

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

In the Matter of the Petition of)	
Sithe Mystic Development LLC for Approval)	
to Construct a Bulk Generating Facility in)	EFSB 98-8A
in the City of Everett, Massachusetts)	

FINAL DECISION
PROJECT CHANGE

Selma Urman
Hearing Officer
November 30, 2001

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The Energy Facilities Siting Board hereby approves, subject to conditions, changes to the Sithe Mystic project as further described below.

I. INTRODUCTION

On September 30, 1999, the Energy Facilities Siting Board (“Siting Board”) conditionally approved the petition of Sithe Mystic Development LLC (“Sithe Mystic” or “Company”) to construct a natural gas-fired, combined-cycle electric generating facility with a net nominal electrical output of 1550 megawatts (“MW”) in the City of Everett, Massachusetts (“Everett” or “City”). Sithe Mystic Development LLC, 9 DOMSB 101,111 (1999) (“Final Decision”).

On March 2, 2000, Sithe Mystic filed with the Siting Board a notification of project change with respect to its decision to use different construction worker parking areas from those approved in the Final Decision (“March 2000 Filing”). On March 20, 2000 the Company provided the Siting Board with responses to information requests issued to the Company.¹ On March 30, 2000, the Siting Board notified the Company that the change proposed by Sithe Mystic did not require further inquiry (March 30, 2000 Letter at 2).

On August 27, 2001, Sithe Mystic provided the Siting Board with notice of additional changes to the proposed project (“August 27 Filing”).² The changes included: (1) a change in the arrival time for the day construction shift (“day shift”) from 6:30 a.m. to 6:00 a.m.³ and a change in the departure time for the day shift from 3:00 p.m. to 4:30 p.m.; (2) an increase in the number of on-site day shift

¹ The Siting Board hereby marks for identification and moves into the record as Exh. PC-T-1, Exh. PC-T-2, Exh. PC-T-3, and Exh. PC-T-4, the Company’s four March 20, 2000 responses to information requests issued by the Siting Board on March 15, 2000.

² The August 27 Filing consisted of the following documents, each of which is hereby marked for identification and moved into the record in this matter: (1) a seven-page letter dated August 27, 2001 signed by John A. DeTore regarding proposed changes to the Sithe Mystic project and attachments (Exh. PC-Sithe-1); and (2) an August 8, 2001 traffic analysis document entitled “Traffic Impact Study” (Exh. PC-Sithe-2).

³ In the underlying decision the arrival time was 7:00 a.m.; in the March 2000 Filing, the arrival time was changed to 6:30 a.m.

workers from approximately 1100 workers to 1350 workers at peak;⁴ and (3) changes in construction worker parking, including the use of a satellite parking area at the Mystic Mall in Chelsea and associated shuttle bus service, rather than a ballpark near Mystic Station (Exhs. PC-Sithe-1, at 3; PC-EFSB-2). The Company also informed the Siting Board as an additional change that it was not providing shuttle bus service from the Sullivan Square MBTA Station, as required by Condition F of the Final Decision (Exh. PC-Sithe-1, at 5). Finally, the Company also informed the Siting Board of the time (5:30 p.m. to 3:00 a.m.) and size (600 workers) of its second shift (Exh. PC-Sithe-1, at 1).⁵

II. PROCEDURAL HISTORY

In its August 27 Filing, Sithe Mystic provided a Traffic Impact Study (“2001 Traffic Study”) dated August 8, 2001. On October 10, 2001, Sithe Mystic submitted responses to Siting Board staff information requests (“October 10 Filing”).⁶ Sithe Mystic submitted supplemental information request responses on October 25, 2001 (“October 25 Filing”).⁷ On October 18, 2001, all parties were given

⁴ The August 27 Filing stated that the number of on-site day shift workers would increase from 1100 to 1400 and night shift workers would increase from 600 to approximately 1200 (Exh. PC-Sithe-1, at 4). However, in a filing dated October 10, 2001, the Company subsequently revised its estimates in response to Siting Board information requests, stating that the estimates of the number of on-site workers are lower than the projected estimates in the August 27 Filing and the 2001 Traffic Study (Exh. PC-EFSB-2).

⁵ In the underlying proceeding, the Company had indicated that, for much of the construction period, it would operate a “significant” second shift of either eight or ten hours, beginning immediately after the first shift; however, details of the second shift were not developed in the underlying proceeding (Exh. EFSB-N-9).

⁶ The October 10 Filing consisted of the Company’s response to nine information requests, each of which is hereby marked for identification and moved into the record in this matter as Exhs. PC-EFSB-1 through PC-EFSB-9.

⁷ The October 25 Filing consisted of supplemental responses to Exhs. PC-EFSB-3a, PC-EFSB-5, and PC-EFSB-9. These documents are marked for identification and moved into the record as Exhs. PC-EFSB-3a(S), PC-EFSB-5(S), and PC-EFSB-9(S).

an opportunity to issue information requests or submit comments with respect to the proposed project changes. No information requests or comments were filed by any party.

