

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Petition of Southern Energy Kendall, LLC)
for Approval to Upgrade and Replace)
Generating Facilities at the Existing)
Kendall Square Station in)
Cambridge, Massachusetts)

EFSB 99-4

FINAL DECISION
ON COMPLIANCE

Sheila R. McIntyre
Hearing Officer
February 16, 2001

On the Decision:
Jenna Ide
Barbara Shapiro
William Febiger

APPEARANCES: Donna C. Sharkey, Esq.
Frank P. Pozniak, Esq.
JoAnne A. Pierce, Esq.
Rubin & Rudman LLP
50 Rowes Wharf
Boston, Massachusetts 02110-3319
FOR: Southern Energy Kendall, LLC
Petitioner

Stephen D. Anderson, Esq.
Douglas H. Wilkins, Esq.
Rachel Graham Evans, Esq.
Anderson & Kreiger, LLP
47 Thorndike Street
Cambridge, Massachusetts 02141
FOR: City of Cambridge
Intervenor

Mary E. Grover, Esq.
NSTAR Services Company
800 Boylston Street
Boston, Massachusetts 02199
FOR: Cambridge Electric Light Company and Commonwealth
Gas Company
Intervenor

Mark Landin
Sigma Consultants, Inc.
95 Main Street
Maynard, Massachusetts 01754
FOR: Sigma Consultants, Inc.
Interested Person

Peter L. Cooper
Assistant Director of Facilities for Utilities
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, Massachusetts 02139-4307
FOR: Massachusetts Institute of Technology
Interested Person

Philip Higonnet
83 Thorndike Street
Cambridge, Massachusetts 02141

FOR: Form Petitioners
Interested Person

Joseph J. Avin
106 Spring Street
Cambridge, Massachusetts 02141

Carole K. Bellew
257 Charles Street
Cambridge, Massachusetts 02141

Stephen Bikofsky
P.O. Box 410419
Cambridge, Massachusetts 02141

Barbara Broussard
148 Third Street
Cambridge, Massachusetts 02141

Mary Ann Donofrio
122 Gore Street
Cambridge, Massachusetts 02141

Jennie Iantosca
12 Winter Street
Cambridge, Massachusetts 02141

Frances Menezes
548 Cambridge Street
Cambridge, Massachusetts 02141

Charles C. Poirier
18 Gore Street
Cambridge, Massachusetts 02141-1212

Mary Travers
54 Fulkerson Street
Cambridge, Massachusetts 02141

Robert V. Travers
54 Fulkerson Street
Cambridge, Massachusetts 02141

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	Page 1
A.	<u>Pre-Construction Conditions</u>	Page 1
B.	<u>Project Change Notification</u>	Page 2
C.	<u>The Company's Filings</u>	Page 2
II.	<u>CONDITION A - TRAFFIC</u>	Page 3
III.	<u>CONDITION B - AMMONIA STORAGE</u>	Page 6
IV.	<u>CONDITION C - SPCC AND EMERGENCY RESPONSE PLAN</u>	Page 7
V.	<u>DECISION</u>	Page 8

The Energy Facilities Siting Board hereby APPROVES subject to conditions the petition of Mirant Kendall, LLC for approval to upgrade generating facilities at the existing Kendall Square Station in Cambridge, Massachusetts. This upgrade will increase the electrical generating capacity at Kendall Square Station from approximately 64 megawatts to approximately 234 megawatts.

I. INTRODUCTION

On December 14, 2000, the Energy Facilities Siting Board (“Siting Board”) conditionally approved the petition of Southern Energy Kendall, LLC, now operating as Mirant Kendall, LLC¹ (“Mirant Kendall” or “Company”) to upgrade Kendall Square Station (“Kendall Station”), an existing cogeneration plant, into a natural gas-fired, combined-cycle, electric generating facility with a total net nominal electric output of 234 megawatts (“MW”) in Cambridge, Massachusetts (“project”). Southern Energy Kendall, LLC, 11 DOMSB 255 (2000) (“Southern Energy Decision”).

