

COMMONWEALTH OF MASSACHUSETTS  
Energy Facilities Siting Board

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Southern Energy Kendall, LLC )  
Motion for Extension to )  
Comply with Condition E, ) March 10, 2003  
EFSB 99-4A )  

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ACTION BY CONSENT

I. INTRODUCTION

This Action by Consent is made pursuant to authority granted the Chairman of the Energy Facilities Siting Board (Siting Board) under 980 CMR 2.06. Section 2.06 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 2.06(1).

On December 15, 2000, the Energy Facilities Siting Board (Siting Board) conditionally approved the petition of Mirant Kendall, LLC (Mirant Kendall or Company), formerly known as Southern Energy Kendall, LLC, to upgrade generating facilities at the existing Kendall Square Station (Kendall Station) in Cambridge, Massachusetts. Southern Energy Kendall, LLC, 11 DOMSB 255 (2000) (Final Decision). In the Final Decision, the Siting Board imposed three conditions, Conditions D, E, and F, for Mirant Kendall to meet prior to the commencement of operation. On November 15, 2002, the Siting Board found the Mirant Kendall has complied with Condition D. Final Decision on Compliance and Request to Amend Condition E, 13 DOMSB 279 (2002) (Compliance Decision). At that time, the Siting Board also amended Conditions E and F. Id. Specifically, Condition E, as amended, directed the Company to negotiate a mutually acceptable emergency water agreement with the City of Cambridge and to provide a copy to the Siting Board on the earlier of: (a) March 1, 2003 or (b) that time when Mirant begins taking water from the Broad Canal/Charles River for process and steam purposes, relying upon the City only for sanitary purposes and for emergency process and steam use. Amended Condition E also directed Mirant to limit its use of City water to historical levels, or obtain City consent to use City water at higher levels, until such time as it ceases to rely regularly on City water for process and steam purposes. Id. Amended Condition E is the only subject of this Action By Consent.

## II. REQUEST FOR EXTENSION

On February 25, 2003, Mirant Kendall filed with the Siting Board a request for a one-month extension until April 1, 2003, to comply with Amended Condition E (Request for Extension). In support of its request, the Company states that Mirant Kendall and the City of Cambridge (City) continue to be engaged in good faith negotiations for an emergency water agreement and the requested extension will provide the parties the opportunity to continue negotiations in an effort to reach a final emergency water use agreement (Request for Extension at 2). Mirant Kendall also states that it does not expect to be taking water from the Broad Canal/Charles River for process and steam purposes before April 1, 2003 (*id.* at n.2).<sup>1</sup>

On February 27, 2003, the City submitted a letter stating that it does not object to Mirant's Request for Extension (City Letter at 1). The City also stated that it is engaged in good faith negotiations with Mirant Kendall regarding an emergency water use agreement and that the requested one-month extension will allow for additional meetings in an attempt to reach an agreement (*id.*). The City also stated that the deadline imposed by the Siting Board in Amended Condition E has, to date, been effective in focusing the parties' attention on concluding this matter (*id.*).

## III. RULING ON REQUEST FOR EXTENSION

In evaluating Mirant's request, the Siting Board notes that the purpose of Amended Condition E was to allow Mirant Kendall to operate the upgraded Kendall Station facility while allowing the Company and the City the time needed to reach an emergency water agreement. Compliance Decision at 288. In that decision, the Siting Board placed considerable weight on the fact that the City was amenable to such an amendment provided that restrictions were placed on Mirant Kendall's

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<sup>1</sup> Currently, the Mirant Kendall plant uses water drawn from the Broad Canal for once-through cooling, and uses water obtained from the City for process and sanitary purposes, and for production of steam for distribution to steam customers (Exh. EFSB CF-3). Final Decision at 300.

consumption, so that the City's water supply was not overburdened in the interim.<sup>2</sup> Id. Because Mirant Kendall did not expect to receive a modified National Pollutant Discharge Elimination System (ANEPDES) permit for Kendall station until early 2003, and given the agreement by the City and the Company, the Siting Board permitted Mirant Kendall to commence operations without an emergency water agreement. Id. However, the Siting Board also stated that, given the importance of the emergency water supply agreement, it was important to impose a firm deadline for contract negotiations and set a deadline of March 1, 2003. Id.

The Siting Board notes that the affected parties agree to the proposed one-month extension and that both parties indicate optimism that the additional time will allow them to bring this matter to closure. The Siting Board concludes that the requested one-month extension is reasonable and therefore amends Condition E to read as follows:

In order to minimize water impacts, the Siting Board directs the Company to negotiate a mutually acceptable emergency water agreement with the City of Cambridge and to provide a copy to the Siting Board on the earlier of: (a) April 1, 2003 or (b) that time when Mirant begins taking water from the Broad Canal/Charles River for process and steam purposes, and relying upon the City water only for sanitary purposes and for emergency process and steam use. The Siting Board also directs Mirant to limit its use of City water to historical levels, or obtain City consent to use City water at higher levels, until such time as it ceases to rely regularly on City water for process and steam purposes.

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<sup>2</sup> As stated above, Amended Condition E directs Mirant Kendall to limit its use of City water to historical levels, or obtain City consent to use City water at higher levels, until such time as it ceases to rely regularly on City water for process and steam purposes.

Signed:

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Paul B. Vasington  
Chairman  
Energy Facilities Siting Board/  
Department of Telecommunications and Energy

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Date

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W. Robert Keating  
Commissioner  
Department of Telecommunications and Energy

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Date

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Deirdre K. Manning  
Commissioner  
Department of Telecommunications and Energy

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Date

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David L. O'Connor  
Commissioner  
Division of Energy Resources

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Date

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Joseph Donovan  
for Barbara B. Berke, Director  
Department of Economic Development

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Date

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Sonia Hamel  
for Ellen Roy Herzfelder  
Secretary of Environmental Affairs

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Date

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Louis A. Mandarinini, Jr.  
Public Member

Date