III. SCOPE OF REVIEW

In its approvals of the Sithe Mystic project, the Siting Board required Sithe Mystic to notify it of any changes other than minor variations to the proposal as presented to the Siting Board, so that it might decide whether to inquire further into such issues. Final Decision at 207. The standard of review to determine whether further inquiry is warranted was 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 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. at 437; see also IDC Bellingham LLC Compliance Decision, 11 DOMSB 27, at 38-39 (2000).

The Siting Board notes that the Company’s decision to use a satellite parking area and associated shuttle bus service from the Mystic Mall in Chelsea, rather than to provide shuttle service to and from the Sullivan Square MBTA stop, may be in conflict with Condition F of the Final Decision, which called for shuttle service to and from the Sullivan Square stop and/or other public transit stops likely to be used by Mystic Station construction workers. Final Decision at 206-207. The Siting Board finds that further inquiry is necessary to resolve the conflict between Condition F and the Company’s current proposal, as well as to determine whether additional mitigation is needed to minimize the traffic impacts of the expanded day shift and the night shift. The Siting Board undertakes this further inquiry in Section IV.A, below.

In addition, the Siting Board notes that, while the Company proposed the use of a second shift during the underlying proceeding, and addressed the possibility of noise impacts from nighttime construction worker parking in the review of the March 2000 Filing, the Siting Board has not previously addressed detailed plans for night construction and related noise impacts, now proposed to include the use of a regular shift of 600 construction workers. The Siting Board finds that further inquiry is

necessary to determine whether additional mitigation is needed to minimize the noise impacts of the night shift. The Siting Board undertakes this further inquiry in Section IV.B, below.

IV. ENVIRONMENTAL IMPACTS

A. Traffic Impacts

1. Final Decision

In the underlying proceeding, the Company anticipated using a main construction shift running from 7:00 a.m. to 3:00 p.m., with a maximum construction-related workforce of 1078. Final Decision at 171. The Company indicated that, during a major portion of the project, it would use a 10-hour construction shift running from 7:00 a.m. to 5:30 p.m., and conduct significant second shift work using an eight- or ten-hour second shift from mid-2000 until project completion (Exh. EFSB-N-9). Further, in the underlying proceeding, the Company indicated that limited weekend work would be expected during the start-up and commissioning phase of the project (id.). The Company provided an analysis of the impacts of first-shift construction traffic, assuming that 50% of afternoon construction-related traffic would occur during the afternoon commuter peak period. Final Decision at 171-172.

The Company proposed to mitigate construction traffic impacts by: (1) optimizing signal timing at the three Route 99 intersections to maximize traffic flow, and manually controlling Route 99 traffic signals when beneficial; (2) using uniformed traffic-control police as necessary at each intersection; (3) encouraging workers' use of public transportation; (4) encouraging carpools among Company employees and subcontractors and providing preferred parking to those who carpool; (5) delivering large equipment by barge and rail as much as possible; and (6) scheduling deliveries during off-peak hours to the extent practicable. Id. at 174.⁸ The Siting Board found that, with the implementation of the proposed mitigation, traffic conditions would be Level of Service ("LOS")⁹ C or better except at

⁸ In addition, the Company proposed specific mitigation associated with the use of the parking area off Route 99. Final Decision at 174. In its March 2000 Filing, the Company indicated that this area would not be used for construction worker parking (March 2000 Filing at 2).

⁹ The Company stated that LOS is a measure of the efficiency of the traffic operations at a
(continued...)

the Route 99/Beecham Street intersection, which would operate at LOS E during the morning peak traffic hour, and LOS D during the afternoon peak traffic hour. Id. at 176. The Siting Board found that, with implementation of the proposed mitigation and a condition concerning the provision of shuttle service between the Sullivan Square MBTA stop (and/or any other public transit stops likely to be used by Mystic Station construction workers) and the Mystic Station site,¹⁰ the environmental impacts of the proposed facility would be minimized with respect to traffic. Id. at 177.

2. March 2000 Project Change

In its March 2000 Filing, Site Mystic informed the Siting Board that the Route 99 parking area was unavailable, and proposed that construction workers park at property owned by Boston Gas Company (“Boston Gas”) at the corner of Rover Street and Robin Street (“Boston Gas lot”), and on a ballpark located at the corner of Dexter Street and Robin Street (March 2000 Filing at 2). The Company also stated that the regular day shift would start at 6:30 a.m. and end at 3:00 p.m. (March 2000 Filing at 2). The Company provided a revised traffic analysis which assumed the new schedule and parking locations (id.). The Company stated that it would mitigate construction traffic impacts by: (1) striping a southbound left turn lane on Route 99 at the Dexter Street intersection; (2) providing uniformed traffic officer control at the Rover Street/Robin Street intersection to facilitate vehicle and pedestrian traffic; (3) re-routing all traffic to Route 99 through the Route 99/Dexter Street intersection, rather than through the Route 99/Beacham Street intersection or the Beacham Street/Rover Street intersection; (4) requiring workers to enter and exit the Boston Gas/ballpark areas from specific exits; and (5) scheduling construction shifts to occur outside normal commuting peak hours (March 2000

⁹ (...continued)
certain location. The Company stated that traffic conditions on roadways and intersections are represented by the letters A through F on the LOS scale, where A represents a “free flow” condition with minimal delays, and F represents “forced flow” or breakdown conditions characterized by erratic vehicle movements. Final Decision at 173.