A. Pre-Construction Conditions

In the Southern Energy Decision, the Siting Board found that, upon compliance with three conditions (“Conditions”), the Company’s proposed project could commence construction. To establish compliance with these Conditions, the Siting Board required the Company: (1) to file with the Siting Board for further review a traffic analysis and mitigation plan identifying the location of off-site parking for construction workers, providing information on the schedule and volume of project-related traffic, and setting forth plans for any necessary mitigation (“Condition A”); (2) to enclose its ammonia storage tank or incorporate an alternative design such as a double-walled tank to mitigate the impacts of any potential ammonia spill, and to file with the Siting Board an analysis of the cost and relative safety advantages of the design options considered for ammonia storage (“Condition B”); and (3) in consultation with Cambridge officials, to revise its Spill Prevention, Control and Countermeasure (“SPCC”) Plan and Emergency Response Plan, and to update the construction section of the

¹ The Company informed the Siting Board in a letter dated January 24, 2001 that Southern Energy Kendall, LLC had changed its name to Mirant Kendall, LLC.

Emergency Response Plan (“Condition C”). Southern Energy Decision, 11 DOMSB at 392-393. The Siting Board found that the Company was required to comply with these Conditions prior to commencement of construction of the proposed project (or, in the case of Condition B, prior to commencement of construction of the ammonia tank). Id. at 392.²

B. Project Change Notification

In addition to imposing conditions, the Siting Board in the Southern Energy Decision also required the Company to notify the Siting Board of any changes to the proposed project, other than minor variations, so that the Siting Board may decide whether to inquire further into any issue associated with a particular change. Id. at 396.

C. The Company’s Filings

On January 11, 2001, the Company submitted a compliance filing relative to Conditions A, B, and C (“Compliance Filing”).³ The Compliance Filing also brought to the Siting Board’s attention a change in the Company’s traffic mitigation plan.

The Siting Board issued information requests to the Company on January 19, 2001 (“First Set of Information Requests”) and on January 25, 2001 (“Second Set of Information Requests”). On January 24, 2001, the Company responded to the First Set of Information Requests. On January 30, 2001, the Company responded to the Second Set Information Requests. The Company supplemented its responses to the Second Set of Information Requests on January 31, 2001.

² In addition to the pre-construction Conditions, the Siting Board imposed nine additional conditions relative to the construction and operation of the proposed project. Southern Energy Decision, 11 DOMSB at 393-396.

³ The January 11, 2001 filing consisted of the following documents, each of which shall be marked for identification and entered into evidence with the following designations: a seven page letter titled “Compliance with Traffic Condition and Safety Conditions” (Exh. CF-1); a Certificate of Service (Exh. CF-2); Transportation Demand Management Plan (Exh. CF-3); and a letter from the City of Cambridge titled “SPCC Plans” (Exh. CF-4).

II. CONDITION A - TRAFFIC

In order to minimize traffic related impacts, the Siting Board in the underlying proceeding directed the Company to file with the Siting Board a traffic analysis and mitigation plan that identified the location of the off-site parking area and would provide information on the schedule and volume of project-related traffic at affected intersections along the likely routes of arrival and departure and set forth plans for any necessary mitigation. Southern Energy Decision, 11 DOMSB at 392. Condition A directed that the analysis should include a Level of Service analysis with accompanying back-up data, and required that all assumptions should be clearly stated. Condition A also stated that the plan should specifically address: (1) the costs and benefits of subsidizing the MBTA fares of the Company's workers in order to decrease traffic impacts at the satellite parking site; and (2) comments from Cambridge and, if applicable, the community in which the satellite parking would be located.

In its Compliance Filing, the Company submitted a Transportation Demand Management ("TDM") Plan which indicated that neither Mirant Kendall nor its engineering, procurement and construction ("EPC") contractor would provide on-site or off-site parking for the construction work force (Compliance Filing, Attachment A). The Company therefore argued that Condition A is no longer applicable to the Kendall project (*id.* at 3). The Company stated that some subcontractors may arrange for off-site employee parking (First Set of Information Requests, Response EFSB-2)⁴ and provided preliminary information on the potential location of such subcontractor parking (Second Set of Information Requests, Response EFSB-2-S). This information indicated that no more than 40 construction workers would be provided with off-site parking in any particular location (*id.*).

