

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Sithe West Medway Development LLC,)
EFSB 98-10)
Motion for Extension of Approval of)
Petition)
_____)

April 10, 2003

ACTION BY CONSENT

I. INTRODUCTION

This ~~A~~Action by Consent~~@~~ is made pursuant to 980 CMR 2.06, which provides the Energy Facilities Siting Board (~~A~~Siting Board~~@~~) with the authority to render a decision via Action by Consent when the Board ~~A~~determines that expeditious action is necessary.~~@~~ 980 CMR 2.06(1).

On April 13, 2000, the Siting Board conditionally approved the petition of Sithe West Medway Development LLC (~~A~~West Medway~~@~~ or ~~A~~Company~~@~~)¹ to construct a net nominal 540 megawatt simple-cycle electric generating facility at the proposed site in Medway, Massachusetts. Sithe West Medway Development LLC, 10 DOMSB 274 (2000) (~~A~~West Medway Decision~~@~~). Pursuant to the West Medway Decision, the Siting Board's approval of the proposed facility will expire on April 13, 2003. Id. at 372.

II. MOTION TO EXTEND

On April 3, 2003, West Medway filed with the Siting Board a request for an extension of Siting Board approval of the facility until August 30, 2004 (~~A~~Motion to Extend~~@~~). The Company set forth several factors in support of its request.

West Medway states that its primary reason for seeking an extension is to ~~A~~preserve the Company's opportunity to develop an important, unique addition to the region's portfolio of generating assets~~@~~ (Motion to Extend at 1). Specifically, the Company asserts that the project, as a clean-burning natural gas facility, can provide energy at periods of high demand more efficiently than the region's existing portfolio of oil-fired peaking facilities (id.).

¹ The owner of the subject facility is now Exelon West Medway Development LLC (Motion to Extend at 1, n.1).

In addition, West Medway asserts that there have been changes in the electricity market conditions that support the requested extension. West Medway argues 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 also 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.). These changes, according to the Company, lead to a renewed opportunity for a clean, efficient and well-sited peaking facility such as the West Medway project (id.).

West Medway asserts that it is not seeking to alter any aspect of the project, and that the key findings of the Siting Board's decision regarding the Project are still valid and appropriate (id. at 3). 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. Brockton Power LLC, EFSB 99-1 (March 10, 2003 Action By Consent); Cabot Power Corporation, EFSB 91-101A, (December 23, 1997 Procedural Order).

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 surrounding the site) or applicable regulations sufficient to alter the underlying assumptions upon which the Siting Board based its approval.² Only after such an inquiry will the Siting Board have sufficient

² 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.

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).

Sithe West Medway Development LLC - EFSB 98-10
Action by Consent

Page 4

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

Sonia Hamel
for Ellen Roy Herzfelder
Secretary of Environmental Affairs

Date

Louis A. Mandarin, Jr.
Public Member

Date