

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

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

SITING BOARD RULING ON REQUEST FOR
FURTHER AMENDMENT TO CONDITION E

Jolette A. Westbrook
Hearing Officer
June 13, 2003

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I. INTRODUCTION

On December 15, 2000, the 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. In the Final Decision, Condition E stated that “[i]n order to minimize water impacts, the Siting Board directs the Company to negotiate a mutually acceptable emergency water use agreement with Cambridge and to provide a copy to the Siting Board prior to the commencement of operation.” On November 15, 2002, the Siting Board amended Condition E. Final Decision on Compliance and Request to Amend Condition E, 13 DOMSB 279 (2002) (“Compliance Decision”).¹ Specifically, Condition E was amended directing 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. Mirant Kendall also was directed 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. at 292. Since that time, Mirant Kendall has filed three requests to extend the time in which it is required to file a copy of its emergency water agreement with the City of Cambridge.² On each occasion, the Siting Board issued an Action by Consent granting Mirant Kendall separate one-month

¹ In the Compliance Decision, the Siting Board also amended Condition F and found that Mirant Kendall had complied with Condition D.

² Mirant Kendall Request for Extension dated February 25, 2003, Mirant Kendall Request for Extension dated March 31, 2003 and Mirant Kendall Request for Extension dated April 29, 2003.

extensions and amended Condition E accordingly.³ As a result of the May 22nd Action by Consent, Condition E establishes June 2, 2003 as the date for Mirant Kendall to comply with Condition E (“Amended Condition E”). On May 30, 2003, Mirant Kendall filed a motion requesting an additional one-month extension from June 2, 2003 to July 1, 2003 to comply with Amended Condition E (“Request for Further Extension”). The Request for Further Extension is the only subject of this decision.

II. REQUEST FOR FURTHER EXTENSION

In support of its Request for Further Extension, the Company states that Mirant Kendall and the City of Cambridge (“City”) were exchanging written drafts of an agreement but that the written draft received from the City does not appear to be consistent with the verbal agreement the Company believed the parties had reached (Request for Further Extension at 2). Mirant Kendall states that, as a result, it needs additional time to attempt to negotiate a written agreement (*id.*). Mirant Kendall also states that it will continue to negotiate in good faith but that it is possible that no agreement will be reached (*id.*). In that case, Mirant Kendall stated that it may file a notice of project change seeking relief from Amended Condition E (*id.*).

In evaluating Mirant Kendall’s request, the Siting Board notes that the purpose of granting the initial amendment to 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 consumption, so that the City’s water supply was not overburdened in the interim.⁴

³ Mirant Kendall, LLC Action by Consent dated March 10, 2003, Mirant Kendall, LLC Action by Consent dated April 10, 2003 and Mirant Kendall, LLC Action By Consent dated May 22, 2003 (“May 22nd Action by Consent”).

⁴ All amendments to Condition E have retained the provision in original Condition E directing Mirant Kendall to limit its use of City water to historical levels, or obtain City consent to use
(continued...)

Id. Because Mirant Kendall did not expect to receive a modified National Pollutant Discharge Elimination System (“NPDES”) 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 deadline for contract negotiations and set a deadline of March 1, 2003. Id. In granting Mirant Kendall the extension from March 1, 2003, to April 1, 2003, the Siting Board took into consideration that both Mirant Kendall and the City indicated optimism that the additional time would allow them to bring this matter to closure (Action by Consent, March 10, 2003, at 2-3). In granting the extension from April 1, 2003 to May 1, 2003, the Siting Board recognized that the parties were making progress in bringing this matter to closure and in light of such progress, it would be counterproductive not to allow the parties further extension to execute a written agreement (Action by Consent, April 10, 2003, at 2-3). In granting the extension from May 1, 2003 to June 2, 2003, the Siting Board recognized that the parties were continuing to make progress toward finalizing an agreement and noted that the City did not oppose the Company’s request for extension (May 22nd Action by Consent, at 3).

Based on the information most recently presented by the Company, the extension from May 1, 2003 to June 2, 2003 has resulted in Mirant Kendall and the City exchanging written drafts of the emergency water agreement to memorialize their verbal agreement. Although the Company questions whether the written draft accurately reflects the verbal agreement the Company believed it had reached with the City, the Company states that it is willing to continue to engage in good faith negotiations with the City to execute a written emergency water agreement. The Siting Board recognizes that since March 1, 2003, Mirant Kendall and the City have made progress toward reaching an agreement. The additional time period that Mirant Kendall is now requesting to attempt to reach an agreement is relatively short and could result in compliance with Condition E. Therefore, the Siting Board concludes

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City water at higher levels, until such time as it ceases to rely regularly on City water for process and steam purposes.

that the requested one-month extension is reasonable and 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) July 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.

Jolette A. Westbrook
Hearing Officer

Dated this 13th day of June 2003.

GRANTED by the Energy Facilities Siting Board at its meeting of June 12, 2003, by the members and designees present and voting: Paul B. Vasington (Chairman, DTE/EF SB); W. Robert Keating (Commissioner, DTE); Deirdre K. Manning (Commissioner, DTE); Robert Sydney (for David L. O'Connor, Commissioner, Division of Energy Resources); and Stephen Pritchard (for Ellen Roy Herzfelder, Secretary of Environmental Affairs).

Paul B. Vasington, Chairman
Energy Facilities Siting Board

Dated this 12th day of June, 2003.