¹⁰ A second condition concerning pedestrian safety in relation to the parking area across Route 99 is no longer applicable (March 2000 Filing at 2).

Filing at 3; Exh. PC-T-2). After reviewing the information provided by Sithe Mystic, the Siting Board found that the change in parking areas did not require further inquiry (March 30, 2000 Letter).

3. August 2001 Project Change

In its August 2001 Filing, Sithe Mystic proposed the use of two construction shifts: a day shift of approximately 1350 workers, running from 6:00 a.m. to 4:30 p.m., and a night shift of approximately 600 workers, running from 5:30 p.m. to 3:00 a.m. (Exhs. PC-Sithe-1, at 3; PC-EFSB-2). The Company stated that approximately 680 day shift workers in 475 cars currently park at the Boston Gas lot, while the remaining day shift workers use a satellite parking area located at the Mystic Mall in Chelsea (Exh. PC-EFSB-2). The Company anticipated that additional day shift workers would park at the Mystic Mall, and that the entire night shift would park at the Boston Gas lot unless overflow parking at the Mystic Mall proved necessary (id.).

The Company submitted a revised traffic study based on traffic counts taken in August 2001, while an on-site day shift of approximately 1100 employees¹¹ and a night shift of approximately 600 employees were in place (Exh. PC-Sithe-2, at 1). Based on the new traffic counts, the 2001 Traffic Study concluded that peak traffic periods in the vicinity of Mystic Station occur from 7:45 a.m. to 8:45 a.m., and from 4:00 p.m. to 5:00 p.m. (id. at 4). The Company based its traffic analysis on an initial peak work force estimate of 1400 day shift workers and 1170 night shift workers, and used ride sharing and public transit assumptions similar to those used in the underlying case (Exhs. PC-EFSB-2; PC-Sithe-1, at 4). The Company later updated its traffic study to assume that no day shift workers would use public transit, reflecting the current limited public transit use (Exh. PC-EFSB-6).¹²

The 2001 Traffic Study indicated that existing traffic conditions at intersections near Mystic Station ranged from LOS A to LOS C during the morning peak construction period (5:30 a.m. to 6:30

¹¹ The Company indicated that an additional 200 of the day shift employees were employed at satellite laydown areas in Charlestown, Lynnfield and Wakefield, for a total project work force of 1300 (Exh. PC-Sithe-1, Att. at 2).

¹² The traffic analysis submitted in the underlying proceeding assumed that one third of craft workers would use public transit (Exh. PC-EFSB-6).

a.m.), and that the additional day shift workers would increase average delays by 0.3 to 3.3 seconds (Exh. PC-EFSB-8, Modified Table 4). According to the 2001 Traffic Study, existing traffic conditions at intersections along Route 99 and Rover Street (excluding the site driveway) ranged from LOS E to LOS F during the evening peak construction period (4:30 p.m. to 5:30 p.m.); the additional day and night shift traffic resulted in increased average delays of up to 23 seconds (id.). The Company noted that the actual number of night shift workers would be significantly lower than the number assumed in the August 2001 traffic analysis, making the August 2001 analysis conservative (Exh. PC-EFSB-6).

Sithe Mystic asserted that traffic conditions in the vicinity of the Mystic Station site (which include traffic from the current day and night shifts) are in many instances much better than had been predicted in the Sithe Mystic proceeding (Exh. PC-Sithe-1, at 4). Sithe Mystic stated that the use of satellite parking at the Mystic Mall has reduced traffic to the construction site by at least 500 cars, alleviating traffic impacts in the vicinity of the site (id. at 5-6). However, the Company indicated that construction workers coming to the Mystic Mall via downtown Boston have the option of four routes, two of which involve travel along Route 99 north in the vicinity of Mystic Station (Exh. PC-EFSB-3).

Sithe Mystic stated that a uniformed traffic control officer currently is stationed at the intersection of Robin Street/Rover Street from 4:00 p.m. to 5:00 p.m., significantly improving LOS at that intersection (Exhs. PC-EFSB-8; PC-EFSB-9). In addition, two other uniformed officers are available to Sithe Mystic on an as-needed basis; in the past, officers had been assigned to the Rover Street construction gate and to the Route 99/Dexter Street intersection (Exhs. PC-EFSB-8; PC-EFSB-9). The Company acknowledged that, in some instances, an officer stationed at either the Route 99/Dexter Street or the Route 99/Beacham Street intersection could help reduce delays on one or multiple approaches, but asserted that overall there is limited value in deploying a police officer to intersections along Route 99 (Exh. PC-EFSB-9(S)). Therefore, the Company now defers to the expertise of the Everett Police Department to determine when to deploy the officers (id.). Finally, Sithe Mystic asserted that other traffic mitigation methods, such as re-striping or widening roadways, would not be effective for short-term traffic impacts associated with peak construction work (Exh. PC-EFSB-9).

