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November 1, 2007

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT

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	:September 25, 2007

As Secretary of Energy and Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **adequately and properly** complies with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). However, for the Final Environmental Impact Report (FEIR) to be found adequate, I am requiring the proponent to provide additional information in the FEIR specifically pertaining to wetlands, stormwater, water supply, air quality, noise, hazardous waste impacts, and mitigation. This information is necessary to ensure that the requirements of 301 CMR 11.07 are met, that the aspects and issues of the project have been clearly described, that the proponent has committed to a set of mitigation measures that will allow the state agencies to satisfy their Section 61 obligations, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency action.

I acknowledge the many comment letters requesting that I deny the project based on air quality and human health impacts. Commenters have also expressed concern about the number of similar projects that have been proposed in Massachusetts, and have questioned the need for so many power plants of this type. A number of projects such as this have been submitted for my review and have or are in the process of receiving necessary state permits. It is important to note that only a small percentage of these plants will actually get built, based on the economics and management of the New England energy market.



Moreover, it is the policy of this office to favor energy conservation and alternative and renewable energy sources over fossil fuel energy sources.

However, it is my obligation under the MEPA statute to entertain all projects submitted for MEPA review. MEPA is not a permitting process, and does not allow me to approve or deny a project. Rather, it is a process designed to ensure that state permitting agencies have adequate information on which to base their permit decisions and their Section 61 findings, and to ensure that potential environmental impacts are fully described and avoided, minimized and mitigated to the maximum extent feasible. I have also received several comment letters requesting that I require a supplemental DEIR to provide additional information and analysis of impacts and alternatives. I am satisfied that the DEIR has adequately responded to the Scope and I am confident that the level of description and analysis required by the scope for the draft and final EIR will ensure that the potential impacts of the project are thoroughly evaluated.

Project Description

As originally proposed, the project involved 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 (ULSD) on a 13.8-acre site located within a 131.43-acre partially developed industrially-zoned parcel of property owned by Baker Commodities on Rear Billerica Avenue in Billerica.

The turbines will have a cumulative 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 above-ground ULSD fuel oil tank, two 24,000 gallon above ground aqueous ammonia storage tanks, a 750,000 gallon above ground water storage tank, and a 500,000 gallon de-mineralized water storage tank, a single story maintenance and operations building, a single story chemical storage building, three 100' tall transmission towers, an electrical switching yard, and related utilities and stormwater management infrastructure. Within the DEIR, the proponent has committed to limiting the facility operation to no more than 2,300 turbine hours per year. Such limits will be outlined within the air quality permit to be issued by MassDEP.

Project Changes and Modifications

Since the filing of the ENF, the project has been modified to further minimize potential damage to the environment. These changes presented in the DEIR include:

- Use of six Rolls-Royce Trent 60 combustion turbine generators (CTGs) each rated at approximately 58 MW. The total nominal capacity of the proposed peaking power generating facility is reduced from 480 MW to 348 MW;
- Expansion of the proposed project site leased area from 13.8-acres to 16.04 acres; and,

Additional noise abatement measures added to further reduce sound impacts to affected receptors.

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 and 401 Water Quality Certification from MassDEP, a Section 404 General Permit from the U.S. Army Corps of Engineers (ACOE), 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 will also require that a Wastewater Discharge Certification Statement be filed with 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 project must comply with the National Pollution Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre. The proposed project is located on a 16.4-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. 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 these 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. 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.

SCOPE

General

The FEIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate. The FEIR should contain a copy of this Certificate and a copy of each comment received.

Project Description and Permitting

The FEIR 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 FEIR should also discuss applicable environmental regulatory requirements, and demonstrate that the proposed project is consistent with applicable regulations. The FEIR 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 FEIR 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.

Future Development

The 16.04-acre project site is located within a 131.43-acre partially developed parcel of property owned by Baker Commodities. As I have previously indicated in the Certificate on the ENF, I 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 Baker Commodities property as a "common plan or undertaking". I have therefore required 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 115.39-acre Baker Commodities property. 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.

Regional Demand

The DEIR included a copy of ISO New England's 2006 Regional System Plan including relevant studies of the region's projected future electrical energy demands. According to information contained in the 2006 Regional System Plan, New England will need additional electrical energy resources to meet projected 2007-2015 future electric power system demands throughout the New England region. According to the proponent, the currently proposed 348 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). The FEIR should include a copy of ISO New England's most recent 2007 Regional System Plan and discuss any changes to the Regional Plan regarding ISO New England's projected future energy demands for Massachusetts and the Boston Subarea of the New England Regional System.

