

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Brockton Power, LLC, EFSB 99-1)

Motion for Extension of Approval of Petition)

March 10, 2003

ACTION BY CONSENT

I. INTRODUCTION

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 via Action by Consent when the Board “determines that expeditious action is necessary.” 980 CMR 2.06(1).

On March 10, 2000, the Energy Facilities Siting Board (“Siting Board”) conditionally approved the petition of Brockton Power, LLC (“Brockton Power” or “Company”) to construct a natural gas-fired combined-cycle, electric generating facility with a net nominal electrical output of 270 megawatts in the City of Brockton, Massachusetts. Brockton Power, LLC, EFSB 99-1, 10 DOMSB 157 (2000) (“Brockton Power Decision”). Pursuant to the Brockton Power Decision, the Siting Board’s approval of the proposed facility will expire on March 10, 2003. Id. at 269.

II. MOTION TO EXTEND

On February 25, 2003, Brockton Power filed with the Siting Board a request for an extension of Siting Board approval of the facility until July 1, 2004 (“Motion to Extend”). The Company set forth several factors in support of its request.

First, Brockton Power asserts that it has made a multi-million dollar investment in its efforts to bring the proposed facility to fruition, and currently is engaged in confidential negotiations with “a qualified energy company interested in purchasing the rights to construct and operate the proposed facility.” (Motion to Extend at 1). The Company states that it requires additional time to complete these negotiations (id. at 2).

In addition, Brockton Power states that there have been changes in electricity market conditions that support the requested extension. Specifically, the Company states that the electricity market is emerging from the negative economic, market and financial developments of the past few years that resulted in the delay or cancellation of projects due to the scarcity of investment capital (id. at

2). The Company cites changes in the wholesale market (e.g., implementation of standard market design and locational marginal pricing) and environmental initiatives to clean the region's dirtiest generating facilities as further evidence of a changing electricity market (*id.* at 2). These changes, according to the Company, lead to a renewed opportunity for the siting of clean, efficient and well-sited generating facilities such as the Brockton project (*id.*).

In further support of its request, Brockton Power argues that litigation-related delays beyond the control of the Company hindered the development of the proposed facility and resulted in the Company's inability to commence construction prior to the March 10, 2003 deadline (*id.*). As an example, the Company notes that an 18 month delay resulted from the appeal of the Siting Board's Final Decision to the Supreme Judicial Court (*id.* at 3, citing *Tofias v. Energy Facilities Siting Board*, 435 Mass. 340 (2001)). The Company maintains that, while the appeal did not stay the Siting Board's decision, it "effectively constrained the Project in moving forward with turbine and other equipment vendors, contractors and investors." (*id.* at 3).¹

Brockton Power asserts that it is not seeking to alter any aspect of the project, and that the "key findings of the Siting Board's approval are valid and appropriate." (*id.*). The Company states that, because it submitted its request so close to the expiration of the Siting Board approval, it would be amenable to the Siting Board's issuance of an interim decision that extends Siting Board approval pending any further inquiry the Siting Board seeks to conduct (*id.*).

III. RULING ON MOTION

In evaluating this Motion to Extend, the Siting Board balances the interests of the public, the Company, and parties to the proceeding to determine whether there is good cause to extend the Siting Board's approval of the proposed facility. *Cabot Power Corporation*, EFSB 91-101A, December 23, 1997 Procedural Order).²

The Siting Board notes that the Company has provided several reasons for the extension of Siting Board approval of the proposed facility; however, we find that further Siting Board inquiry is necessary. In order to determine whether good cause exists to grant the Company's request as presented, the Siting Board must determine, *inter alia*: (1) whether the length of the requested extension is reasonable; and (2) whether there have been changes either in background conditions (e.g., land use

¹ Brockton Power also states that its request for an extension is consistent with the expiration of the Company's Massachusetts Environmental Policy Act Certificate (July 16, 2004) and the extension granted by the Department of Environmental Protection to allow Brockton Power to complete its Air Plans Approval by June 30, 2004 (Motion to Extend at 2-3).

² In the instant case, there are no intervenors or interested persons in the proceeding.

surrounding the site) or applicable regulations sufficient to alter the underlying assumptions upon which the Siting Board based its approval.³ Only after such an inquiry will the Siting Board have sufficient information to balance the interests of the public and the Company.

Accordingly, the Siting Board will defer final action on the Company's Motion to Extend. The Siting Board, however, grants an extension of its approval until such time as it rules on the Company's Motion to Extend.

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:

Paul B. Vasington
Chairman
Energy Facilities Siting Board/
Department of Telecommunications and Energy

Date

W. Robert Keating
Commissioner
Department of Telecommunications and Energy

Date

Deirdre K. Manning
Commissioner
Department of Telecommunications and Energy

Date

³ If the Company were proposing changes to its project at this time, the Siting Board also would consider whether the specific project changes would alter the underlying assumptions upon which the Siting Board based its approval; however, the Company currently does not propose such changes.

David L. O'Connor
Commissioner
Division of Energy Resources

Date

Joseph Donovan
for Barbara B. Berke, Director
Department of Economic Development

Date

Sonia Hamel
for Ellen Roy Herzfelder
Secretary of Environmental Affairs

Date

Louis A. Mandarinini, Jr.
Public Member

Date