The Company provided a qualitative assessment of traffic impacts in the vicinity of the Mystic Mall resulting from the use of the Mystic Mall for satellite parking (Exhs. PC-EFSB-6; PC-Sithe-2). The Company estimated that 500 to 600 day shift workers currently park at the Mystic Mall parking lot and are transported to the Sithe Mystic site by a private shuttle service that uses buses and vans (Exhs. PC-Sithe-1, at 5; PC-EFSB-6).¹³ Sithe Mystic asserted that the traffic impacts of workers commuting to and from the Mystic Mall are dispersed throughout the roadway network due to the use of various routes by the workers to commute to the parking area (Exh. PC-EFSB-3). The Company noted that the area surrounding the Mystic Mall is primarily industrial in nature, with the nearest residential area located more than 1/4 mile from the construction worker parking area in the rear lot (Exh. PC-EFSB-4).¹⁴ Sithe Mystic stated that its contractor has been in consultation with the Chelsea Police Department, and that the Company has agreed to place a traffic control officer at the Mystic Mall exit to control traffic if necessary (Exh. PC-EFSB-3).

In the Final Decision, the Siting Board required Sithe Mystic to provide shuttle service to the site from the Sullivan Square Station or another MBTA stop likely to be used by project construction workers. Final Decision at 177. In its August 2001 Filing, the Company asserted that since the MBTA already operates a public bus service from the Sullivan Square Station, there would be no benefit to replicating the service (Exh. PC-Sithe-1, at 5). Sithe Mystic also indicated that, early in 2000, the MBTA had refused either to operate a shuttle bus service for Mystic Station construction workers, or to permit a private shuttle bus service to operate out of the Sullivan Square Station (Exh. PC-EFSB-5). The Company indicated that the MBTA's decision was intended to prevent (1) bus equipment from competing for space within the station complex, and (2) any interference with scheduled MBTA bus routes (Exh. PC-EFSB-5(s)). Sithe Mystic stated that one private employer, the R.M. Bradley Company, operates a shuttle service that uses three 20-passenger vans to pick-up and discharge

¹³ Sithe Mystic based its estimate on total trip generation for both the morning and afternoon peak hour on the use of 25 buses and 3 vans to transport the workers (Exh. PC-EFSB-6)

¹⁴ Construction worker parking at the Mystic Mall is confined to the rear lot, in the vicinity of Second and Carter Streets (Exhs. PC-EFSB-3, Att. C; PC-EFSB-3a(S)).

passengers at the public parking area, which is physically segregated from the main station area (id.). The Company provided information showing that the MBTA Orange Line service begins at 5:16 a.m. at both its northern and southern termini, and that the travel time to Sullivan Square Station is approximately 10 minutes, and 23 minutes, respectively (id.). Based on this schedule, the Company argued that, while some construction workers might be able to use public transit to reach the Sithe Mystic job site by the beginning of the day shift at 6:00 a.m., most would not be able to do so (id.).

4. Analysis

In its petition, Sithe Mystic proposes to perform construction work at Mystic Station in two shifts: a 1350-person day shift, running from 6:00 a.m. to 4:30 p.m., and a 600-person night shift, extending from 5:30 p.m. to 3:00 a.m. Workers for both shifts would park in the Boston Gas lot near Mystic Station; additional day shift parking (and night shift parking, if necessary) is available at the Mystic Mall in Chelsea. The resultant traffic patterns would differ significantly from those analyzed in the Final Decision for several reasons. First, Sithe Mystic seeks approval for an extended day shift which runs from 6:00 a.m. to 4:30 p.m., moving the shift change for the project into the peak evening traffic period. In addition, the Company's proposal reflects greater overall vehicle use by construction workers due to: (1) an increased size of the day shift work force; (2) reduced reliance on public transportation for travel by day shift workers; and (3) the modeling of a regular night shift. While motor vehicle travel by workers would increase, the use of remote parking at the Mystic Mall with shuttle transport during the day shift would reduce the impact of travel by day shift workers on traffic near the project site.

Table 1, attached as Appendix 1 to this decision, compares the overall traffic conditions predicted by the 2001 Traffic Study with conditions anticipated by the Company in the underlying petition and in the March 2000 Filing. The 2001 Traffic Study shows that the change in shift schedule provides some benefit to projected morning traffic impacts, as day shift workers now arrive between 5:30 a.m. to 6:30 a.m., well outside of the peak commuter traffic period. Specifically, for the morning peak the anticipated LOS at (1) the Route 99/Dexter Street intersection is now projected to be LOS

C, rather than LOS F (without mitigation), as anticipated in the underlying decision; and (2) the Route 99/Beacham Street intersection is now projected to be LOS C, rather than LOS E, as anticipated in the underlying decision.

