



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Deval Patrick
GOVERNOR

Timothy Murray
LIEUTENANT GOVERNOR

Ian Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

January 22, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME :Billerica Power Project
PROJECT MUNICIPALITY :Billerica
PROJECT WATERSHED :Concord
EOEA NUMEIER :13925
PROJECT PROPONENT :Montgomery Billerica Power Partners, LLP
DATE NOTICED IN MONITOR :December 23, 2006

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Sections 11.04 and 11.06 of the MEPA regulations (301 C.M.R. 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

According to the Environmental Notification Form (ENF), the project involves the construction of a peaking power generating facility, consisting of eight, 60-megawatt (MW) simple-cycle combustion turbine generators (Pratt and Whitney FT8 or equivalent) fueled by either natural gas or ultra low-sulfur diesel fuel on a 13.8-acre industrially-zoned site located on Rear Billerica Avenue in Billerica. The turbines will have a total, nominal capacity of 480 MW to provide power during peak electric demand periods and to support the transmission grid during emergencies and system imbalances. The project will interconnect with an existing 115kV National Grid transmission line located approximately 0.2 miles south of the proposed facility. The project also includes the construction of one 500,000 gallon fuel oil tank, one 50,000 gallon aqueous ammonia storage tank, three 500,000 gallon water storage tanks, a single story maintenance and operations building, a single story chemical storage building, three transmission towers, an electrical switching yard, and related utilities and stormwater management infrastructure.

The project is undergoing review and requires the preparation of an EIR pursuant to section 11.03 (7)(a)(1) of the MEPA regulations, because the project involves the development of a new electric generating facility with a capacity greater than 100-megawatts. The project will require numerous state permits and agency actions, including: Approval to Construct from the Energy Facilities Siting Board (EFSB); Air Plans Approval for a non-major source from the Department of Environmental Protection (MassDEP); a Water Management Act Permit from MassDEP, a permit for tank of capacity greater than 10,000 gallons (527 CMR; 502 CMR 5) from the state Fire Marshall Office and an Order of Conditions from the Billerica Conservation Commission (and hence a Superseding Order from MassDEP if the local order were appealed). The project may also require several federal environmental permits. The project may also require a Sewer Connection Permit from MassDEP, and a permit from the Massachusetts Water Resources Association (MWRA) for construction in proximity to MWRA water or sewer line (Ch. 372, Acts of 1984, Section 8(m)). The proposed project is located on a 13.8-acre portion of the 131.43-acre parcel of property currently owned by the Baker Commodities Inc.-Lowell Corenco Division (Baker Commodities), a rendering company that produces fertilizer from animal fats and bones.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is limited to those aspects of the project that are likely to directly or indirectly cause Damage to the Environment and that are within the subject matter of required or potentially required state permits or agency actions. Given the numerous permits and agency actions (and the broad scope of the EFSB and MassDEP permit reviews), MEPA subject matter jurisdiction exists over virtually all of the potential environmental impacts of the project. The project will be a new, non-major source of air pollutants. The project must meet the Best Available Control Technology (BACT) requirements for air pollutants as required by MassDEP's Division of Air Quality Control as well as demonstrate that the project will comply with MassDEP's Noise Policy. The resolution of the critically important issues, as well as other environmental issues as detailed below, may impact the final layout and design of the project. I strongly encourage the proponent to continue consultation with local, state, federal and other agencies and concerned citizens to resolve the remaining issues and to develop appropriate mitigation.

Future Development

According to the proponent's statements made at the MEPA consultation session held for this project on January 5, 2007, the 13.8-acre project site is located within a 131.43-acre partially developed parcel of property owned by Baker Commodities. After considering the factors cited in Section 11.01 of the MEPA regulations, I must consider the environmental impacts associated with the proposed development of the Billerica Power project, any future expansion of the existing Baker Commodities facility, and the potential future development of existing developable land located within the 131.43-acre Baker Commodities property as a "common plan or undertaking".

I am therefore requiring that a Notice of Project Change (NPC) be filed with the MEPA Office for any future expansion or new development proposal that may be proposed within the remaining 127-acre Baker Commodities property prior to January 2012. The NPC will need to discuss both the potential cumulative infrastructure impacts including but not limited to traffic, water supply, wastewater and wetlands, and site planning issues arising out of the expansion of the existing Baker Commodities facility, the proposed Billerica Power Project, and the full-build out (allowable as-of-right under current local zoning) of the remaining 127-acre industrial-zoned Baker Commodities property.

SCOPE

General

The DEIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate. The DEIR should contain a copy of this Certificate and a copy of each comment received. The proponent should circulate the DEIR to those parties who commented on the ENF, to any state agencies from which the proponent will seek permits or approvals, and to any parties specified in section 11.16 of the MEPA regulations. In addition, the proponent should make available a reasonable number of copies of the DEIR free of charge on a first come, first served basis.

