

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

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|-------------------------------------------------|---|-----------|
| Notice of Inquiry on Adoption of an Alternative |) | |
| Process to Exempt Electric Companies from the |) | EFSB 98-5 |
| Provisions of G.L. c. 164, § 69I |) | |
| |) | |

FINAL DECISION

Selma Urman
Presiding Officer
June 13, 2003

On the Decision:
Diedre Shupp Matthews
William Febiger
Amy Barad

LIST OF ABBREVIATIONS

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|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Agencies | Energy Facilities Siting Board and Department of Telecommunications and Energy |
| Department | Massachusetts Department of Telecommunications and Energy |
| DSM | demand-side management |
| D.T.E. 98-84 | <u>Order Commencing a Notice of Inquiry and Rulemaking into (1) rescinding 220 C.M.R. §§ 10.00 et seq. and (2) exempting electric companies from any or all of the provisions of G.L. c. 164, § 69I (2003)</u> |
| FG&E | Fitchburg Gas and Electric Light Company |
| G.L. | Massachusetts General Laws |
| ISO-NE | Independent System Operator - New England |
| Joint Request | August 19, 2002 Request of the Energy Facilities Siting Board and Department of Telecommunications and Energy for additional comments |
| kV | kilovolt |
| National Grid | Massachusetts Electric Company, Nantucket Electric Company and New England Power Company |
| NOI | Notice of Inquiry |
| NSTAR | NSTAR Electric |
| <u>NSTAR Decision</u> | <u>NSTAR Gas Company, 13 DOMSB 143 (2001)</u> |
| Restructuring Act | Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 |
| Siting Board | Massachusetts Energy Facilities Siting Board |
| 2002 System Planning Orders | <u>NSTAR Electric, D.T.E. 01-65 (2002); Western Massachusetts Electric Company, D.T.E. 01-66 (2002); Fitchburg Gas and Electric Light Company, D.T.E. 01-67 (2002); Massachusetts Electric Company & Nantucket Electric Company, D.T.E. 01-68 (2002)</u> |
| WMECo | Western Massachusetts Electric Company |

The Energy Facilities Siting Board adopts an alternative process approved by the Department of Telecommunications and Energy in Order Commencing Notice of Inquiry and Rulemaking into (1) rescinding 220 C.M.R. § 10.00 et seq. and (2) exempting electric companies from any or all of the provisions of G.L. c. 164, § 69I, D.T.E. 98-84 (2003) (“D.T.E. 98-84”) that would exempt investor-owned electric companies from the provisions of G.L. c. 164, § 69I.

I. INTRODUCTION

A. Background

G.L. c. 164, §69I requires each Massachusetts investor-owned electric company to file with the Department of Telecommunications and Energy (“Department”) biennial forecasts of the electric power needs and requirements of its market area for the ensuing ten-year period. In the early 1990s, the Department implemented this long-range forecast requirement through a comprehensive integrated resource planning framework governing the procurement and cost recovery associated with resources to meet electric customers’ electricity needs. 220 C.M.R. 10.00 et seq. This framework provided for a regular, two-year planning cycle for all electric companies, encompassing several distinct phases including forecasting, need determination, negotiation, competitive solicitation, and contract approval.

On November 25, 1997, the Governor signed into law Chapter 164 of the Acts of 1997, entitled, “An Act Relative to Restructuring the Electric Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein” (“Restructuring Act”). The Restructuring Act introduced retail competition to the generation sector of the electric industry and relieved electric companies of their obligation to plan for and serve the generation needs of its customers, except for those customers with standard offer or default service. In accordance with G.L. c. 164, § 69I of the Restructuring Act, the Department is authorized “to exempt any electric ... company from any or all provisions of [G.L. 164, § 69I] upon a determination of the [D]epartment and the [Energy Facilities] [S]iting [B]oard that an alternative process is in the public interest...”

B. Procedural History

On August 13, 1998, the Siting Board, pursuant to G.L. c. 164, §§ 69H and 69I, issued a Notice of Inquiry (“NOI”) requesting public comment on the Department’s proposal to exempt electric companies from any or all of the provisions of G.L. c.164, § 69I. That matter was docketed as EFSB 98-5. The Siting Board requested comments to help develop an alternative process, or a set of alternative processes, that would allow the Siting Board and the Department (collectively, the “Agencies”) to fulfill their duties under the Restructuring Act without conducting the detailed biennial review of electric utility forecast and supply plans currently required under G.L. c. 164, § 69I. The Department issued a similar notice on August 10, 1998 and docketed this proceeding as D.T.E. 98-84.¹

On September 14, 1998, the Agencies jointly conducted a public hearing on the issues raised in the NOIs. The Agencies received written or oral comments from Representatives Dennis M. Murphy and Marie J. Parente, the Division of Energy Resources, Boston Edison Company, Commonwealth Energy Company, Eastern Edison Company, Western Massachusetts Electric Company (“WMECo”), Sithe New England Holdings, LLC and Independent System Operator - New England (“ISO-NE”). The Agencies conducted two technical sessions, one with ISO-NE on October 22, 1998, and one with Massachusetts electric companies on November 3, 1998.