However, the current shift timing also has resulted in construction worker traffic coinciding with the afternoon peak commuter traffic period, resulting in delays during the afternoon peak period that offset the improvements in morning peak traffic conditions. The 2001 Study shows that for the afternoon peak, the anticipated overall LOS at every signalized intersection is worse than anticipated in the underlying decision. Specifically, overall (1) the Route 99/Dexter Street intersection is now projected to be LOS F, rather than LOS D; and (2) the Route 99/Beacham Street intersection is now projected to be LOS F, rather than LOS D. Further, while the overall LOS at the Route 99/Beacham Street/McDonalds intersection was projected to improve based on the March 2000 project changes, it is now projected to significantly deteriorate.

In addition, at the unsignalized intersections, the anticipated afternoon peak LOS is projected to worsen overall at both the Robin Street/Rover Street and Robin Street/Beacham Street intersections. Specifically, overall (1) the Robin Street/Rover Street intersection is modeled at LOS F, rather than LOS A as projected in the underlying proceeding;¹⁵ and (2) the Robin Street/Beacham Street intersection is modeled at LOS F, rather than LOS A as projected in the underlying proceeding. Actual conditions at the Robin Street/Rover Street intersection may be better than modeled, due to routine police officer control of the intersection.

Thus, it appears that, during project construction, afternoon peak traffic conditions at almost all intersections would be worse than anticipated in the Final Decision, offsetting improvements in projected morning peak traffic conditions. The Siting Board recognizes that the 2001 Study provides a conservative estimate of traffic conditions under the changed shift schedule, as it assumes an on-site day shift work force of 1400 and an on-site night shift work force of 1170, while the Company now plans a

¹⁵ Since Sithe Mystic will not be using the ballpark parking, the impact of construction traffic on Robin Street southbound at Rover Street would be the same as projected in 1998 and be less than was projected based on the March 2000 changes.

slightly smaller maximum on-site day shift work force of 1350 and a maximum on-site night shift work force of 600. Thus, while project-related impacts on traffic conditions are likely to exceed current levels (which were modeled based on actual traffic counts with an on-site day shift of 1100 workers and an on-site night shift of 570 workers in place), they likely will fall below the projections in the 2001 Traffic Study.

The Siting Board also recognizes that current traffic conditions are influenced not just by construction traffic, but also by an increase in other traffic through the area. Because the Company has used new traffic counts as a baseline for its 2001 Traffic Study, it is difficult to determine the precise effect which construction traffic has had on traffic conditions near Mystic Station. However, it is reasonable to assume that the departure of 475 vehicles from the Boston Gas parking area at the end of the day shift, combined with the arrival of up to 475 vehicles for the beginning of the night shift, has had a significant effect on evening peak hour conditions. While new parking arrangements which incorporate the use of Mystic Mall, and no longer include the use of the ballpark, have served to lessen traffic impacts based on the total number of workers parking near the site, the scheduling of a shift change during the peak traffic hour serves to worsen traffic impacts in the area. In addition, some construction workers using the Mystic Mall lot travel on Route 99 and Dexter Street or Beacham Street, and therefore contribute to the peak traffic conditions.

Overall, a combination of underlying traffic conditions and shift change traffic has resulted in afternoon peak traffic conditions which have in some cases deteriorated to LOS F, which represents forced flow or breakdown conditions with highly unstable operating conditions, with delay times of over 120 seconds. The proposed expansion of the day shift can only cause conditions to deteriorate further. Consequently, in order to minimize construction traffic impacts during the afternoon shift change, the Siting Board directs Site Mystic to work with the City of Everett to develop and implement a construction traffic mitigation plan for the area near Mystic Station. This plan should include measures acceptable to the City of Everett to ensure optimum traffic flow at project area intersections; such measures could include mitigation proposed by the Company, including police control at the Robin Street/Rover Street intersection and other congested intersections during the evening peak traffic

period; optimization of signal timing or manual control of Route 99 traffic signals; and the promotion of carpooling by Company employees and subcontractors.

Finally, Sithe Mystic has argued that its implementation of satellite parking and shuttle service at the Mystic Mall is an appropriate substitute for the provision of shuttle service from the Sullivan Square MBTA stop (or another public transportation stop), as required by Condition F of the Final Decision. The Siting Board notes that the Company's satellite parking proposal helps achieve the primary goal of Condition F, which was to minimize construction traffic impacts by decreasing the number of motor vehicles traveling on the roadways in the vicinity of Mystic Station. However, in light of those aspects of the project change which serve to increase traffic impacts, as well as the unacceptable existing traffic conditions in the vicinity of Mystic Station, it is critical for Sithe Mystic to pursue aggressive measures to reduce the number of construction workers traveling through the Mystic Station area.