Alternatives

According to the information provided in the ENF submittal, the proposed 480 MW peak power generating facility has been designed to address the immediate and projected regional demand for more peaking power resources for Massachusetts, and the Greater Boston metropolitan area as projected by the Independent System Operator for New England (ISO-NE). I note that the MEPA Office has recently reviewed a number of other proposed peak power generating facilities (EOEA #13734 Everett, March 2006 - 200 MW, EOEA #13705 Lowell, January 2006 - 99 MW, EOEA #13192 Peabody, January 2004 - 99 MW) to be located in eastern Massachusetts. In addition to this proposed Billerica Power Project, the MEPA Office is also currently reviewing the proposed Chelsea Peak Energy Facility project EOEA #13927, December 2006 - 250 MW. In a separate chapter of the DEIR, the proponent should include copies of ISO New England's most recent Regional System Plan and other relevant studies of the region's projected future electrical energy demands. This section of the DEIR should discuss the proposed project's contribution to the region's projected future electrical energy demands in light of these other peak power generating facilities and the projected regional demand for more peaking power resources for Massachusetts.

The DEIR should discuss in more detail the layout of the preferred alternative including the anticipated off-site interconnection to the National Grid's 115KV bulk power system. The DEIR should also analyze alternative site layouts, to arrive at a site layout that minimizes overall impacts. Specifically, the DEIR should examine alternative site layouts that avoid or minimize impacts to wetlands resource areas, and increase buffer zones between the project site and adjacent resource areas and land uses. The DEIR should include a more detailed site plan identifying project elements and locations.

Project Description/Project Permitting/Regulatory Environment

The DEIR should briefly describe each state permit or agency action required for the project, and should discuss how the project meets the performance standards associated with various permits. The DEIR should also discuss applicable environmental regulatory requirements, and demonstrate that the proposed project is consistent with applicable regulations. The DEIR should also provide information regarding the consistency of the project with any applicable local or state open space plans, and should include an update on the status of the local review and approval process (see Section 11.01(3) of the MEPA regulations). The DEIR should provide sufficient detail for the state permitting agencies to make informed permitting decisions, and otherwise meet their Section 61 obligations. I also encourage the proponent to include similar information for federal permits and regulations as well.

The DEIR should include an analysis of project design, layout, and site conditions. It should contain a site plan that includes information on proposed lighting, vegetative plantings or buffers, and the proposed stormwater drainage system. The DEIR should also include schematics and diagrams to describe the proposed facility in terms of structural design, project height, the power generation process and its parameters, and the proposed pollution control systems.

Air Quality

As a new, non major source of air pollutants, the proponent must perform an analysis using a US EPA-approved screening computer dispersion model to demonstrate compliance with the applicable National and Massachusetts Ambient Air Quality Standards. The proponent will need to provide additional information in the DEIR submittal to satisfactorily demonstrate that the project will not have significant impacts on air quality. The proponent should work with MassDEP's Division of Air Quality to demonstrate that the project meets the requirements for MassDEP's Non-Major Comprehensive Plan Approval pursuant to 310 CMR 7.02 prior to project construction. To meet the requirements for BACT, the project is proposing to use clean fuels. The DEIR should include information to satisfactorily demonstrate that the project meets the Best Available Control Technology (BACT) requirements for air pollutants including any/all proposed combustion and post-combustion controls to demonstrate that the project will meet these requirements.

According to the comments received from MassDEP, the proponent will need to complete a Top-down Best Available Control Technology Analysis for the proposed Billerica Power project that uses the specific emissions limitations identified in MassDEP's comment letter. The ENF indicates that the project will fall below applicable thresholds for federal National Emissions Standards for Hazardous Air Pollutants for stationary gas turbines. However, the proponent will be required to comply with the federal New Source Performance Standard for stationary gas turbines. The DEIR must demonstrate how the project will comply with these standards. I encourage the proponent to contact MassDEP's Division of Air Quality Control about these and any other air quality issues.

Noise

The DEIR must demonstrate how the project will comply with the DEP Noise Policy (DAQC Policy 90-001). MassDEP will require the proponent to file a BWP AQ SFP-3, Supplemental Form for Survey of Noise Potential. The DEIR should also quantify what the incremental cost would be if reducing increases in noise from the facility below the level required by that policy. The DEIR should evaluate the feasibility of holding net noise increases at the property line and at the nearest residential receptors to 7dBa, 1dBa, and 0dBa. This portion of the scope will require a "noise BACT" analysis. The proponent should commit to implementing all feasible noise attenuation measures to mitigate the project's potential noise impacts to existing residential neighborhoods located in the project area.

