

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Southern Energy Kendall, LLC)
Motion for Further Extension)
to Comply with Condition E)
EFSB 99-4A)

May 22, 2003

ACTION BY CONSENT

I. INTRODUCTION

This “Action by Consent” is made pursuant to 980 CMR 2.06, which provides the Energy Facilities Siting Board (“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 December 15, 2000, the Siting Board conditionally approved the petition of Mirant Kendall, LLC (“Mirant Kendall” or “Company”), formerly known as Southern Energy Kendall, LLC, to upgrade generating facilities at the existing Kendall Square Station (“Kendall Station”) in Cambridge, Massachusetts. Southern Energy Kendall, LLC, 11 DOMSB 255 (2000) (“Final Decision”). In the Final Decision, the Siting Board imposed three conditions, Conditions D, E, and F, for Mirant Kendall to meet prior to the commencement of operation. On November 15, 2002, the Siting Board found the Mirant Kendall has complied with Condition D. Final Decision on Compliance and Request to Amend Condition E, 13 DOMSB 279 (2002) (“Compliance Decision”). At that time, the Siting Board also amended Conditions E and F. Id. Specifically, Condition E was amended directing the Company to negotiate a mutually acceptable emergency water agreement with the City of Cambridge and to provide a copy to the Siting Board on the earlier of: (a) March 1, 2003 or (b) that time when Mirant begins taking water from the Broad Canal/Charles River for process and steam purposes, relying upon the City only for sanitary purposes and for emergency process and steam use. Mirant Kendall was also directed to limit its use of City water to historical levels, or obtain City consent to use City water at higher levels, until such time as it ceases to rely regularly on City water for process and steam purposes. Id. Since that time, Mirant Kendall has filed two requests to extend the time in which it is required to file a copy of its emergency water agreement with the City of Cambridge.¹ On each occasion, the Siting Board issued an Action by Consent granting Mirant Kendall’s request and amending Condition E

¹ Mirant Kendall Request for Extension dated February 25, 2003, and Mirant Kendall Request for Extension dated March 31, 2003.

accordingly.² As a result of the April 10, 2003 Action by Consent, Condition E establishes May 1, 2003 as the date for Mirant Kendall to comply with Condition E (“Amended Condition E”). On April 29, 2003, Mirant Kendall filed a motion requesting an additional one month extension from May 1, 2003 to June 2, 2003 to comply with Amended Condition E (“Request for Further Extension”). The Request for Further Extension is the only subject of this Action By Consent.

II. REQUEST FOR FURTHER EXTENSION

In support of its Request for Further Extension, the Company states that Mirant Kendall and the City of Cambridge (“City”) have reached a verbal agreement on emergency water use for the Kendall Station facility (Request for Further Extension at 2). Mirant Kendall also states that the Company and the City continue to exchange written drafts of the emergency water agreement and that it expects to provide a finalized agreement by June 2, 2003 (*id.*).

III. RULING ON REQUEST FOR FURTHER EXTENSION

In evaluating Mirant’s request, the Siting Board notes that the purpose of granting the initial amendment to Condition E was to allow Mirant Kendall to operate the upgraded Kendall Station facility while allowing the Company and the City the time needed to reach an emergency water agreement. Compliance Decision at 288. In that decision, the Siting Board placed considerable weight on the fact that the City was amenable to such an amendment provided that restrictions were placed on Mirant Kendall’s consumption, so that the City’s water supply was not overburdened in the interim.³ *Id.* Because Mirant Kendall did not expect to receive a modified National Pollutant Discharge Elimination System (“NPDES”) permit for Kendall station until early 2003, and given the agreement by the City and the Company, the Siting Board permitted Mirant Kendall to commence operations without an emergency water agreement. *Id.* However, the Siting Board also stated that, given the importance of the emergency water supply agreement, it was important to impose a deadline for contract negotiations and set a deadline of March 1, 2003. *Id.* In granting Mirant Kendall the extension from March 1, 2003, to April 1, 2003, the Siting Board took into consideration that both Mirant Kendall and the City indicated optimism that the additional time would allow them to bring this matter to closure (Action by Consent, March 10, 2003, at 2-3). In granting the extension from April 1, 2003 to May 1,

² Siting Board Action by Consent dated March 10, 2003, and Siting Board Action by Consent dated April 10, 2003.

³ All amendments to Condition E have retained the provision in original Condition E directing Mirant Kendall to limit its use of City water to historical levels, or obtain City consent to use City water at higher levels, until such time as it ceases to rely regularly on City water for process and steam purposes.

2003, the Siting Board recognized that the parties were making progress in bringing this matter to closure and in light of such progress, it would be counterproductive not to allow the parties further extension to execute a written agreement (Action by Consent, April 10, 2003, at 2-3).

Based on the information most recently presented by the Company, the extension from April 1, 2003 to May 1, 2003 has resulted in Mirant Kendall and the City exchanging written drafts of the emergency water agreement and an expectation by the Company that a final agreement will be executed by June 2, 2003. The Siting Board recognizes that the parties are continuing to make process toward finalizing an agreement and notes that the City did not oppose the Company's Request for Further Extension. Therefore, the Siting Board concludes that the requested one-month extension is reasonable and amends Condition E to read as follows:

In order to minimize water impacts, the Siting Board directs the Company to negotiate a mutually acceptable emergency water agreement with the City of Cambridge and to provide a copy to the Siting Board on the earlier of: (a) June 2, 2003 or (b) that time when Mirant begins taking water from the Broad Canal/Charles River for process and steam purposes, and relying upon the City water only for sanitary purposes and for emergency process and steam use. The Siting Board also directs Mirant to limit its use of City water to historical levels, or obtain City consent to use City water at higher levels, until such time as it ceases to rely regularly on City water for process and steam purposes.

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

David L. O'Connor
Commissioner
Division of Energy Resources

Date

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

Date

Stephen R. Pritchard
for Ellen Roy Herzfelder
Secretary of Environmental Affairs

Date

Louis A. Mandarin, Jr.
Public Member

Date