The Siting Board recognizes that Condition F provided for coordination with the MBTA and municipal safety officials, and that Sithe Mystic cannot institute a shuttle service from Sullivan Station without MBTA permission and municipal acceptance. However, it appears from the record that the MBTA rejected a shuttle proposal involving the use of full-size buses, which would have had to enter the main station area. The record also suggests it is possible that the Company could implement a van-based shuttle service similar to the one operated by the R.M. Bradley Company, which may well be acceptable to the MBTA. The record indicates the Company already is using vans as well as buses to provide shuttle service between the Mystic Mall and the project site. The Siting Board acknowledges that the MBTA subway schedule may be restrictive; however, the travel time from the Sullivan Square Station stop to the Sithe Mystic site at this time of the morning is very short, and a reasonable number of workers therefore may be able to use a shuttle service. Consequently, the Siting Board modifies Condition F to read as follows:

In order to minimize traffic impacts, the Siting Board directs the Company, if the MBTA permits, to provide a van-based shuttle service between the Sullivan Square MBTA stop and the Mystic Station site at the beginning and end of the day shift. If the MBTA does not permit use of the shuttle service, the Company should so inform the Siting Board. To the extent the Company may schedule van-based service in compliance with this condition that is used at levels significantly below the capacity of

available equipment, the Company may reduce scheduling of van trips or, if warranted after at least two weeks of service, discontinue all van-based shuttle service from Sullivan Station. If shuttle service is discontinued, the Company shall so inform the Siting Board and document its reasons. The two week service period must encompass a time period that includes peak construction worker staffing. The Company should notify workers of the availability of the shuttle service, indicating that service is subject to evaluation and possible discontinuation based on usership.

The Siting Board finds that, with the implementation of the foregoing condition, the traffic impacts of the proposed facility would be minimized.

B. Noise Impacts

1. Final Decision

In the underlying proceeding, the Company stated that it would minimize construction noise by: (1) limiting all major construction activities to daytime hours to the extent practical; (2) limiting pile driving to daytime hours without exception; and (3) confining steam blows to daytime hours with muffled piping. Final Decision at 164. The Company explained that by limiting major construction activity to daytime hours, it expected that this would significantly reduce the noise impact of the project on nearby communities (Exhs. EFSB-A-7S, Att. at 6-15; EFSB-A-1-S3, at 6-3). The Siting Board noted that the construction practices proposed by the Company would be consistent with approaches to construction noise mitigation that it had reviewed in recent generating facility cases, and found that the environmental impacts of the proposed facility would be minimized with respect to noise. Final Decision at 166.

2. March 2000 Project Change

In March, 2000, Sithe Mystic proposed a change in the location of its construction worker parking (March 2000 Filing). Sithe Mystic indicated that nighttime construction worker parking would be confined to the Boston Gas property (Exh. EFSB-PC-T-4). The Company stated it would re-route all traffic to Route 99 through the Route 99/Dexter Street intersection, rather than through the Route 99/Beacham Street intersection or the Beacham Street/Rover Street intersection (Exh. PC-T-2). The

Company noted that the Boston Gas property was not in close proximity to area residences, and concluded that use of the property for construction worker parking would not affect nearby residences either during the day or at night (Exh. EFSB-T-4). After reviewing the information provided by Sithe Mystic, the Siting Board found that the change in parking areas did not require further inquiry (March 30, 2000 Letter).

3. August 2001 Project Change

Sithe Mystic currently is proposing a two-shift construction schedule, with a day shift running from 6:00 a.m. to 3:00 p.m., and a night shift running from 5:30 p.m. to 3:00 a.m. (Exh. PC-Sithe-1, at 3). The Company stated that approximately 600 construction workers would work the night shift during the peak construction period (Exh. PC-EFSB-2).¹⁶ The Company stated that it has been running a limited second shift since June 2000; the current 600-worker second shift began in August 2001 (Exhs. PC-Sithe-1, at 3; PC-EFSB-1). The Company indicated that it has not received any noise complaints related to the conduct of its night shift (Exhs. PC-Sithe-1, at 3). The Company attributed the lack of complaints to the industrial nature of the area surrounding the site, and the distance between the site and potential sensitive receptors (*id.* at 3-4). The Company also noted that truck and vehicular traffic, airplane overflights, and industrial activity (including the operation of Mystic Station and a nearby scrap metal operation) contribute to existing noise levels (*id.* at 4).

The Company stated that night shift parking would be confined to the Boston Gas parking lot unless it becomes necessary to use the Mystic Mall for parking, and indicated that it has not received any complaints regarding noise from workers departing the Boston Gas lot at 3:00 a.m. (Exh. PC-EFSB-2).

4. Analysis

¹⁶ Sithe Mystic stated that, between October 2001 and September 2002, the number of night shift workers would range from 300 to 600 (Exh. PC-EFSB-2).