Visual

The DEIR should include an analysis of the potential visual impacts of the proposed facility. The proponent should provide visual renderings for the exact on-site layout of the preferred alternative, and more detail on the anticipated off-site interconnection to the National Grid's existing overhead 115KV bulk power system. versus running a generator lead directly from the project site to the Billerica substation. This section of the DEIR should include renderings of the proposed project as viewed from nearby residents neighborhoods located in the project area, and other appropriate vantage points in the project area. The proponent should indicate if the project will require a variance from the height limitations of the Billerica Zoning Ordinance. The DEIR should also explore Alternative site layouts that provide increased buffers between the project site and adjacent land uses. The DEIR should describe the height of the project in greater detail, and should discuss methods of mitigating the proposed project's visual impacts.

Stormwater

The proposed project will result in the creation of approximately 4.4 acres (3.34 acres on-site, 1.1 acres off-site) of impervious surface area. The DEIR should investigate all feasible methods of avoiding, reducing, or minimizing impervious surfaces associated with the project. The DEIR should include a detailed description of the project's proposed on-site and off-site drainage system design, including a discussion of the alternatives considered along with their impacts. The DEIR should identify the quantity and quality of flows. The rates of all project-related stormwater runoff should be analyzed for the 10, 25, and 100-year storm events. The proposed drainage system should control storm flows at existing levels. The DEIR should discuss the consistency of the drainage plan with DEP's Stormwater Management Policy, guidelines, and Wilmington's Stormwater Program. The DEIR should identify any stormwater discharge points, and describe any drainage impacts associated with required off-site roadway improvements. The DEIR should indicate and discuss where the Billerica Avenue and Letchworth Avenue drainage systems discharge in this area. It should also be demonstrated that the proposed drainage system would control storm flows at existing levels. The proponent should respond to the comments received from MassDEP and others pertaining to the project's stormwater management plan.

Wetlands

The project site is located east of the Concord River and contains previously disturbed bordering vegetated wetland (BVW) and isolated wetland resource areas. According to the proponent, the project will not impact BVW resource areas, but will result in alterations to on-site wetland buffer areas.

All resource area boundaries, riverfront areas, applicable buffer zones, and 100-year flood elevations should be clearly delineated on a reasonable scaled plan. Bordering vegetated wetlands that have been delineated in the field should be surveyed, mapped, and located on the plans. Each wetland resource area and riverfront area should be characterized according to 310 CMR 10.00. The test should be whether the local conservation commission has accepted the resource area boundaries and any disputed boundary should be identified. Proposed activities, including construction mitigation, erosion and sedimentation control, phased construction, and drainage discharges or overland flow into wetland areas, should be evaluated. The locations of any detention basins and their distances from wetland resource areas, and the expected water quality of the effluent from said basins should be identified. This analysis should address current and expected post-construction water quality (including winter deicing and sanding analyses) of the predicted final receiving water bodies.

Sufficient mitigation measures should be incorporated to ensure that no downstream impacts would occur. The drainage analysis should ensure that on- and off-site wetlands are not impacted by changes in stormwater runoff patterns.

Where it has been demonstrated that impacts are unavoidable, the DEIR should demonstrate that the impacts have been minimized, and that the project will be accomplished in a manner that is consistent with the Performance Standards of the Wetlands Regulations (310 CMR 10.00). The proponent will need to provide wetlands replication at a ratio of at least 1:1 for any unavoidable impacts to wetlands.

Water Supply

As described in the ENF submittal, the project will generate a water supply demand of approximately 964,000 gallons per day (gpd). According to the proponent's statements made during the January 5, 2007 MEPA Site visit held for this project, the proponent has identified a number of alternative scenarios for serving the project's water supply needs including; 1) using treated wastewater from the Town of Billerica's existing Wastewater Treatment Facility (WWTF) located within the project area and near project site, and 2) constructing an on-site water supply well. The DEIR should demonstrate that the proposed alternative scenarios for serving the project's water supply are feasible. At a minimum, the DEIR should demonstrate that the proponent has secured permission from the Town of Billerica to direct treated wastewater flow from the Billerica WWTF to the proposed project for use in the project's electrical generating process. According to MassDEP, the proponent should consult with MassDEP for guidance on the applicable standards on the use of reclaimed water. The DEIR should identify any permits and requirements the proposed project may require if on-site wells are proposed as the water supply source for the project. The DEIR should respond to the many comments received pertaining to the project's potential impacts to the Concord River, and the Town of Tewksbury's public water supply.