The Company further stated that the TDM Plan anticipates that all construction workers would be encouraged to use public transportation (Compliance Filing at 2). The Company described five

⁴ The Company identified three subcontractors that had arranged for or were considering the provision of employee parking in the project site area (Second Set of Information Requests, Response EFSB-2-S). The Company indicated that, of these subcontractors, one would employ a maximum of 33 workers on the project in April 2001, a level representing most of the project workers at that time. Two other subcontractors would employ maximums of 29 workers and 35 workers in July 2001 and November 2001, respectively, levels representing 25-30 percent of the project workers at those times.

ways in which the Company or its EPC contractor would encourage construction workers to use public transportation: (1) by not providing on-site parking; (2) by having site managers use public transportation; (3) by purchasing public transportation passes for all the salaried onsite EPC contractor employees;⁵ (4) by providing showers, a changing room, and secure areas for tool boxes and changing bags; and (5) by posting information for workers regarding public transportation (First Set of Information Requests, Response EFSB-2, at 2). The Company also noted that it would encourage bicycle transit by providing a covered area for bicycle parking (id.).

The Company stated that the MBTA station stop at Kendall Square is two blocks from the project site (Compliance Filing, at 2). The Company explained that there is unmetered parking in the vicinity of the project site but noted that the Kendall Station is closer to the nearest MBTA stop than to the parking (First Set of Information Requests, Response EFSB-2). The Company also stated that there is no long-term metered parking in the vicinity of the project site; the Company therefore argued that the construction workers would be subject to ticketing during the work day if they attempted to park near the project site (id.). The Company stated that parking in residential areas near Kendall Station is by permit only and asserted that construction workers would be discouraged from using parking lots in the area due to the expense (id.).

The Company provided data showing that during the peak construction months of July 2001 through January 2002 the construction work force will consist of fewer than 130 on-site workers and that for the remainder of the construction period the construction work force will consist of 60 or fewer on-site construction workers (Second Set of Information Requests, Response EFSB-2-S). The Company stated that the majority of the construction workers work an eight hour shift from 7 a.m. to 3 p.m., although some workers involved in critical path items could work an overtime shift, generally an eleven hour shift from 7 a.m. to 6 p.m. (id. at Response EFSB-3).

Mirant Kendall has provided information indicating that it no longer intends to provide off-site satellite parking area for its construction workers. Consequently, the Siting Board finds that Condition

⁵ No other transportation or parking subsidies are planned (First Set of Information Requests, Response EFSB-2, at 3).

A of the Southern Energy Decision, which required an analysis of traffic impacts in the vicinity of the satellite parking area, is no longer relevant to this project. We therefore rescind this condition.

However, the Siting Board notes that its finding in the Southern Energy Decision that the impacts of construction worker traffic in the Kendall Station area would be minimized was premised in large part on the Company's statements that workers would arrive at the project site either by shuttle from a satellite parking location or by public transit, and our consequent determination that even if all construction workers drove to the satellite parking location, traffic to the Kendall Station site would be limited to no more than twelve shuttle trips. Southern Energy Decision, 11 DOMSB at 360. The change in the Company's plans eliminates the basis for the Siting Board's original finding that traffic impacts in the Kendall Station area would be minimized, and requires the Siting Board to address this issue anew.

In its Compliance Filing, the Company has indicated that its peak period construction work force will total no more than 130 workers, that the standard construction shift will begin and end outside of peak traffic hours, and that there will be no parking at the Kendall Station site for construction workers. Given these circumstances, the Siting Board concludes that construction worker traffic is unlikely to cause traffic impacts of the type typically generated by major construction projects – significant delays in traffic at intersections near the project site caused by a substantial increase in the number of commuters at those intersections. However, the Siting Board notes that the availability of parking for residents, shoppers, and office workers in the Kendall Station area could be significantly affected if a large percentage of the project's peak construction work force chooses to commute by automobile and park in the vicinity of Kendall Station. The Company has indicated that it anticipates that most construction workers will commute to the project site by public transit. It also appears that some of the project subcontractors may provide parking for their workers in the project area, but at locations some distance from the project site. The Siting Board concludes that if a significant rate of public transit use is achieved throughout the construction period, and if sufficient subcontractor parking arrangements are made throughout the construction period to meet worker needs without concentrating worker parking in a particular community area, the impacts of construction worker traffic at the Kendall

Station area would be minimized.

