issued an associated Administrative Order. See Notice of Project Change, Exhs. 1, 5.

Revised Supp. Response to Question 1). To confirm that actual noise and heat emissions from the Facility will comply with applicable standards, GenOn and the City have jointly proposed a procedure for measuring actual noise and heat emissions and for taking steps in response to any possible non-compliance (“Monitoring Agreement”).⁵ Pursuant to the Monitoring Agreement, GenOn will take noise measurements during an outage of GenOn’s combustion turbine and its boilers at the Facility. GenOn will also implement a noise monitoring and reporting program over the 12-month period following commencement of Facility operation with the Project Change in place, to confirm that, as predicted by GenOn’s modeling, the actual noise emissions from the Facility will comply with the noise requirements applicable to the Facility under DEP’s Air Permit for the Facility (“DEP Noise Standards”) and the Cambridge Noise Ordinance (Joint Comments at 2). If the DEP Noise Standards are violated, GenOn will copy the City on the Company’s notification to DEP; if exceedances of the City Noise Ordinance are identified, GenOn will investigate the causes and, for material non-compliance, GenOn will propose a mitigation plan to bring the Facility into compliance (*id.*).⁶ Pursuant to the Monitoring Agreement, GenOn will implement a similar monitoring and reporting program to confirm that the Facility’s actual heat emissions are substantially similar to the heat emissions modeled by GenOn (*id.*). If the results are materially and adversely different, GenOn will propose a plan and schedule for implementation of mitigation measures (*id.* at 3).

GenOn and the City have requested that the Monitoring Agreement and its protocols be adopted as a condition in the Siting Board’s approval of GenOn’s Notice of Project Change (Joint Comments at 3). The City has stated that, based on the Monitoring Agreement, it supports the Notice of Project Change and does not believe that further inquiry or process regarding the filing is necessary (*id.*).

IV. RULING ON REQUEST FOR PROJECT CHANGE

The Final Decision requires the Company to notify the Siting Board of project changes so that the Board can “decide whether to inquire further into a particular issue” (Final Decision, 11 DOMSB at 396). The standard of review to determine whether further inquiry is warranted was first articulated by the Siting Board in the Berkshire Power Decision on Compliance (“Berkshire Compliance Decision”) 7 DOMSB 423, at 437 (1997). In the Berkshire Compliance Decision, the

⁵ The Monitoring Agreement is set forth in the Joint Comments. The Joint Comments are hereby moved into evidence in EFSB 99-4C.

⁶ The Cambridge Noise Control Ordinance limits and the Company’s anticipated compliance with these limits were relied on in the underlying Siting Board decision (Final Decision, 11 DOMSB at 345). Specifically, in the underlying decision the Siting Board noted that the “Cambridge Noise Control Ordinance comprehensively addresses many facets of noise impacts, including both operational and construction noise. The City has indicated its intention to work with the Company to ensure that the proposed project will meet the noise ordinance limits as determined by the City, and to diligently monitor compliance with these limits” (*Id.*).

Siting Board declined to make further inquiry regarding certain project changes if the change did not alter in any substantive way either the assumptions or conclusions reached in its analysis of the project's environmental impacts in the underlying proceeding (*Id.*, 7 DOMSB at 437).⁷

The record shows that the proposed Project Change, i.e., the replacement of once-through cooling with an air-cooled condenser and back-pressure steam generator, will significantly reduce the Facility's environmental impacts on the Charles River. According to the EPA, the NPDES permit will significantly increase protections for ecological health and recreational water uses of the lower Charles River and Boston Harbor.⁸ The record also shows that, based on the Monitoring Agreement between GenOn and the City of Cambridge, noise emissions associated with the Project Change will be minimal and within applicable DEP Noise Standards and the City of Cambridge Noise Ordinance but, if not, will be brought to the attention of the City and DEP and mitigated by GenOn pursuant to the terms of the Monitoring Agreement. Likewise, the record shows that heat emissions will be within minimal limits projected by GenOn but, if not, will be mitigated pursuant to the terms of the Monitoring Agreement.

Based on the record, including the September 28, 2011 Monitoring Agreement between GenOn and the City of Cambridge, the Siting Board finds that the proposed Project Change does not alter in any substantive way either the assumptions or conclusions in the Board's analysis of the Facility's environmental impacts in the underlying proceeding. In fact, with the Project Change in place, the Board finds that the Facility's environmental impacts will be minimized to a greater extent than such impacts were minimized under the Final Decision. Accordingly, based on the Final Decision and on the extensive record developed by GenOn and the City with respect to the proposed Project Change, we find that no further inquiry relative to the Project Change is required. The Project Change is approved. Compliance with the Monitoring Agreement and its protocols, as set forth in the "Joint Comments of the City of Cambridge and GenOn Kendall, LLC," dated September 28, 2011, shall be a condition of this approval and shall be Condition M of the Final Decision.


Condition M

The Siting Board directs the Company to comply with the Monitoring Agreement and its protocols as set forth in the "Joint Comments of the City of Cambridge and GenOn Kendall, LLC," and attached hereto dated September 28, 2011.

⁷ Other project changes decisions by the Siting Board can be found at Cape Wind Associates, LLC, 16 DOMSB 194 (2008); Fore River Development, LLC 15 DOMSB 403 (2006); Sithe Mystic Development, LLC 13 DOMSB 118 (2001); Sithe Edgar Development, LLC 13 DOMSB 81 (2001); IDC Bellingham LLC, 12 DOMSB 372 (2001).

⁸ See EPA Press Release, 2/2/2011, Notice of Project Change, Exh. 9

Signed:



Steven Clarke
Acting Energy Facilities Siting Board Chair
For Secretary, Executive Office of
Energy and Environmental Affairs

12/15/11

Date

Ann G. Berwick
Chair
Department of Public Utilities

Date

Jolette A. Westbrook
Commissioner
Department of Public Utilities

Date

Robert Sydney, Designee
For Commissioner, Department of Energy Resources

Date

April Anderson Lamoureux, Designee
For Secretary, Executive Office of Housing
and Economic Development

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Nancy Kaplan, Designee
For Commissioner, Department of Environmental Protection

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Penn Loh, Public Member

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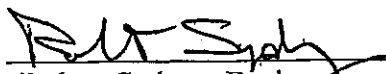
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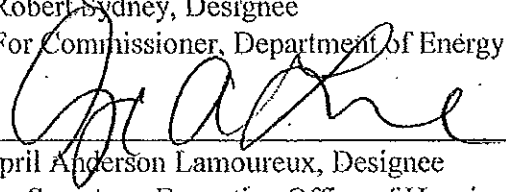
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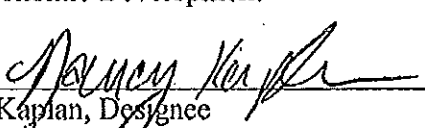
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For Commissioner, Department of Environmental Protection

12/9/11

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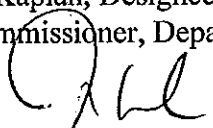
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12-21-2011