

COMMONWEALTH OF MASSACHUSETTS  
Energy Facilities Siting Board

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Sithe Edgar Development LLC )

July 31, 2002

Notice of Probable Violations )

ACTION BY CONSENT

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 "when it would be a hardship to the public welfare to defer the decision until the next scheduled meeting of the [Siting Board]." 980 CMR 2.06(1).

On February 10, 2000, the Energy Facilities Siting Board ("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. 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 the Company. Sithe Edgar Development LLC, EFSB 98-7A (2001) ("Project Change Decision").

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. Based on the Siting Board's review of the Company's monthly noise reports for the months of December 2001 through June 2002, we are issuing this notice of probable violations of the following orders or conditions in EFSB 98-7A:

**1. Construction work performed during times prohibited by the Siting Board**

In accordance with the Project Change Decision, the Siting Board approved with conditions a change in the construction schedules for the Sithe Edgar project, including a night shift that would extend from 4:30 p.m. to 2:00 a.m, Monday through Saturday. Project Change Decision at 12-16; see also Exh. PC-Sithe-6, EFSB 98-7A.

A. May 19, 2002

On Sunday, May 19, 2002 at 2:30 a.m., Paula Pineo, a resident of 7 Vanness Road, Weymouth, Massachusetts, reported construction noise. The Company indicated that the noise

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resulted from unexpected work on the boiler (May 2002 Noise Complaint Report).<sup>1</sup> The Siting Board finds that this is a probable violation of the Project Change Decision in that the Company worked past the approved end-of-shift at 2:00 a.m. and hereby fines the Company \$1000 for said violation.

B. June 30, 2002

On Sunday, June 30, 2002 at 12:39 p.m., Eileen Burwell, a resident of 50 Monatiquot Street, Weymouth, Massachusetts, reported sounds of machinery emanating from the Edgar Station site. The Company indicated that the noise resulted from machinery movement necessary for performing X-raying of welds and other operation/commissioning activities, but did not specify these activities or the number of workers involved (June 2002 Noise Complaint Report at 3). The Siting Board finds that this work constitutes a probable violation of the Project Change Decision in that the Project Change Decision does not provide for a daytime construction shift on Sundays and hereby fines the Company \$1000 for said violation.

2. Use of outdoor crane or other machinery after 11:00 p.m.

In accordance with Condition N of the Project Change Decision, the Siting Board directed Sithe to limit the use of outdoor cranes 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 to the City of Weymouth. Project Change Decision at 29.

A. May 30, 2002

On May 30, 2002, at 12:27 a.m., Paul Burwell, a resident of 50 Monatiquot Street, Weymouth, Massachusetts, reported noise from a crane. According to the Company, the night shift construction manager stopped any crane movement that “might have been taking place.” (May 2002 Noise Complaint Report at 3). The Company made no claim that it had provided the affected neighbors notice of crane movement after 11:00 p.m. (May 2002 Noise Complaint Report at 3). The Siting Board finds that this is a probable violation of Condition N of the Project Change Decision, which limits the use of outdoor cranes as stated above, and hereby fines the Company \$1000 for said violation.

B. June 20, 2002

On June 20, 2002 at 11:25 p.m., Eileen Burwell, a resident of 50 Monatiquot Street, Weymouth, Massachusetts, reported crane use and general banging. The Company indicated that one

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<sup>1</sup> On the same day, Richard Pineo of the same address, sent an electronic mail communication to the City of Weymouth and to Marcia MacClary, an employee of Sithe, reporting banging noises at 2:30 a.m. on May 19, 2002 (June 7, 2002 Letter from Sithe at Appendix B, p. 9).

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crane was being moved in order to reposition it for the following day. The Company made no claim that it had provided the affected neighbors notice of crane movement after 11:00 p.m. (see June 2002 Noise Complaint Report at 3). The Siting Board finds that this is a probable violation of Condition N of the Project Change Decision, which limits the use of outdoor cranes as stated above, and hereby fines the Company \$1000 for said violation.

C. June 21, 2002

On June 21, 2002 at 11:25 p.m., Paula Pineo, a resident of 7 Vanness Road, Weymouth, Massachusetts, reported the sounds of cranes. The Company indicated that one crane was being repositioned for the following day (June 2002 Noise Complaint Report at 3). The Company made no claim that it had provided the affected neighbors notice of crane movement after 11:00 p.m. (see June 2002 Noise Complaint Report at 3). The Siting Board finds that this is a probable violation of Condition N of the Project Change Decision, which limits the use of outdoor cranes as stated above, and hereby fines the Company \$1000 for said violation.

**3. Procedure**

Sithe 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 Wednesday, August 7, 2002. At the informal conference, the hearing officer will make available to Sithe the evidence on which the Siting Board based its issuance of this Notice of Probable Violations, and Sithe may present evidence disputing the probable violations.

If Sithe 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 August 7, 2002. 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 Sithe 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 \$5000 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 Sithe does not respond to this notice as required by August 7, 2002, 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.

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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:

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

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Sonia Hamel  
for Robert Durand  
Secretary of Environmental Affairs

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W. Robert Keating  
Commissioner  
Department of Telecommunications and Energy

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Deirdre K. Manning  
Commissioner  
Department of Telecommunications and Energy

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Joseph Donovan  
For Elizabeth Ames, Director  
Department of Economic Development

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David L. O'Connor  
Commissioner  
Division of Energy Resources

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 Sithe Edgar Development LLC (“Respondent”).

2. In a July 31, 2002 Action by Consent, the Siting Board issued to Respondent a notice of probable violations on May 19, 2002, May 30, 2002, June 20, 2002, June 21, 2002 and June 30, 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 \$5000 civil penalty pursuant to G.L. c. 164, § 69H.

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

4. Respondent hereby agrees to pay to the Commonwealth of Massachusetts \$5000 by check dated August 12, 2002.

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 five probable violations raised in the NOPV.

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Date

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John A. DeTore, for Sithe Energy LLC

\_\_\_\_\_  
Date

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Diedre Shupp Matthews  
Director, Energy Facilities Siting Division