Wetlands

As described in the DEIR document, the project site is located east of the Concord River and contains bordering vegetated wetland (BVW) and isolated wetland resource areas (IVW), bordering land subject to flooding (BLSF) and Inland Bank. The DEIR included plans that identified the location of each wetlands resource area that may be regulated under the Army Corps of Engineers (ACOE) Section 404 Permit, MassDEP's Wetlands Protection Act (WPA), and the City of Billerica's wetlands regulations. The DEIR characterized each wetland resource area and riverfront area according to 310 CMR 10.00 and provided a measurement of impact to each wetland resource area under the Preferred Alternative. According to the proponent the project will result in the alteration of approximately 14,000 sf of bordering vegetated wetlands (BVW) including permanent canopy alteration for the construction of the access roadway, transmission line, and A-frame structure. The FEIR should quantify the temporary and permanent impacts to BVW and IVW buffer areas. The proponent will need to demonstrate how the project meets the performance standards of the Wetlands Protection Act, including standards related to limited projects, the extent of the proposed alteration of wetlands, and the need, if any, for a Variance from the regulations under the Wetlands Protection Act (WPA). The proponent should respond to MassDEP's comments pertaining to the need to provide MassDEP with any supporting information to evaluate the proponent's limited project claims.

The project will also result in impacts to approximately 17,800 sf of isolated wetlands (IVW) resource area, approximately 65,000 sf of bordering land subject to flooding (BLSF), and approximately 200 sf of inland bank. MassDEP has indicated that a portion of the IVW to be impacted by the proposed project may be hydraulically connected to BVW resource areas. MassDEP has requested that the proponent conduct a field check of these resource areas to verify their regulatory status under MassDEP's wetlands regulations. I note that MassDEP's 401 WQC and wetlands regulations review processes require an alternatives analysis that considers practicable alternatives to avoid, minimize, and mitigate impacts to wetlands resource areas. The proponent's alternatives analysis will need to satisfactorily comply with the alternative analysis requirements for MassDEP's 401 WQC and wetlands regulations review processes.

The DEIR includes a description of the proponent's commitment to construct approximately 17,800 sf of on-site wetlands replication for the project's alteration of IVW to be located along the northwestern edge of existing IVW #3. The DEIR did not identify wetlands mitigation for the project's proposed alteration of BVW. The FEIR must include a detailed discussion of the proponent's commitment to provide wetlands mitigation for the project's proposed alteration of BVW resource areas. 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 FEIR 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.

Stormwater

The project will result in the creation of approximately 6.9 acres of impervious surface area. The DEIR includes a proposed stormwater drainage plan for the power generating facility project that is consistent with MassDEP's Stormwater Management Guidelines, and the MassDEP Stormwater Management Policy standards for water quality including avoidance of impact to wetland resource areas and maintenance or improvement to stormwater quality and quantity in a post-construction condition, and the Town of Billerica's current Stormwater Program. The stormwater management plan incorporates a series of natural and structural best management practices (BMPs), including water quality swales, two stormwater detention basins, deep sump catch basins equipped with Stormceptor to collect, treat and provide total recharge of stormwater from the project site to wetland resource areas and buffer areas located within and adjacent to the project site. According to the proponent, the proposed stormwater management plan meets the Stormwater standards for redevelopment projects and provides a Total Suspended Solids (TSS) removal rate that meets or exceeds the 80% standard for new construction. As described in the DEIR document, the stormwater management plan complies with the National Pollutant Discharge Elimination System (NPDES) Stormwater requirements for the Power General Industry.

MassDEP has indicated in its comment letter that the FEIR must provide additional information to determine that proposed plan's consistency with MassDEP's Stormwater Management Policy (SMP) and standards. Specifically, the proponent will need to demonstrate compliance with Standard 5 of the SMP. The FEIR must include calculations for the estimated 2-year peak rate of runoff, the water quality volume, total suspended solids (TSS) removal for the stormwater control system, and the existing and proposed infiltration rates. The FEIR should respond to MassDEP's comments. The FEIR should also provide information pertaining to the stormwater drainage and containment system for the proposed fuel oil tanks and ammonia tanks.

