

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Motion for Extension of Time to Commence
Noise Monitoring at the Fore River Generating
Facility in Weymouth, Massachusetts

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EFSB 98-7B

FINAL DECISION

Selma Urman
Hearing Officer
March 3, 2004

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Interested Person

The Energy Facilities Siting Board hereby amends Condition J of the Final Decision by granting Exelon Fore River Development, LLC a five-month extension relative to the commencement of noise monitoring at the Fore River Generating Facility in Weymouth, Massachusetts.

I. INTRODUCTION

On February 11, 2000, the Siting Board issued a final decision approving, subject to conditions, the petition of Sithe Edgar Development LLC to construct a 775 MW generating facility in the Town of Weymouth.¹ Sithe Edgar Development LLC, 10 DOMSB 1 (2000) (“Sithe Edgar Decision”). Pursuant to the Sithe Edgar Decision, the Siting Board found that, with implementation of certain conditions, noise impacts of the proposed facility would be minimized. Sithe Edgar Decision at 96. Condition J of the decision requires that:

In order to minimize noise impacts, the Siting Board directs the Company, in consultation with Weymouth and MDEP, to develop a noise monitoring protocol and baseline noise measurements, taken on a schedule chosen in consultation with MDEP and Weymouth, that allows for the implementation of an ongoing periodic noise monitoring program to begin within six months of the commencement of commercial operation, and a reporting procedure that provides for dissemination of monitoring results to Weymouth and/or the community areas that are affected by L₉₀ noise increases from the facility of 3 dBA or more.

Sithe Edgar Decision at 149.

On July 29, 2003, Exelon Fore River submitted to the Siting Board a statement of its compliance with Condition J and its associated directives as well as a copy of the July 2003 noise control monitoring protocol (“NCMP”). The NCMP provides that initial noise monitoring will be conducted within six months of commercial operation of the Fore River Generating Facility (“Fore River Facility”) and establishes a reporting procedure for disseminating monitoring results in accordance with Condition J.²

¹ On or about November 1, 2002, Exelon Fore River became the owner of the facility.

² By letter dated September 30, 2003, the Siting Board Staff acknowledged receipt of information showing that Exelon Fore River had complied with the requirements of Condition J of the Sithe Edgar Decision relating to development of a noise monitoring protocol and baseline noise measurements, and had complied with the consultation and

(continued...)

II. REQUEST FOR EXTENSION

On January 28, 2004, Exelon Fore River requested a five-month extension of the requirement in Condition J relative to the commencement of noise monitoring at the Fore River Facility (“January 28th Letter”) (EFSB-Amend-1, at 1).³ The Company states that the reasons for its request to the Siting Board for a five-month extension to begin noise monitoring are the same reasons that serve as the basis for the Company’s January 22, 2004 extension request to the Massachusetts Department of Environmental Protection (“MDEP”) (*id.* at 3).⁴ Specifically, according to Exelon Fore River, weather conditions and operational limitations have delayed noise mitigation and noise monitoring activities at the facility site (*id.*). The Company asserts that ambient temperatures below approximately 40 degrees Fahrenheit, “do not allow the Company to operate all of the fans in the air-cooled condenser, the facility’s Fin Fan Cooler, or the supply and exhaust fans for building HVAC system components which together could comprise a significant noise source” (*id.*). The Company states that the Fore River Facility commenced commercial operation on August 4, 2003 (*id.* at 2) and that any extension granted by the Siting Board would not affect the Company’s commitment to at least two years of noise testing at the Fore River Facility (*id.* at 3).

² (...continued)
notification requirements set forth in Condition J and the associated directives (September 30, 2003, Letter at 2).

³ In support of its request for extension, Exelon Fore River submitted the January 28th Letter and a letter dated February 13, 2004 (“February 13th Letter”). The January 28th Letter, including all attachments, and the February 13th Letter, including all attachments, are hereby moved into evidence as Exhibits EFSB-Amend-1 and EFSB-Amend-2, respectively.

⁴ Under MDEP’s Air Plan Approval for the Fore River Facility, Exelon Fore River was required to begin noise monitoring of the facility within 180 days from facility startup (EFSB-Amend-1, n.5). On February 4, 2004, MDEP granted a five-month extension to this 180-day requirement (Exh. EFSB-Amend-2, at 1 and Att.). As a result, MDEP is now requiring the Company to conduct a noise survey by June 30, 2004 and to provide MDEP with a written report of the results by August 29, 2004 (*id.* at 1 and Att.).

III. ANALYSIS

In imposing Condition J, the Siting Board stated that “[g]iven the proximity and extent of the residential neighborhood to the east of the proposed facility, and the extent of noise mitigation necessary to attain the Company’s noise target, additional verification of the facility’s compliance with identified noise targets over time is appropriate.” Sithe Edgar Decision at 94-95. In support of its request for extension, Exelon Fore River has provided the Siting Board with information stating that several components at the Fore River Facility cannot be operated due to weather conditions. The information provided suggests that such components could significantly affect the noise readings taken at or near the Fore River Facility site. To require the Company to go forward with noise monitoring at this time, knowing that several noise sources would not be captured, would be counter to the verification that Condition J seeks to obtain. Therefore, the Siting Board hereby grants the Company’s five-month request for extension and amends Condition J accordingly.

The Siting Board notes, however, that a delay in the commencement of formal periodic noise monitoring should not result in delayed implementation of noise mitigation measures that could be of immediate benefit to the local community. Therefore, the Siting Board directs Exelon Fore River to proceed without delay to implement all planned noise mitigation, including the installation of any noise mitigation equipment that has not already been installed.

IV. DECISION

The Siting Board amends Condition J of the Final Decision as follows:

In order to minimize noise impacts, the Siting Board directs the Company, in consultation with Weymouth and MDEP, to develop a noise monitoring protocol and baseline noise measurements, taken on a schedule chosen in consultation with MDEP and Weymouth, that allows for the implementation of an ongoing periodic noise monitoring program to begin within 11 months of the commencement of commercial operation, and a reporting procedure that provides for dissemination of monitoring results to Weymouth and/or the community areas that are affected by L_{90} noise increases from the facility of 3 dBA or more.

Selma Urman
Hearing Officer

Dated this 3rd day of March, 2004.

APPROVED by the Energy Facilities Siting Board at its meeting of March 2, 2004, by the members and designees present and voting: Paul G. Afonso (Chairman, DTE/EFSB); W. Robert Keating (Commissioner, DTE); Robert Sydney (for David L. O'Connor, Commissioner, Division of Energy Resources); Joseph Donovan (for Barbara B. Berke, Director, Department of Business and Technology); and Stephen R. Pritchard (for Ellen Roy Herzfelder, Secretary of Environmental Affairs).

Paul G. Afonso
Chairman, DTE/EFSB

Dated this 2nd day of March, 2004.

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, § 5; Chapter 164, § 69P).