

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Sithe Edgar Development LLC)

Notice of Probable Violations)

April 17, 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 it “determines that expeditious action is necessary.” 980 CMR 2.06(1).

On February 10, 2000, the Siting Board conditionally approved the petition of Sithe Edgar Development LLC (“Sithe” or “Company”) to construct a natural gas-fired combined-cycle, electric generating facility with a net nominal electrical output of 775 megawatts in the Town of Weymouth, Massachusetts.¹ Sithe Edgar Development LLC, 10 DOMSB 1 (2000) (“Final Decision”). On November 30, 2001, the Siting Board conditionally approved a Notice of Project Change filed by Sithe. Sithe Edgar Development LLC, EFSB 98-7A (2001) (“Project Change Decision”). The Project Change Decision authorized the use of two construction shifts, one beginning at 7:00 a.m. and ending at 5:00 p.m., and a second beginning at 5:30 p.m. and ending at 2:00 a.m. Project Change Decision at 16.

In accordance with G. L. c. 164, § 69H(4), the Siting Board is authorized to levy a civil penalty when an applicant has violated any order of the Siting Board. The applicant is subject to a civil penalty not to exceed \$1000 per day per violation, with a maximum civil penalty of \$200,000 for any related series of violations.

Pursuant to Condition P of the Project Change Decision, the Company is required to submit monthly noise complaint reports for the duration of nighttime construction. See Project Change Decision at 29. On December 10, 2002 and January 14, 2003, the Company submitted reports for the months of November 2002 and December 2002, respectively. Based on the Siting Board’s review of the Company’s monthly noise report for the months of November and December 2002, the Siting Board is issuing this notice of probable violations of the following orders or conditions in EFSB 98-7A.

¹ As of November 1, 2002, the owner of the subject facility is Exelon Fore River Development, LLC (“Exelon”).

II. PROBABLE VIOLATIONS

A. Use of Outdoor Crane or Other Noisy Equipment After 11:00p.m.

In accordance with Condition N of the Project Change Decision, the Siting Board directed the Company to limit the use of outdoor cranes or other particularly noisy equipment to occasional occurrences during the night shift, and prior to 11:00 p.m. when possible. When this is not possible, the Siting Board directed the Company to provide advance notice to all affected neighbors and the Town of Weymouth. Project Change Decision at 29.

On November 6, 2002, at 11:15 p.m., Eileen Burwell, a resident of 50 Monatiquot Street, reported crane noise (November 2002 Noise Complaint Report at 1). The Company indicated that the Nighttime Noise Monitor called the WGI supervisor, who informed him that the crane (cherry picker) was in the process of being shut down (*id.*). The Company's response to the complaint indicates that the crane may have been operating after 11:00 p.m. The Company made no claim that it gave prior notification to either the affected neighbors or the Town of Weymouth of the use of noisy equipment after 11:00 p.m. The Siting Board finds that use of an outdoor crane after 11:00 p.m. without prior notice is a probable violation of Condition N of the Project Change Decision and hereby fines the Company \$1000.00 for said violation.

B. Prohibited Activity on Second Construction Shift

In order to mitigate the noise impacts of the second shift, the Project Change Decision placed various restrictions on second shift construction work. According to the Noise Mitigation Plan submitted by the Company, second shift work would generally take place in enclosed structures. *Id.* at 8. Specifically, the Company agreed that such activity would take place "in and around the turbine building, inside two warehouse buildings attached to the turbine building, and within the pipe that runs the air-cooled condenser" in order to take advantage of the shielding provided by these structures. *Id.* at 9. In addition, the Company agreed that second shift construction work would take place entirely to the north of a line running approximately from 340 to 600 feet north of Monatiquot Street ("second shift construction line"). Project Change Decision at 10.

On November 14, 2002, at 6:25 p.m., Eileen Burwell reported the sound of loud, banging noises near the ACC. According to the Company, both the Nighttime Noise Monitor and the WGI supervisor investigated work activity near the ACC but did not hear banging sounds (November 2002 Noise Report at 2). The WGI supervisor indicated that he would continue to investigate and shut down any activity that might be the cause of banging sounds (*id.*). The Company's response to the complaint suggests that there was ongoing work activity near the ACC during the second shift. The Siting Board finds that second shift construction work on or in the area of the ACC

units is a probable violation of the noise mitigation plan approved by the Siting Board in the Project Change Decision, which limits second shift construction work to enclosed structures, and hereby fines the Company \$1000.00 for said violation.

On December 13, 2002 at 8:35 p.m., Eileen Burwell reported the sound of a circular work saw in use along the fenceline (December 2002 Noise Report at 2-3). According to the Company, the Nighttime Noise Monitor noticed this activity during an inspection, and reported that the WGI supervisor stopped this work at 8:33 p.m (id.). The Siting Board finds that second shift construction work along the Monatiquot Street fenceline is a probable violation of the Project Change Decision, which requires second shift construction work to be confined to the north of the second shift construction line, and hereby fines the Company \$1000.00 for said violation.

III. PROCEDURE

Exelon has the right to appear with counsel before Siting Board staff in an informal conference on any or all of the probable violations at the offices of the Siting Board on (date), 2003. At the informal conference, the hearing officer will make available to Exelon the evidence on which the Siting Board based its issuance of this Notice of Probable Violations, and the Company may present evidence disputing the probable violations.

If Exelon chooses to dispute the probable violations set forth in this notice but does not choose to attend the informal conference, it should send a written response to this notice to the Siting Board on or before (date), 2003. The reply must include a complete statement of all relevant facts, and a full description of the reasons the Company disputes the probable violations enumerated in this notice.

If Exelon chooses not to dispute the probable violations, it should sign and return the attached Consent Order. The Consent Order must be accompanied by a check in the amount of \$3,000 made payable to the Commonwealth of Massachusetts, and mailed to the Energy Facilities Siting Board, One South Station, Boston, MA 02110. The Siting Board hereby authorizes Diedre Matthews, Director of the Siting Board, to sign on behalf of the Siting Board any Consent Order or other agreement with the Company regarding this Notice of Probable Violations.

If Exelon does not respond to this notice as required by (date) 2003 and does not attend the informal conference, the Company will be deemed to have admitted the allegations and will be subject to all penalties set forth herein.

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 Edgar Development LLC; EFSB 98-7
Notice of Probable Violations

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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 J. Mandarini, Jr.
Public Member

Date

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

CONSENT ORDER

1. This document is a Consent Order entered into between the Energy Facilities Siting Board of the Commonwealth of Massachusetts (“Siting Board”) and Exelon Fore River Development, LLC (“Respondent”).

2. In an Action by Consent, the Siting Board issued to Respondent a notice of probable violations on November 6 and 14, 2002 and December 13, 2002, of certain conditions or orders of the Siting Board’s Final Decision in Sithe Edgar Development LLC, EFSB 98-7A (2001) (the “NOPV”). The NOPV assessed a \$3,000 civil penalty pursuant to G.L. c. 164, § 69H(4).

3. The purpose of this Consent Order is to fully resolve the probable violations raised in the NOPV. It is not intended to resolve any other issues related to construction noise at Fore River Station in Weymouth, Massachusetts.

4. Respondent hereby agrees to pay to the Commonwealth of Massachusetts \$3,000 by check dated (), 2003.

5. This Consent Order does not constitute an admission by the Respondent that any violation of Siting Board Orders or Conditions has occurred.

6. This Consent Order constitutes the final disposition of the three probable violations raised in the above-referenced NOPV.

Date

John A. DeTore,
for Exelon Fore River Development, LLC

Date

Diedre Shupp Matthews
Director, Energy Facilities Siting Division