According to MassDEP, these drainage and containment systems must be designed in conformance with MassDEP's SMP and Standard 5. The proponent is also reminded that a source control and pollution prevention plan is required for compliance with the SMP. This source control and pollution prevention plan should specify that snow disposal be performed in accordance with the MassDEP Snow Disposal Guidelines. The FEIR should demonstrate that the project will be constructed and operated in a manner consistent with the anticipated NPDES Construction General Permit and more specifically with Billerica's Storm Water Program. The FEIR should address the comments received from MassDEP regarding fuel and ammonia storage tanks and their relationship to the site stormwater management system. I ask that the proponent work closely with MassDEP in the preparation of the FEIR and the final design of the stormwater management plan for the proposed facility.

I encourage the proponent to continue to evaluate opportunities for incorporating sustainable design alternatives including Low Impact Development (LID) techniques in the project's site design and stormwater management plans. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. Clustering of buildings is an example of how LID can preserve open space and minimize land disturbance. LID can also protect natural resources by incorporating wetlands, stream buffers and mature forests as project design features. For more information on LID, visit <http://www.mass.gov/envir/lid/>. Other LID resources include the national LID manual (Low Impact Development Design Strategies: An Integrated Design Approach), which can be found on the EPA website at: <http://www.epa.gov/owow/nps/lid/>.

Water Supply

As described in the DEIR submittal, under peak operating conditions (6 hours per day peak operation), the project will generate a water supply demand of approximately 180,000 gallons per day (gpd) to cool the turbines during combustion process and minimize emissions of NO_x. The proponent has proposed to use treated wastewater effluent from the Town of Billerica's existing Wastewater Treatment Plant (WWTP), located south of the project site, as the primary source of process water for the peaking power generating facility. According to the proponent, the Billerica WWTP has a design capacity of 5.5 mgd and currently treats approximately 4.7 mgd during peak periods in the summer. The proponent has also proposed to connect to the Town of Billerica's municipal water supply as back-up for the facility's power generating activities. According to the information provided in the DEIR, the Billerica WWTP has sufficient capacity to serve the proposed peaking power generating facility. In their comments, MassDEP has requested that the FEIR include a detailed description of the proponent's proposed wastewater reuse plan.

The FEIR should identify the total maximum water consumption rate (gallons per minute (gpm)) for the eight turbine generators, and describe the proposed facility's water consumption, availability, treatment and storage capabilities during periods of extended facility operation (i.e. the longest permitted operational duration). The FEIR should demonstrate that the proponent has secured permission from the Town of Billerica to receive treated wastewater flow from the Billerica WWTP to the proposed project for use in the project's electrical generating process. In their comments, MassDEP has indicated that the Department's regulations pertaining to the reuse of wastewater effluent have not been finalized. MassDEP has requested that the proponent work closely with MassDEP in designing the project's wastewater effluent reuse plan to address the any uncertainties resulting from the pending finalization of MassDEP's wastewater reuse regulations. The FEIR should respond to MassDEP's comments and should include a summary of the proponent's consultations with MassDEP.

Impacts to the Concord River

According to the information provided in the DEIR, the Billerica WWTP discharges an average of 4.4 mgd of treated wastewater effluent to the Concord River. A number of commenters have expressed concern with the project's potential impacts to the Concord River. According to the comments received from the Organization of the Assabet River (OAR) and others, the peaking facility's proposed use of approximately 0.18 mgd (4%) of treated wastewater from Billerica's WWTP during peak operation scenarios will reduce the amount of wastewater discharged by the WWTP to the Concord River during typical seasonal low flow periods and could impact the stream flow, water quality and wetlands resources in this reach of the Concord River. I note that MassDEP did not cite any significant concerns with the proponent's proposed reuse of treated wastewater from the Billerica WWTO. I anticipate that the project's potential impacts to the Concord River's stream flows, water quality and wetlands resources will be considered further by MassDEP during the necessary permit review processes for this project. The FEIR should present additional narrative or quantitative analysis as necessary to respond to the comments received from OAR and others on this issue.

Wastewater

According to the information provided in the DEIR submittal, the proposed project will generate approximately 20,000 – 30,000 gpd of wastewater through process related operations or equipment cleaning. As currently designed, the proponent is proposing to pre-treat the facility's wastewater flows to remove dissolved mineral matter and to return the treated wastewater flows to the Billerica WWTP for further treatment and discharge to the Concord River. According to the proponent, the Billerica WWTP has the treatment capacity to serve the project's wastewater flows. As a back-up alternative, the proponent has also proposed to collect and pre-treat the facility's wastewater flow on-site and to truck off-site to one or more licensed wastewater treatment facilities (WWTFs) for treatment and disposal. The proponent will need to submit an Industrial User Discharge Permit to the Town of Billerica to direct the project's wastewater flows to the WWTP for treatment and disposal.