The Siting Board recognizes, however, that plans for the construction of the proposed project, including plans for the accommodation of construction traffic, are still under development. Consequently, in order to ensure that traffic impacts in the vicinity of Kendall Station are minimized, the Siting Board directs the Company to file by April 1, 2001, an analysis of projected construction traffic and parking impacts for the peak construction period. The analysis should include: (1) the number of workers expected on-site from July 1, 2001 until January 31, 2002; (2) a description of any parking arrangements made by the contractor or subcontractors for these workers and a map showing the parking locations; (3) an estimate of the percentage of construction workers using public transit; and (4) if necessary, a description of the steps which the Company or its contractor could take to limit the impact of construction worker parking in the Kendall Station area. The Siting Board will review this information to determine whether traffic impacts continue to be minimized or whether further mitigation (e.g., the subsidization of passes to increase the use of public transit) is necessary.

Finally, we note that this re-analysis of traffic impacts has been made necessary because the Company failed in its obligation to update the record during the proceeding. The Company has indicated that it was aware well before the close of the record in this case that its contractor had abandoned plans to offer satellite parking for its construction workers. The Company was under an obligation to update its information responses to the Siting Board to reflect this fact, and failed to do so. The Siting Board reminds Mirant Kendall that it is under an absolute obligation to notify the Siting Board of any changes other than minor variations to the proposal so that the Siting Board may decide whether to inquire further into a particular issue.

III. CONDITION B - AMMONIA STORAGE

In order to minimize safety impacts, the Siting Board in the underlying proceeding directed the Company: (1) to enclose the ammonia storage tank or incorporate an alternative design such as a double-walled tank to mitigate the impacts of any potential ammonia spill; and (2) to file with the Siting Board prior to commencement of construction of the ammonia system, an analysis of the cost and

relative safety advantages of the design options considered for ammonia storage. Southern Energy Decision, 11 DOMSB at 392-393.

In its Compliance Filing, the Company submitted an analysis of the cost and relative safety of two design options for ammonia storage: a double-walled tank and a single-walled tank enclosed in a containment building (Compliance Filing at 5). With reference to cost, the Company submitted price estimates for various ammonia storage options and estimated that the cost of a double-walled tank would be half the cost of the single-walled tank enclosed in a containment building (id.). With reference to safety, the Company claimed that a double-walled tank would provide the same level of overall safety for residents and workers as a single-walled tank enclosed in a containment building (id.). Further, the Company contended that enclosing the tank would increase risks for the workers who service the tank (id.). The Company stated that an enclosed tank would provide better control of vapor emissions in the event of a release, but argued that a double-walled tank in a bermed secondary containment structure with adequate control systems would provide adequate protection to workers and the surrounding community (id.). The Company therefore concluded the double-walled ammonia storage tank would be a better choice than the enclosed ammonia storage tank (id.).

The Siting Board finds that the Company has complied with the second part of Condition B of the Southern Energy Decision, which required filing of a cost and safety analysis of design options for ammonia storage. Further, the Siting Board finds that with the construction of a double-walled ammonia tank in a bermed secondary containment structure with adequate control systems, the Company will comply with the balance of Condition B.

IV. CONDITION C - SPCC AND EMERGENCY RESPONSE PLAN

In order to minimize safety impacts, the Siting Board in the underlying proceeding directed the Company to: (1) consult with the appropriate Cambridge officials in the revision of its SPCC Plan and the Emergency Response Plan; and (2) update the construction section of its Emergency Response Plan, in consultation with appropriate Cambridge officials, and file it with Cambridge before construction begins in order to cover possible emergencies related to construction accidents.

