

COMMONWEALTH OF MASSACHUSETTS  
Energy Facilities Siting Board

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Motion to Withdraw the Petition of IDC )  
Bellingham LLC, for Approval to Construct )  
and Operate a 700-MW Bulk Generation Facility in ) November 13, 2003  
Bellingham, Massachusetts and the Application of )  
IDC Bellingham LLC for a Certificate of )  
Environmental Impact and Public Interest )  

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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).

II. BACKGROUND

On June 19, 2003, Maurice Durand et al. and the Box Pond Association, Inc. et al. (“Petitioners”) filed with the Siting Board a motion (“Motion”) to withdraw the certificate of environmental impact and public interest (“Certificate”) issued by the Siting Board in IDC Bellingham, LLC, 13 DOMSB 1 (2001) (“Certificate Decision”), and the decision issued by the Siting Board in IDC Bellingham, LLC, 9 DOMSB 225 (1999) (“Final Decision”). IDC Bellingham, LLC, the company that obtained the Certificate and Final Decision from the Siting Board, filed no response to the Motion.

III. PROCEDURAL HISTORY

On December 21, 1999, the Siting Board conditionally approved the petition of IDC Bellingham, LLC (“IDC” or “Company”) to construct a natural gas-fired combined-cycle electric generating facility with a net nominal electrical output of 700 MW. Final Decision. On September 12, 2000, the Siting Board approved the Company’s Compliance Filing, approving

the proposed reconfigured facility with a net nominal output of 500 MW. IDC Bellingham, LLC - Compliance, 11 DOMSB 27 (2000) (“IDC Compliance Decision”).<sup>1</sup> On September 24, 2001, the Siting Board approved with conditions a project change filed by the Company on June 6, 2001. IDC Bellingham, LLC, 12 DOMSB 372 (2001) (“IDC Project Change Decision”).<sup>2</sup> Thereafter, on October 12, 2001, the Siting Board granted the Company’s Application for a Certificate with respect to five special permits granted by the Bellingham Board of Appeals. Certificate Decision.<sup>3</sup>

#### IV. POSITION OF THE PETITIONERS

The Petitioners claim that the Siting Board should withdraw both the Final Decision and the Certificate Decision, asserting that IDC has decided not to build the generating facility which is the subject of the Certificate Decision and Final Decision (Motion at 1). In support, the Petitioners state that, in March 2003, the Petitioners filed a motion jointly with IDC and the Massachusetts Department of Environmental Protection (“DEP”) to withdraw the air quality permit DEP had issued for the IDC facility (id.). As grounds for that motion, IDC stated that it “no longer intends to build the power plant” (id.).<sup>4</sup> The Petitioners contend that the statement made by IDC in the motion filed at DEP also may serve as grounds for the Siting Board to withdraw the Final Decision and the Certificate Decision (id.).

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<sup>1</sup> The Petitioners are not seeking to withdraw the IDC Compliance Decision.

<sup>2</sup> The Petitioners are not seeking to withdraw the IDC Project Change Decision.

<sup>3</sup> Box Pond Association, Inc. appealed the Final Decision and Maurice Durand et al. appealed the Certificate Decision. On appeal, the Supreme Judicial Court upheld the Final Decision; the appeal of the Certificate Decision is still pending. Box Pond Ass’n v. Energy Facilities Siting Bd., 435 Mass. 408 (2001); Maurice Durand et.al. v. Energy Facilities Siting Bd., SJ-2001-0504.

<sup>4</sup> On March 14, 2003, DEP issued a decision vacating the air quality plan for the IDC facility and granting the joint motion to withdraw filed by the Petitioners, IDC and DEP (Motion, Att. DEP Final Decision In the Matter of IDC Bellingham, Docket No. 2001-133, March 14, 2003).

V. ANALYSIS

The Petitioners have filed a motion to “withdraw” the Final Decision and the Certificate Decision. However, IDC, and not the Petitioners, is the entity that petitioned for and received both the Final Decision and the Certificate Decision. The Petitioners cannot withdraw petitions which they never filed; consequently, we interpret the Petitioners’ request as a motion to vacate the Final Decision and the Certificate Decision.

With respect to the Final Decision, the Petitioners’ Motion is moot. In the Final Decision issued on December 21, 1999, the Siting Board stated that “[b]ecause issues addressed in this Decision relative to this facility are subject to change over time, construction of the proposed generating facility must be commenced within three years of the date of the decision.” Final Decision at 362. At no point in the subsequent proceedings on this matter did the Siting Board extend the three-year time limit for commencement of construction; further, IDC did not seek an extension of this deadline prior to its expiration. Consequently, the approval granted by the Siting Board in the Final Decision has lapsed. Should IDC wish to construct the Bellingham facility at some future date, it would have to submit a new petition to the Siting Board for review pursuant to G.L. c. 164, § 69J¼. Petitioners’ Motion with respect to the Final Decision is denied because it is moot.

With respect to the Certificate Decision, the Siting Board relies on its precedent for guidance. Previously, the Siting Board considered a motion to vacate a decision filed by persons who had properly intervened in the Siting Board proceeding. As in the case before us, the motion to vacate was filed while the decision was on appeal. In its ruling, the Siting Board stated, inter alia, that “[l]ogically, no person other than [the holder of the approval] is capable of determining or authorized to determine when [the holder of the approval] no longer retains any interest in the project. If [the holder of the approval] ever determines that it has no remaining interest in the Final Decision, it may, if it chooses, withdraw its petition to construct.” Nickel Hill Energy, LLC, Ruling on Motion to Vacate, 12 DOMSB 277, at 281 (2001) (“Nickel Hill

Decision”).<sup>5</sup> We are of the opinion that the logic used in that case is applicable here. The Petitioners have provided no argument to convince us that we should reach a different decision. Accordingly, the Siting Board denies the Petitioners’ Motion with respect to the Certificate Decision.<sup>6</sup>

This Action by Consent shall be deemed to have been taken when the document and copies bearing the signatures of all Board members are returned to the Chairman. 980 CMR § 2.06(2).

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<sup>5</sup> See Silver City Energy Limited Partnership (Action by Consent), 4 DOMSB 445 (1994); Eastern Energy Corporation (Action by Consent), 4 DOMSB 213 (1996); Altresco Lynn, Inc. (Action by Consent), 4 DOMSB 459 (1993).

<sup>6</sup> We also note that there may be procedural deficiencies regarding the motion brought by the Petitioners. See Nickel Hill Decision at 5. However, because we have denied the Motion on other grounds, we need not address those procedural issues here.

Signed:

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Paul G. Afonso  
Chairman  
Energy Facilities Siting Board/  
Department of Telecommunications and Energy

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Date

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W. Robert Keating  
Commissioner  
Department of Telecommunications and Energy

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Date

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Deirdre K. Manning  
Commissioner  
Department of Telecommunications and Energy

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Date

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David L. O'Connor  
Commissioner  
Division of Energy Resources

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Date

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Joseph Donovan  
for Barbara B. Berke, Director  
Department of Business and Technology

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Date

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James Stergios  
for Ellen Roy Herzfelder  
Secretary of Environmental Affairs

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Date

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Louis A. Mandarin, Jr.  
Public Member

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Date