The project proponent will also be required to fill a certification statement (BRP WP-73) with MassDEP for a wastewater discharge greater than 15,000 gpd and less than 50,000 gpd to the Billerica WWTP. The FEIR should include a detailed description of any proposed wastewater collection and pre-treatment activities that may be required to convey the peaking facility's wastewater flows to the Billerica WWTP or to an off-site WWTF for further treatment and disposal. The FEIR should confirm the proposed facility's industrial and sanitary wastewater generation estimates and any off-site treatment locations.

Air Quality

The DEIR presented an air modeling analysis based on the assumption of a 2,300 hour per year maximum operational limit for the facility.

The air modeling analysis assumes fuel supply solely from natural gas delivered via connection to an existing on-site Tennessee Gas Transmission Company pipeline, thereby eliminating the need for numerous truck traffic trips to the project site. The analysis also assumes that ULSD fuel will be used for back-up purposes in cases where natural gas supply is interrupted. The FEIR should indicate if any maximum consecutive hours operating time for the facility was assumed for air quality impact modeling purposes. The FEIR must clarify these operational assumptions and commit to these operating limits and fuel delivery methods within its draft Section 61 Findings.

The DEIR included an air toxics analysis of the project’s predicted worst-case emissions, including U.S. EPA-approved air quality computer dispersion modeling results for the applicable criteria air pollutants (i.e., sulfur dioxide – SO₂, Nitrogen Dioxide – NO₂, Carbon Monoxide – CO, Ozone – O₃, Particulate Matter with 10 micron and 2.5 micron diameter – PM₁₀, PM_{2.5}) for the protection of public health and welfare. According to the information provided in the DEIR, the project’s emissions of criteria air pollutants will fall below the Significant Impact Levels (SILs) for all criteria air pollutants except the 24-hour average SIL for PM₁₀. Based upon the modeling conducted by the proponent for the DEIR, the proponent has concluded that, when considered in combination with impacts from existing sources, as determined from background monitoring data approved by MassDEP, the project would not cause or contribute to any exceedances of the National Ambient Air Quality Standards (NAAQS) criteria pollutants. MassDEP did not cite any concerns with this portion of the air quality analysis methodology.

The DEIR indicates that the facility’s maximum potential annual emissions will be limited to the following:

Pollutant	Estimated Maximum Annual Emissions (TPY)
Nitrogen Oxides (NO _x)	44
Particulate Matter (PM 10 and PM 2.5)	41
Carbon Monoxide	42
Volatile Organic Compounds (VOC)	13
Sulfur Dioxide (SO ₂)	21

The DEIR included a Top-down Best Available Control Technology (BACT) Analysis for the proposed energy peaking facility as part of the required 310 CMR 7.02 Air Plan application and approval process. The proponent should continue to 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. MassDEP did not cite any concerns with the proponent’s BACT Analysis for the proposed energy peaking facility. In consultation with the MEPA Office, MassDEP expressed its concurrence with the proponent’s air quality modeling, analysis and results.

I have received numerous comments expressing concern with the proponent’s air quality modeling methodology, analysis and conclusions.

A number of commenters have requested that the air quality impact analysis for this energy peaking facility should identify and incorporate the air emissions of planned, permitted and/or operating energy peaking facilities located near the project area and their cumulative impacts to emission standards and ambient air quality within the Billerica, Tewksbury and Chelmsford project area. Some commenters have identified the need for additional information regarding the proponent's ambient air quality impact analysis and the modeling of PM 2.5 and PM10. Commenters also requested that the BACT analysis include a more detailed discussion of technical and financial feasibility of achieving the lowest achievable emission rates from the proposed facility. The FEIR should present additional narrative or quantitative analysis as necessary in response to these comments.

Noise

The DEIR included a description of the proponent's noise modeling study that reflected proposed project changes and modifications since the ENF. According to MassDEP, the proponent's noise impact analysis was consistent with MassDEP's Noise Policy (DAQC Policy 90-001). The noise analysis included baseline measurements and current ambient sound levels in the project vicinity, proposed conditions and potential impacts. The DEIR identified the locations of each sensitive receptor site and added additional noise measurement locations (7 locations total) to evaluate the project's noise impact on the nearest community receptor locations in Billerica and Tewksbury. As described in the DEIR, the construction and operation of the energy peaking facility project will not result in significant increases to background sound levels and will comply with MassDEP's Noise Policy for incremental noise increases and the Town of Billerica's noise regulations. The proponent has proposed to construct a 10' tall sound barrier wall along the project site's southern property line.