In its petition, Sithe Mystic proposes to perform construction work at Mystic Station in two shifts: a 1350-person day shift, running from 6:00 a.m. to 4:30 p.m., and a 600-person night shift, extending from 5:30 p.m. to 3:00 a.m. Although the Company proposed significant use of a night shift for the peak construction period through the end of construction (see Exh. EFSB-N-9), the issue of night work was not addressed in detail in the Final Decision. The Siting Board notes that the explicit size and attributes of the second shift were not specified by the Company at the time of the issuance of the Final Decision or the submission of the March 2000 Filing and that the proposed noise mitigation centered around the limitation of major construction to daytime hours. The Siting Board therefore reviews night time noise issues including consideration of the Company's experience to date.

In the Final Decision, the Siting Board noted that the use of the area in the vicinity of the proposed facility is consistent with industrial zoning in three directions, but that a neighborhood characterized by residential use, with some recreational space, lies to the north of the Mystic Station site. Final Decision at 188. The Company stated that the nearest residence is 350 feet north of the site boundary, and there are no sensitive receptors (excluding residences) located within 1000 feet of the site boundary (Exhs. PC-Sithe-1, at 4; EFSB-L-1). The record shows that in the area to the north of the site there are approximately 32 residences located within 1000 feet of the site boundary (Exh. EFSB-L-1).

In the Final Decision, the Siting Board found that the construction noise impacts from the proposed facility would be minimized, based on the Company's proposal to limit pile driving and steam blows to daytime hours, and to limit major construction to daytime hours to the extent practical. Final Decision at 54-56. Although the site is located in a heavily industrialized area with some nighttime industrial activity, there is a residential neighborhood to the north of the facility. The Siting Board notes that the Company will be directing traffic that departs via Route 99 through the Route 99/Dexter Street intersection, thus preventing late night impacts to the surrounding neighborhood. The record indicates that the Company has, thus far, carried out regular night shift construction work without engendering noise complaints, either with respect to noise from the construction site or with respect to noise from departing construction traffic.

However, full-scale night shift construction has been in place only since August 2001. The nature of second shift construction conducted to date may be different from that undertaken in later stages of the project. Given the 3:00 a.m. ending time for the second shift, it is critical that the Company maintain open lines of communication with the neighborhood to the north of the facility in order to minimize the impacts of construction noise.

Accordingly, the Siting Board directs the Company to develop and implement a mechanism for regular communication with the neighborhood bordered by Dexter Street, Route 99, Robin Road and Beacham Road, regarding construction plans and construction noise at the facility. This regular communication should include, initially, distributing an informational notice describing procedures for reporting noise issues and for inquiring about Company activities which includes phone numbers of the Company's representatives, as well as procedures for the notification of municipal officials and upon request, neighbors, in advance of noisy events and steam blows. Beyond initial notification, regular communication may be accomplished via a regular meeting or a newsletter, or in conjunction with meetings with Town officials. Further, if a structured, documented written mechanism has not been implemented, the Company shall develop procedures for recording noise complaints and a mechanism for investigating and remedying complaints.

Accordingly, the Siting Board finds that, with the implementation of the foregoing condition, the noise impacts of the proposed facility would be minimized.

V. DECISION

Consistent with the Siting Board's directive to Sithe Mystic to inform the Siting Board of any changes to Sithe Mystic's proposed project, other than minor variations, Sithe Mystic has informed the Siting Board of three such changes -- an increase in the number of construction workers on-site, a change in the arrival and departure times of construction workers, and the use of the Mystic Mall parking area, rather than a ballpark in the neighborhood of Mystic Station.

The Siting Board found that further inquiry was warranted to evaluate the traffic and noise impacts that may result from a change in shift schedules. After conducting such inquiry in Sections

IV.A, and IV.B above, the Siting Board found that, with the implementation of the following Condition N, and the implementation of Condition F as revised, the traffic impacts of the proposed facility would be minimized.

Condition N:

Consequently, in order to minimize construction traffic impacts during the afternoon shift change, the Siting Board directs the Mystic to work with the City of Everett to develop and implement a construction traffic mitigation plan for the area near Mystic Station. This plan should include measures acceptable to the City of Everett to ensure optimum traffic flow at project area intersections; such measures could include mitigation proposed by the Company, including police control at the Robin Street/Rover Street intersection and other congested intersections during the evening peak traffic period; optimization of signal timing or manual control of Route 99 traffic signals; and the promotion of carpooling by Company employees and subcontractors.

Revised Condition F:

In order to minimize traffic impacts, the Siting Board directs the Company, if the MBTA permits, to provide a van-based shuttle service between the Sullivan Square MBTA stop and the Mystic Station site at the beginning and end of the day shift. If the MBTA does not permit use of the shuttle service, the Company should so inform the Siting Board. To the extent the Company may schedule van-based service in compliance with this condition that is used at levels significantly below the capacity of available equipment, the Company may reduce scheduling of van trips or, if warranted after at least two weeks of service, discontinue all van-based shuttle service from Sullivan Station. If shuttle service is discontinued, the Company shall so inform the Siting Board and document its reasons. The two week service period must encompass a time period that includes peak construction worker staffing. The Company should notify workers of the availability of the shuttle service, indicating that service is subject to evaluation and possible discontinuation based on usership.