Wastewater

According to the information provided in the ENF submittal, the proposed project will generate approximately 18,000 – 30,000 gpd of wastewater flow. The proponent has identified a number of wastewater treatment alternative including; 1) discharging the project's wastewater flow to the Town of Billerica's WWTF for treatment and discharge to the Concord River, 2) collecting and trucking the project's wastewater off-site. The DEIR should demonstrate that the proposed discharge of the project's wastewater to Billerica's municipal WWTF is feasible. The DEIR should demonstrate that the Town of Billerica's municipal WWTF has sufficient design capacity to accommodate the proposed project's additional wastewater flows, and that the proponent has secured permission from the Town of Billerica to direct the proposed project's wastewater flows to said facility for treatment. The DEIR should include a description of the proponent's efforts to coordinate with the Town of Billerica to identify appropriate mitigation that will help to offset the potential municipal sewerage impacts from the proposed project.

The DEIR should include a description of the proponent's efforts to coordinate with the Town of Billerica to identify appropriate mitigation that will help to offset any potential municipal sewerage impacts from the proposed project.

Hazardous Waste

According to the information contained in the ENF, and additional information provided by the proponent during the MEPA Scoping session held for this project on January 5, 2007, the project site does not contain known or reported releases of hazardous waste material to soil or groundwater. In their comments, MassDEP has equated the prior use of the project site with the potential for encountering reportable concentrations of oil or hazardous material to soil and/or groundwater pursuant to the provisions of MGL c 21E/21/C. I strongly recommend that the proponent consult with DEP's Bureau of Waste Site Cleanup (BWSC) in the final design of this project to explore what impacts, if any, the proposed project's excavation activities might have on this site, and to evaluate the proponent's need for retaining a Licensed Site Professional (LSP) to assist in the project's construction, and to coordinate the project's construction activities with the other ongoing groundwater treatment projects in the area. The proponent should ensure that the project contractors and sub-contractors maintain an emergency response plan for performing appropriate response actions in the event contamination is encountered during project construction.

Traffic

As described in the ENF submittal, the proposed project is anticipated to result in a minor increase (10 vehicle trips per day (vtd)) to traffic within the project area when operated using natural gas. During periods when natural gas is unavailable, the facility will be operated using ultra low-sulfur diesel oil and will require additional fuel oil truck deliveries (25 vtd), resulting in a total of approximately 35 vtd on local roadways within the project area.

I ask that the proponent work closely with Town of Billerica officials, and local residents to establish a specific distribution route to and from the facility for bulk chemical and fuel oil deliveries to and from the project site. Any proposed truck distribution route should concentrate on using major thoroughfares (i.e., Route 10, MassPike, Servistar Industrial Way) and should avoid use of residential roadways, and roadways abutting schools and open space recreational areas. The routing plan should consider alternatives to ensure that the plan will be enforceable, including the use of truck markings so that local police and residents may identify trucks utilizing the new transfer facility. The DEIR should include a description of the proponent's proposed truck distribution route for trucks coming to and leaving the site.

Construction Management

The proponent should analyze and mitigate construction-period impacts, including temporary impacts to wetlands, and the extent of any re-grading during construction. The proponent should consult with MassDEP to ensure that the proponent will meet any performance standards associated with a federal NPDES permit for all project construction activities. The proponent should commit to using lower emission equipment in addition to requiring its contractors to retrofit diesel-powered equipment with emissions controls, such as particulate filters or traps, and use low-sulfur diesel fuel. The proponent should require its contractors to use On-Road Low Sulfur Diesel (LSD) fuel in their off-road construction equipment which can increase the removal of particulate matter (PM) by approximately 25% beyond that which can be removed by retrofitting diesel-powered equipment. All construction-related refueling and equipment maintenance activities should be conducted under cover on impervious surface areas with containment, and outside of any wetlands resource areas, endangered species habitat areas, residential areas and wellhead protection areas.

Mitigation

The DEIR should include a Draft Section 61 Finding for all state permits. The Draft Section 61 Finding should contain a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included.

Response to Comments

The DEIR should follow MEPA regulation 11.07 as modified by this scope and must respond to the comments received. I recommend that the proponent use either an indexed response to comments format, or else direct narrative response. The DEIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

Circulation:

The DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of "comments received" below and to officials from the Town of Billerica. A copy of the DEIR should be made available for public review at the Billerica Public Library.

January 22, 2007
DATE



Ian A. Bowles, Secretary

Comments received:

01/08/07	Joan and Edward LaTourneau
01/09/07	East Chelmsford Water District
01/09/07	Lisa Doherty
01/11/07	Town of Tewksbury
01/12/07	Northern Middlesex Council of Governments (NMCOG)
01/12/07	Massachusetts Department of Fish and Game - Riverways Program
01/12/07	Department of Environmental Protection (MassDEP) – NERO
01/12/07	Organization for the Assabet River (OAR)
01/12/07	Billerica Planning Board

ENF #13925
IAP/NCZ/ncz