In their comments on the DEIR, MassDEP again required the proponent to quantify what the incremental cost would be if reducing increases in noise from the facility below the level required by that policy. The FEIR must respond to MassDEP's initial comments on the ENF and subsequent comments on the DEIR and must include an evaluation of the feasibility of holding net noise increases at the property line and at the nearest residential receptors to 7dBA, 1dBA, and 0dBA. The proponent should continue to identify all feasible noise attenuation measures to mitigate the project's potential noise impacts to existing residential neighborhoods located in the project area. The proposed noise mitigation measures for the project should be clearly defined in the FEIR in accordance with the criteria outlined in the "Mitigation" section of this Certificate.

Hazardous Waste

The proposed peaking facility project includes will feature hazardous material storage areas provided with secondary curbed containment areas with separate drains designed to hold the contents of the container. The proponent should respond to comments regarding the proponent's proposed use of single-walled and not double-walled tanks to store as aqueous ammonia on site.

Given the nature of hazardous materials that will be stored and delivered to the project site, as well as adjacent sensitive receptors and land uses, I am requesting that the FEIR include a plan outlining what site design and safety measures will be incorporated into facility, storage and delivery operations. I ask that the proponent consider providing exterior storage tanks and equipment will containment areas designed to hold 110 percent of the maximum quantity of material stored in each location.

A number of comments have been received expressing concern regarding the proponent's proposed operation of energy peaking facility as an unmanned facility that will be monitored remotely. The FEIR should explain how the facility will be operated remotely, and describe all measures the proponent proposes to implement to secure the site and the facility from unauthorized entry, vandalism and destruction. The FEIR must include a Site Security Plan and an Emergency Response Plan, developed in coordination with the Town of Billerica and adjacent communities, to ensure effective means are available to maintain a secure facility and to mitigate any environmental or human health impacts that may be associated with a potential spill or incident involving hazardous materials. The Security Plan and the Emergency Response Plan should address the relationship of hazardous materials on-site with adjacent uses. The Emergency Response Plan and safety protocols should specifically address the use of ammonia on-site, as well as other regulated chemicals, and how on-site operations will be conducted in accordance with applicable local, State and Federal regulations.

Traffic

As described in the DEIR, 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 ULSD fuel oil and will require additional fuel oil truck deliveries (26 vtd), resulting in a total of approximately 36 vtd on local roadways within the project area. Additional traffic trips, approximately 12 vehicle trips per month, will be generated by trucks for the delivery of bulk chemicals (i.e. ammonia), or the removal of industrial wastewater that will be collected in tanks on site.

During project construction, project-related traffic has been estimated to increase to include approximately 500 vehicles trips per day (250 in the morning, 250 in the evening). The construction period and operational period traffic impacts are not anticipated to have negative impacts on the capacity or functionality of nearby roadways or intersections. The proponent has identified a preferred travel route (Route I-495 (Exit 37), Woburn Street, Baker Commodities entrance) for project construction, facility management and bulk chemical and ULSD fuel oil deliveries. I ask that the proponent continue to consult with Town of Billerica officials, and local residents to establish a specific enforceable travel routes to and from the facility for project construction, facility maintenance and management, and bulk chemical and fuel oil deliveries to and from the project site that avoids the 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 FEIR should clarify the distribution of construction traffic, facility management traffic and delivery traffic routes during periods of operation for delivery of hazardous materials and the removal of industrial wastewater. The FEIR should include a description of the proponent's commitments to the proposed facility routing plan.

Visual

The DEIR included 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 Tewksbury substation. This section of the DEIR included a digital photo analysis of the project site including the proposed stack and transmission tower locations viewed from seven different locations in Billerica, Chelmsford and Tewksbury. According to the proponent, the project as currently designed will not require a variance from the height limitations of the Billerica Zoning Ordinance. The FEIR should describe the height of the project in greater detail, and should continue to explore opportunities to mitigate the proposed project's visual impacts.