The Siting Board also found that, with the implementation of the following condition, the noise impacts of the proposed facility would be minimized.

Condition O:

The Siting Board directs the Company to develop and implement a mechanism for regular communication with the neighborhood bordered by Dexter Street, Route 99, Robin Road and Beacham Road, regarding construction plans and construction noise at the facility. This regular communication should include initially distributing an informational notice describing procedures for reporting noise issues and for inquiring about Company activities which includes phone numbers of the Company's representatives, as well as procedures for the notification of municipal officials and upon request, neighbors, in advance of noisy events and steam blows. Beyond initial notification, regular communication may be via a regular meeting or a newsletter, or in conjunction with meetings with Town officials. Further, if a structured, documented written mechanism has not been implemented, the Company shall develop procedures for recording noise complaints and a mechanism for investigating and remediating complaints.

Accordingly, the Siting Board finds that, upon compliance with Condition F as revised, and with Conditions N and O set forth in Sections IV.A and IV.B, above, the Company's plans for the construction of the proposed facility would minimize the environmental impacts of the proposed facility consistent with the minimization of cost associated with the mitigation, control, and reduction of the environmental impacts of the proposed generating facility.

Findings in this decision are based upon the project change information provided by the Company examined in light of findings the Siting Board made in the Final Decision. Since the project changes outlined in this decision pertain to the facility approved by the Siting Board in the underlying proceedings, the Company must construct and operate its facility in conformance with its proposal presented in the underlying proceedings; the only modifications permitted are those stated in the above conditions.

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.

Selma Urman
Hearing Officer

Dated this 30th day of November, 2001

APPENDIX 1

	<u>Analysis for Petition</u> 2000 Construction Year Build /Petition¹		<u>Analysis for March 2000</u> 2000 Construction Year Build w/Boston Gas and Ballpark²		<u>Analysis for Project Change</u> 2001 Construction Year Build w/project changes³	
Intersection	Morning Peak 6:30-7:30 a.m	Afternoon Peak 5:00-6:00 p.m	Morning Peak 5:30-6:30 a.m	Afternoon Peak 2:30-3:30 p.m	Morning Peak 5:30-6:30 a.m	Afternoon Peak 4:30-5:30
Signalized Intersection	LOS/Delay (seconds)	LOS/Delay (seconds)	LOS/Delay (seconds)	LOS/Delay (seconds)	LOS/Delay (seconds)	LOS/Delay (seconds)
Route 99 /Dexter	F/>120	D/32	C	D	C/23	F/106
Dexter WB	F/>120	E/49	D	E	C/27	D/40
Rt. 99 NB	B/6	E/42	C	E	B/17	F/>120
Rt. 99 SB	D/33	B/8	C	C	C/26	F/101
Route 99 Beacham/McD	E/42	D/30	B	C	C/25	F/>120
McD EB	C/21	C/18	C	B	C/31	C/32
Beacham WB	F/108	D/32	D	D	D/42	F/104
Rt. 99 NB	E/41	D/40	B	C	B/13	E/80
Rt. 99 SB	D/33	C/17	B	C	C/25	F/>120
Unsignalized Intersections						
Robin/Rover			B*	C*	C/15	F/55*
Robin SB	A/.2	A/.1	B	D	A/8	A/9
Rover WB	C/15	C/15	C	B	C/15	F/55
Robin/Beacham	/3	/7			C/24	F>120
Robin NB	B/8	C/18	B	B	C/21	F/>120
Exxon SB	C/10	D/23	B	C	C/24	F/59
Beacham EB	A/0	A/0	A	A	A/8	A/8
Beacham WB	A/2	A/2	A	A	A/8	A/9

* Without police officer controlling traffic.

¹ August 27 Filing, Appendix C- 1998 Traffic Study at 4-10. Based on information provided by the Company in 1998 in support of the Sithe Mystic project as approved in the Final Decision.

² March 2, 2001 Filing, Attachment 2. Based on information provided by the Company in support of changes in construction parking areas, as proposed in the March 2000 project change

³ Exh. PC-EFSB-8. Based on information provided by the Company in support changes in shift scheduled and number of construction workers, as proposed in the August 27 Filing.

APPROVED by the Energy Facilities Siting Board at its meeting of November 29, 2001, by the members and designees present and voting: James Connelly (Chairman, DTE/EFSB); Deirdre K. Manning (Commissioner, DTE); W. Robert Keating (Commissioner, DTE); David L. O'Connor, Commissioner, Division of Energy Resources; Joseph Donovan (for Elizabeth Ames, Director of Economic Development); and Sonia Hamel (for Robert Durand, Secretary of Environmental Affairs).

James Connelly, Chairman
Energy Facilities Siting Board

Dated this 29th day of November, 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).