

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

)
Request of UAE Lowell Power LLC)
for an Advisory Ruling pursuant to)
980 CMR 3.02(7), regarding jurisdiction)
of a proposed 96 MW peaking facility)

ACTION BY CONSENT

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 “when it would be a hardship to the public welfare to defer the decision until the next scheduled meeting of the [Siting Board].” 980 CMR 2.06(1).

By letter dated May 23, 2000 (“Request”) and signed by its attorney, Steven Ferry, UAE Lowell Power LLC (“UAE”) petitioned the Energy Facilities Siting Board (“Siting Board”) for an advisory ruling pursuant to the provisions of 980 CMR 3.02(7). The Request sought the opinion of the Siting Board whether the construction of a 96 MW peaking generation facility (“proposed facility”) on land close to or adjacent to an existing 82 megawatt (“MW”) plant would be jurisdictional to the Siting Board under G.L. c. 164.

In the Request, UAE states that the existing 82 MW plant in Lowell, Massachusetts is a combined cycle, base load facility that went into commercial operation in 1993 under the ownership of L’Energia Limited Partnership (“L’Energia”) (Request at 1). UAE states that, as part of a voluntary restructuring in 1999, UAE assumed ownership of the L’Energia project and the project is now called UAE Lowell Power LLC (“UAE Lowell project”) (*id.* at 2). Further, according to UAE, as part of the restructuring, the L’Energia project was no longer required to maintain its qualifying facility (“QF”) status and currently operates as a merchant plant in the New England market (*id.*).¹

UAE is contemplating the construction of a 96 MW peaking power generating unit on land

¹ UAE states that in 1999, L’Energia terminated its QF power sale agreement with Boston Edison, its gas transportation agreement with Colonial Gas Company, and other agreements (Request at 1). UAE states that the Boston Edison and Colonial Gas contract terminations were formally approved by the Department of Telecommunications and Energy approximately one year ago (*id.*).

close to or adjacent to the existing 82 MW plant (id. at 2). The proposed facility would be fueled only by natural gas and would operate as a merchant facility (id. at 3). UAE asserts that the proposed facility is not jurisdictional to the Siting Board (id. at 4). In support, UAE states that the proposed facility would be less than 100 MW and would not be a segmented element of the existing plant (id.). Specifically, UAE states that the proposed facility would be distinct from the original L’Energia project in that the new facility would enter service approximately eight years after the start of operation at the existing plant, the proposed facility is conceived as a merchant facility, and there would be no integral relationship between the existing plant and the proposed facility (id.).

UAE states that the proposed 96 MW facility, which would employ General Electric simple cycle aero-derivative jet turbines, could be constructed at a variety of locations (id. at 3).² UAE states that it seeks to place the proposed facility near the existing plant, which is staffed around the clock (id. at 3). UAE states that the City of Lowell is “extremely supportive” of the proposed facility (id.). UAE states that National Grid/New England Power recommended that UAE reduce its request for interconnection to less than 100 MW in order to use the existing transmission infrastructure (id.). In addition, UAE states that the existing Boston Gas Company natural gas pipeline could provide enough natural gas to power approximately 100 MW (id.).

UAE estimates that the requisite air permit, as well as all local building and land use permits, can be obtained in final form in a “few months” (id. at 4).³ UAE intends to have the proposed facility operational in a short period of time to meet the existing need for peaking capacity in the New England region (id.).

II. ANALYSIS

G.L. c. 164, § 69G defines a generating facility that is jurisdictional to the Siting Board as “any generating unit designed for or capable of operating at a gross capacity of 100 Megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities.”⁴ Based on the information presented, the proposed

² According to UAE, these turbines are manufactured and designed in increments of 48 MW per turbine (Request at 3).

³ UAE states that the proposed facility will be a minor air source with the potential to emit less than 25 tons per year of nitrogen oxides (Request at 4). UAE states that it will be required to obtain a minor source air permit from the Massachusetts Department of Environmental Protection (id.).

⁴ We note that as a separate generating unit, the proposed facility is not an ancillary structure
(continued...)

project itself would be under the 100 MW threshold and therefore, on its face, not subject to the jurisdiction of the Siting Board.⁵

However, before concluding that the proposed facility is not within its jurisdiction, the Siting Board must consider whether the construction of the 82 MW L’Energia project, followed approximately eight years later by the construction of the proposed facility at a proximate site, may constitute the segmented construction of a single, jurisdictional 178 MW generating facility. The Siting Board notes that, in order to fulfill its mandate to provide for a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost, it must review and approve the construction of all facilities that meet its jurisdictional thresholds, even if such facilities are constructed in several sub-jurisdictional stages. To do otherwise would create an incentive to segment projects for the purpose of avoiding the Siting Board’s environmental review.

The Siting Board’s statute and regulations provide no direct guidance as to the factors it should consider when assessing whether two or more proximate, non-jurisdictional facilities together constitute a single jurisdictional facility. However, it is the Siting Board’s opinion that such a determination must be made on a case-by-case basis, taking into account all relevant circumstances. In this instance, the only factors which suggest the possibility of project segmentation are a commonality of ownership and the physical proximity of the proposed facility site to the site of the existing UAE Lowell project. Set against this, we note that the two projects would be developed approximately eight years apart, and by different developers; that the L’Energia project was conceived as base load cogeneration facility, while the proposed facility would be a merchant peaking facility; and that, while the proposed facility would share some electric and natural gas infrastructure with the UAE Lowell project, the development of the proposed facility would not require any alteration to the UAE Lowell project. In addition, we note that UAE’s assertion that the proposed facility could be built in any of a number of locations suggests that it is a stand-alone facility, rather than a segment of a larger, integral project. Based on all of the facts presented, the Siting Board concludes that the UAE Lowell project and the proposed facility are separate generating facilities, and not two parts of an integral project. Our determination of jurisdiction therefore properly is based on the size of the proposed facility alone, and not on the combined size of the existing UAE Lowell project and the proposed facility.

III. ADVISORY RULING

⁴ (...continued)
associated with the existing plant.

⁵ In rendering the requested Advisory Ruling, the Siting Board assumes, but does not expressly find, that all material facts are stated and that the facts are as represented by UAE’s attorney in the May 23, 2000 letter.

Accordingly, after due consideration of the averments of fact and the foregoing analysis, the Siting Board hereby advises that UAE's proposed 96 MW simple cycle gas generating unit,

as described in the request of May 23, 2000, would not be jurisdictional to the Siting Board under G.L. c. 164.

This Action by Consent may be executed in any number of counterparts, each of which shall be an original, but all of which constitute one agreement, and shall be dated and become effective when the copies bearing all of the signatures of the Siting Board members are received by the Chairman. 980 CMR 2.06(2).

Signed:

James Connelly
Chairman
Energy Facilities Siting Board/
Department of Telecommunications and Energy

Sonia Hamel
for Robert Durand
Secretary of Environmental Affairs

W. Robert Keating
Commissioner
Department of Telecommunications and Energy

Louis Mandarini, Jr.
Public Member

Deirdre K. Manning
Commissioner
Department of Telecommunications and Energy

Joseph Donovan
For Dean Serpa, Acting Director
Department of Economic Development

David L. O'Connor
Commissioner
Division of Energy Resources