Construction Management

The DEIR included a discussion of potential construction related impacts associated with the project including temporary and permanent impacts to wetlands, traffic, noise, and stormwater management, and mitigation measures associated with dust and noise impacts during the construction period. The proponent must supplement the mitigation measures outlined in the DEIR with the preparation of a National Pollutant Discharge Elimination System (NPDES) Construction General Permit and an associated Stormwater Pollution Prevention Plan (SWPPP) prior to the commencement of construction. The SWPPP must clearly define how erosion and sedimentation controls will be employed on site to minimize impact to sensitive resource areas during the construction period. Given the concern about local air quality within the community, I strongly encourage the proponent to make a full commitment in the FEIR to require contractors to retrofit diesel powered equipment with emissions controls, such as particulate filters or traps, in addition to the commitment made to use ULSD fuel. The FEIR should clarify proposed construction traffic trucking routes, and outline how the proponent will manage idling of trucks or other equipment used on site. 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 presented a summary table of mitigation measures identifying State Agency actions, mitigation actions, and schedule. The FEIR should expand this section to include draft language for use by State Agencies to be incorporated into each State permit required for the project. 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. The Section 61 Findings will be included with all state permits issued for this project, and will be considered binding upon the proponent as mitigation commitments. The proponent must refine efforts to reduce emissions identified in the DEIR and fully commit to on-site and off-site air quality mitigation measures that would lead to local pollution reductions within the project area. Additionally, I encourage the proponent to include within this section of the FEIR a summary of additional mitigation measures proposed outside the scope of required State agency actions (i.e. traffic mitigation during construction, establishment of safety plans, etc.), or those focused specifically on mitigating public health impacts. I ask that the proponent consult with the Town of Billerica, MassDEP or MassDPH in the final design of the mitigation plan for the proposed project.

Response to Comments

The FEIR 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 FEIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

Circulation

The FEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be circulated to those parties who commented on the ENF and or the DEIR, 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. I will consider allowing the proponent to circulate the FEIR in CD-ROM format to individual commenters, although the proponent should make available a reasonable number of hard copies available on a first come, first served basis, to accommodate those without convenient access to a computer. In the interest of broad public dissemination of information, the proponent should send a notice of availability of the FEIR (including relevant comment deadlines, locations where hard copies may be reviewed and electronic copies obtained and appropriate addresses) to those who submitted letters. This notification may be made by email in

the instance that e-mail addresses are available in association with many commenters. A hard copy and an electronic copy of the FEIR should be made available for public review at the Billerica, Tewksbury and Chelmsford Public Libraries.

November 1, 2007

DATE



Ian A. Bowles, Secretary

Comments received: (continued on next page)

10/25/07	Department of Environmental Protection (MassDEP)- NERO
10/12/07	Senator Sue Tucker
10/25/07	Representative William G. Greene, Jr.
10/17/07	Organization for the Assabet River (OAR)
10/23/07	Billerica Planning Office
10/22/07	Billerica Board of Selectmen
10/15/07	Doris E. Briggs
10/20/07	J.E. Thissell
10/7/07	Mr. & Mrs. John E. Buonono
10/5/07	L. A. Cooper
10/15/07	Beverly A. Doyle
10/11/07	Diane Dexter
10/11/07	Stephen F. Gadbois
10/10/07	Lisa (Sampson) Gadbois and Peter Gadbois
10/11/07	Geraldine E. Foskitt
10/23/07	Levon Chorbajian, Ph.D. and Beverly Chorbajian, Esq.(UM/Lowell)
10/15/07	Brian Seigel and Judi Luciano
10/21/07	Cornelius J. Harrington
10/25/07	Jeanne Landers
10/1/07	Judith R. Gadbois
10/2/07	Margaret Gadbois
10/2/07	Janet & Irving Hildreth
10/3/07	Barbara O'Toole
10/1/07	Mary Rouine
10/3/07	Susan Hanlon
10/20/07	Leo Manning, Jr.
10/10/07	Concerned Billerica Residents

10/18/07 Christine Donoghue
10/15/07 Sharon C. Lapham
10/19/07 Caroline Ahdab
10/19/07 Ed Camplese
10/10/07 Margo Checrallah
10/9/07 Steven & Chrissie Conatser, Charles & Deborah Sheppard
10/16/07 Sandra Rhynd
10/11/07 Stephen F. Gadbois
10/24/07 Edward A. Bunker
10/19/07 G. Brosuan, Donna Gadbois & Margaret Hurlsher
10/25/07 Leo Manning
10/25/07 Ann Kinsella
10/23/07 Jan Wetzel
10/25/07 Bonnie Ferreira
10/25/07 Peter Dulchinos
10/25/07 Jim Stevens
10/25/07 Northern Middlesex Council of Governments (NMCOG)
10/25/07 Billerica Watchers Group
10/25/07 Lynne Santos, P.E.
10/25/07 AERO Engineering Services
11/01/07 Carlos D. Flores, Sr.

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