On August 19, 2002, the Agencies issued a request for additional comments on a specific proposal for an alternative process (“Joint Request”). The Agencies proposed that the core of the alternative process be the annual planning reports the Department directed the four investor-owned electric distribution companies to submit, beginning January 1, 2003. See NSTAR Electric, D.T.E. 01-65 (2002); Western Massachusetts Electric Company, D.T.E. 01-66 (2002); Fitchburg Gas and

¹ As part of D.T.E. 98-84, the Department also initiated a rulemaking proceeding to rescind 220 C.M.R. 10.00 et seq., the Department’s regulations governing electric utility long-range forecast filings. Since G.L. c. 164, § 69I requires both the Department and the Siting Board to determine that an alternative process is in the public interest, the Department cannot make a final determination on the exemption from the requirements of Section 69I or the rescission of 220 C.M.R. 10.00 et seq. until the Siting Board makes a determination that the alternative process is in the public interest.

Electric Light Company, D.T.E. 01-67 (2002); Massachusetts Electric Company & Nantucket Electric Company, D.T.E. 01-68 (2002) (collectively, “2002 System Planning Orders”) (Joint Request at 4-5).

In addition, the Agencies proposed that, concurrent with its annual planning report, each electric company would be required to file information describing transmission projects planned to be built within or partially within its service territory (id. at 5).

On September 26, 2002, the Agencies conducted a public hearing on the Joint Request. The Agencies received written or oral comments from the Joint Committee on Energy of the Commonwealth of Massachusetts, ISO-NE, Fitchburg Gas and Electric Light Company (“FG&E”), Massachusetts Electric Company, Nantucket Electric Company, and New England Power Company (collectively, “National Grid”), NSTAR Electric (“NSTAR”), RealEnergy, et al., and WMECo. The Agencies received reply comments from ISO-NE, FG&E, National Grid, NSTAR and WMECo.

On April 22, 2003, after notice and public hearing, the Department established an alternative process to the long-range electric forecast review required by G.L. c. 164, § 69I, and found that the alternative process is in the public interest. D.T.E. 98-84, at 24. The alternative process is summarized in Section I.C, below.

C. The Department’s Alternative Process

The alternative process adopted by the Department consists of an annual planning report required by the Department’s 2002 System Planning Orders and an annual transmission project report.

The annual planning report, which focuses on the distribution system, must include:

1. ten-year peak demand forecasts for the distribution companies’ service area;
2. planning criteria and guidelines for the distribution system planning process;
3. an operating study report showing power flows and voltages under normal and emergency conditions;
4. a listing of critical loads (e.g., hospitals) by towns and the circuits by which they are fed;
5. a listing of significant reliability and infrastructure improvement projects planned for construction within the next five years; and
6. a prioritization of future projects.

Id. at 25.

The second component of the alternative process, a transmission project report to be filed annually by any investor-owned electric company that owns or operates transmission within Massachusetts, must include:

1. a map of transmission facilities;
2. a list of existing 69 kV or higher transmission facilities, indicating electrical characteristics and ratings;
3. a list of existing transmission substations with a voltage rating of 69 kV or higher, indicating electrical characteristics and ratings; and
4. a description of all transmission system need identified within the ten-year planning horizon and, where information is available, all transmission-level projects that are being developed to meet these needs.

Id.

For purposes of this requirement, the Department determined that transmission projects shall include the construction of any new transmission line (including any line with a voltage of 69 kV or greater), regardless of the purpose of the project. Id.

The Department reserved its right to clarify the scope and level of detail required in the annual planning report. Id. In addition, the Department stated that, consistent with its responsibility to ensure distribution system reliability and to oversee transmission system planning and reliability, it may, on its own motion, determine whether an investigation of either report is necessary. Id. at 26.

II. ANALYSIS

G.L. c. 164, § 69I requires certain Massachusetts electric companies to file biennially with the Department “... a long-range forecast with respect to the electric power needs and requirements of its market area ... for the ensuing ten-year period.” However, G.L. c. 164, § 69I also authorizes the Department “...to exempt any electric or gas company from any or all provisions of this section upon a determination by the [D]epartment and the [S]iting [B]oard, after notice and hearing, that an alternative process is in the public interest.” In D.T.E. 98-84, the Department adopted an alternative process and found that this process is in the public interest. Consequently, the Siting Board here considers whether the alternative process put forth by the Department in D.T.E. 98-84 is in the public interest.