The Company submitted a letter from John Bulduc, the Environmental Planner for Cambridge, indicating that the Company consulted with the appropriate Cambridge officials in the revision of its SPCC Plan and Emergency Response Plan and that the construction section of the Emergency Response Plan is in order (Compliance Filing, Attachment B). Consequently, the Siting Board finds that the Company has complied with Condition C of the Southern Energy Decision.

V. DECISION

In the Final Decision for this matter issued on December 14, 2000, the Siting Board approved subject to conditions the petition of Mirant Kendall, LLC to upgrade Kendall Station, an existing cogeneration plant, into a natural gas-fired, combined-cycle, electric generating facility with a total net nominal electric output of 234 MW in Cambridge, Massachusetts. Southern Energy Decision, 11 DOMSB at 392-396. The Siting Board found that, upon compliance with the conditions set forth in that decision, the construction and operation of the proposed facility would provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Id.; see G.L. c. 164, § 69J¼. Here, the Siting Board has examined whether changes in the Company's traffic mitigation plan alter the conclusions we reached in Southern Energy Decision.⁶ In Section II, above, the Siting Board found that Condition A of Southern Energy Decision is no longer relevant to this project and therefore rescinded Condition A. The Siting Board also found that with the implementation of the listed condition relative to traffic impacts, the traffic impacts of the proposed facility would be minimized.

Accordingly, the Siting Board finds that, upon compliance with the condition set forth in II. A, above, and the conditions B through L from the Southern Energy Decision, the construction and operation of the proposed facility will provide a reliable energy supply for the Commonwealth with a minimum impact on the environmental at the lowest possible cost.

Accordingly, the Siting Board APPROVES the petition of Mirant Kendall, LLC to upgrade

⁶ Matters that were addressed in the Southern Energy Decision and which are unchanged by the Compliance Filing are not at issue in this case.

Kendall Station, an existing cogeneration plant, into a natural gas-fired, combined-cycle, electric generating facility with a total net nominal electric output of 234 MW in Cambridge, Massachusetts subject to conditions B through L as set forth in Southern Energy Decision and condition M below:

- (M) In order to ensure that traffic impacts in the vicinity of Kendall Station are minimized, the Siting Board directs the Company to file by April 1, 2001, an analysis of projected construction traffic and parking impacts for the peak construction period. The analysis should include: (1) the number of workers expected on-site from July 1, 2001 until January 31, 2002; (2) a description of any parking arrangements made by the contractor or subcontractors for these workers and a map showing the parking locations; (3) an estimate of the percentage of construction workers using public transit; and (4) if necessary, a description of the steps which the Company or its contractor could take to limit the impact of construction worker parking in the Kendall Station area. The Siting Board will review this information to determine whether traffic impacts continue to be minimized or whether further mitigation (e.g., the subsidization of passes to increase the use of public transit) is necessary.

The Siting Board also finds that the Company has complied with the second part of Condition B, which required filing of a cost and safety analysis of design options for ammonia storage. Further, the Siting Board finds that with the construction of a double-walled ammonia tank in a bermed secondary containment structure with adequate control systems, the Company will comply with the balance of Condition B. The Siting Board further finds that the Company has complied with Condition C.

Findings in this Compliance Decision are based upon the record developed during the compliance proceeding examined in light of findings we made in the Southern Energy Decision. The Siting Board requires the Company to notify the Siting Board of any changes other than minor variations to the proposal so that the Siting Board may decide whether to inquire further into a particular issue. The Company is obligated to provide the Siting Board with sufficient information on changes to the proposed project to enable the Siting Board to make these determinations.

Sheila R. McIntyre
Hearing Officer

Dated this 16th day of February, 2001

APPROVED by the Energy Facilities Siting Board at its meeting of February 15, 2001, by the members and designees present and voting: James Connelly (Chairman, DTE/EFBSB); W. Robert Keating (Commissioner, DTE); Deirdre K. Manning (Commissioner, DTE); Joseph Donovan (for Elizabeth Ames, Director of Economic Development); and Gina McCarthy (for Robert Durand, Secretary of Environmental Affairs).

James Connelly, Chairman
Energy Facilities Siting Board

Dated this 16th day of February, 2001.

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).