

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Proposed Rulemaking Regarding The)
Rescission of 980 Code of Massachusetts)
Regulations Sections 12.00 through 12.08)
EFSB 96-5)

FINAL ORDER ON RULEMAKING

Robert P. Rasmussen
Hearing Officer
December 3, 1996

On the Decision:

Barbara Shapiro

I. INTRODUCTION

On February 7, 1996, Executive Order 384 ("E.O. 384") was issued requiring all state agencies under the Governor's supervision to review their regulations and to retain or modify only those regulations which are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents. The Energy Facilities Siting Board ("Siting Board") conducted such a review, and pursuant to G.L. c. 164 § 69H and G.L. c. 30A §§ 2-7 proposes to rescind 980 C.M.R. § 12.00 entitled "The Procedure by Which Additional Resources are Planned, Solicited and Procured by Investor-Owned Electric Companies," known as the Integrated Resource Management ("IRM") regulations.

In 1990, both the Department of Public Utilities ("Department") and the Energy Facilities Siting Council ("Siting Council") promulgated regulations governing the administration and enforcement of the IRM process for electric companies. IRM Rulemaking, D.P.U. 89-239 (1990); 220 C.M.R. § 10.00; Siting Council's Final Order on IRM Rulemaking, 21 DOMSC 91 (1990); 980 C.M.R. § 12.00. Pursuant to Chapter 141 of the Acts of 1992 ("Reorganization Act"), the Department was granted jurisdiction over the entire IRM process for electric companies. Section 46 of the Reorganization Act also stated that the Siting Council's regulations were to "continue in force and the provisions thereof shall thereafter be enforced, until superseded, revised, rescinded or cancelled in accordance with law" by the Department or the newly created Siting Board.

In December 1992, the Department amended its IRM regulations, 220 C.M.R. § 10.00, to substantially incorporate the Siting Board's IRM regulations, 980 C.M.R. § 12.00. See D.P.U. 92-191 (1992). In preparing the amended 220 C.M.R. § 10.00, comments were sought from all interested persons and a public hearing was held. No substantive changes were intended or made in combining the Siting Council's IRM regulations with the Department's IRM regulations. The Department has subsequently amended these regulations, which now require the filing with the department of an integrated resource plan by certain Massachusetts investor-owned electric utilities not less often than every twenty-four months. 220 C.M.R. §§ 10.01(2), 10.03(1).

In the instant proceeding, the Siting Board proposes to rescind 980 C.M.R. § 12.00, on the

grounds that the Siting Council's IRM regulations have been superseded by the Department's regulations and that the Siting Board no longer has any jurisdiction in the IRM process.

II. COMMENTS

On October 18, 1996, the Siting Board solicited comments in this proceeding from all interested persons by November 8, 1996. No comments were received.

III. DECISION

Accordingly, after notice and consideration, the Siting Board orders that 980 C.M.R. § 12.00 be rescinded, effective upon publication of notice in the Massachusetts Register.

Robert P. Rasmussen
Hearing Officer

Dated this 3rd day of December, 1996.

Unanimously APPROVED by the Energy Facilities Siting Board at its meeting of December 3, 1996 by the members and designees present and voting. Voting for approval of the Order on Proposed Rulemaking: John B. Howe (Chairman, EFSB/DPU); Andree Gagnon (for David A. Tibbetts, Director, Department of Economic Development); Joseph Faherty, (Public Member); Nancy Brockway, (Public Member).

John B. Howe
Chairman

Dated this 3rd day of December, 1996

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).