In considering this question, the Siting Board considers its statutory mandate, which is “to

implement the provisions contained in sections 69H to 69Q, inclusive, to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.” G.L. c. 164, § 69H. Prior to 1992, the Siting Board fulfilled this responsibility in part by reviewing the long-range forecasts of electric and gas utilities pursuant to G.L. c. 164, § 69I.² This review encompassed a review of the reliability of a utility’s demand forecast, the adequacy of resources available to meet such demand, and the cost-effectiveness of various supply contracts, as well as approval of a utility’s plans to construct new energy facilities to serve its customers. The 1992 legislation transferred the review of long-range forecasts from the Siting Board to the Department; however, the Siting Board retained responsibility for reviewing plans to construct energy facilities. When such facilities are proposed by an electric or gas company that is required to file a long-range forecast, the Siting Board must determine that the facility is consistent with the company’s most recently-approved long-range forecast. G.L. c. 164, § 69J. Thus, in evaluating the Department’s alternative process, the Siting Board must consider whether that process aids the Siting Board in its review of facility proposals offered by electric utilities – primarily, proposals to construct electric transmission lines pursuant to G.L. c. 164, § 69J.

In reviewing petitions to construct facilities such as electric transmission lines, the Siting Board must consider “the need for, cost of, and environmental impacts of” such lines. G.L. c. 164, § 69H. In addition, G.L. c. 164, § 69J requires a petitioner to present alternatives to its planned action. The Department’s alternative process supports the Siting Board’s review of such transmission lines, and in fact is superior to the Section 69I long-range forecast in a number of ways.

First, the alternative process requires each electric utility to conduct a systematic annual review of the reliability of its distribution infrastructure. This systematic review of infrastructure needs, which goes well beyond that required under G.L. c. 164, § 69J, increases the probability that an electric utility

² Prior to September 1, 1992, the Siting Board’s functions were effected by the Energy Facilities Siting Council (“Siting Council”). See St. 1992, c. 141.

will identify the need for jurisdictional distribution upgrades³ in advance of the time they are needed to ensure reliability. Advance notice of developing needs should facilitate the early exploration of alternative solutions, either by the electric company itself or by others. In addition, early identification of potential projects should enable companies to file more timely petitions for approval of construction, and to include thorough presentations regarding the need for the projects and alternatives to them. Timely filing of petitions will ensure that distribution system reliability is not compromised by delays in constructing critical infrastructure, and that the Siting Board has adequate time for a thorough review of proposed projects and project alternatives.

The alternative process also requires all investor-owned electric companies that own or operate transmission within Massachusetts to file an annual transmission project report identifying transmission system needs, and, where that information is available, transmission-level projects that are being developed to meet these needs, within a ten-year planning horizon. This report serves a similar purpose in that it provides advance notice of developing transmission needs, facilitates the exploration of alternative solutions, and helps ensure the timely review and construction of critical energy infrastructure. Taken together, the annual planning report and the transmission project report form an alternative process that provides the Siting Board with information that it needs to fulfill its statutory responsibilities. Consequently, the Siting Board finds that the alternative process set forth by the Department in D.T.E. 98-84 is in the public interest.

As part of this proceeding, the Siting Board issued a series of questions about transmission system planning that were designed to assist it in planning an upcoming rulemaking on transmission line siting. In response to these questions, many commenters provided a comprehensive discussion of transmission planning in New England, the relative roles of the ISO-NE, transmission companies, and

³ Many of the transmission facilities reviewed by the Siting Board are proposed to provide localized distribution support. See New England Power Company, 7 DOMSB 333 (1998); Boston Edison Company, 6 DOMSB 208 (1997); Commonwealth Electric Company, 5 DOMSB 273 (1997). The Siting Board reminds all investor-owned electric companies that any electric line meeting the length and voltage thresholds set forth in G.L. c. 164, § 69G must be approved by the Siting Board prior to construction, regardless of the role that the line will play in the company's transmission or distribution system.

distribution companies, and the nature and sources of transmission planning data that could be provided to the Agencies. The Siting Board appreciates these comments, and hopes to open its rulemaking within the next twelve months. Our decision in EFSB 98-5 does not alter the Siting Board's review of petitions to construct electric transmission lines in any way. However, the Siting Board expects that, shortly after the issuance of this decision, the Department will formally exempt electric companies from the requirements of G.L. c. 164, § 69I. Once this exemption is in place, electric companies seeking Siting Board authority to construct transmission lines no longer will be required to show that proposed facilities are consistent with their most recently-approved long range forecasts.

III. DECISION

The Siting Board's enabling statute directs the Siting Board to implement the energy policies contained in G.L. c. 164, §§ 69H to 69Q, to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, § 69H. In accordance with G.L. c. 164, § 69I, of the Restructuring Act, the Department of Telecommunications and Energy may exempt any electric company from any or all provisions of G.L. c. 164, § 69I upon a determination of the Department and the Siting Board that an alternative process is in the public interest.

In Section II., above, the Siting Board found that the alternative process set forth by the Department of Telecommunications and Energy in D.T.E. 98-84, is in the public interest. Accordingly, the Siting Board adopts the alternative process that would exempt investor-owned electric companies from the provisions of G.L. c. 164, § 69I, as set forth in Section I.C., above.

Selma Urman
Presiding Officer

Dated this 13th day of June, 2003.

APPROVED 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/EFSB); 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.