

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC Docket No. 98-02

Application of AES Londonderry, LLC

Application of AES Londonderry, L.L.C., for a Certificate of Site and Facility to construct and operate a 720 megawatt combined cycle natural gas fired power facility in the Town of Londonderry, Rockingham County known as the "AES Londonderry Cogeneration Facility or Project."

**ORDER ON
MOTION FOR A REHEARING
BY THE TOWN OF LONDONDERRY OF
ORDER DENYING MOTION TO IMMEDIATELY REVOKE
OR SUSPEND CERTIFICATE OF SITE AND FACILITY**

On January 16, 2001, the Town of Londonderry (TOL) filed a pleading in this docket entitled: Motion by the Town of Londonderry to Immediately Revoke or Suspend Certificate of Site and Facility. The Certificate holder, AES Londonderry, LLC (AES), filed an objection to the motion on January 24, 2001. TOL and AES each filed replies to the other's objections. The motion was considered at a public meeting of the Site Evaluation Committee (SEC or Committee) on February 21, 2001. On February 23, 2001, the Committee issued its written order denying the motion.

On March 23, 2001, TOL filed a Motion for Rehearing of the denial of the motion to immediately suspend or revoke the AES Certificate. The Committee, finding no good reason to grant a rehearing denies the motion for rehearing.

In its Motion for Rehearing TOL claims that the denial of the motion to immediately suspend or revoke the Certificate was unlawful, unjust or unreasonable for the following reasons:

1. TOL claims that the Committee was required to hold an evidentiary hearing on its motion to suspend or revoke the Certificate.
2. TOL claims an error of law because the Committee mentioned the "host community agreement" in its order denying the motion to suspend or revoke the certificate.
3. TOL claims that the Committee was unreasonable in considering the delay in the Town's response to a low cost power offer made by AES to TOL in 1999.
4. TOL claims that it was an error of law for the Committee to refuse to hold AES to the representations made to the Committee in 1999.

An evidentiary hearing on TOL's motion to suspend or revoke the AES Certificate was not required because it is not necessary to resolve a factual dispute in order to rule on the motion. First, the AES certificate was never conditioned upon a low cost power agreement between AES and TOL. In its Decision, this Committee recognized from the testimony at the adversarial hearings that TOL had the "opportunity" to enter into a low cost power agreement. Decision , p. 2. The Committee did not require TOL to accept such an "opportunity" nor did we set forth the specific terms which should govern such a contract.

At oral argument on its motion for rehearing TOL asserted that the Committee cited this opportunity and the 3 cent/kWh price range as a basis for its finding that the proposed facility complied with state energy policy. TOL claims that reference to these factors in this Committee's Decision requires an evidentiary hearing and reconsideration of our Order denying TOL's Motion to Immediately Suspend or Revoke the Certificate. TOL claims that an evidentiary hearing is necessary to determine whether TOL received the low cost power opportunity. This argument fails for two reasons. First, TOL's motion dated January 12, 2001, and its attachments, specifically referenced the fact that AES made an offer to sell power to TOL as early as February, 1998. In its reply to AES' s objection to its Motion, TOL also appended documents that demonstrate that AES made a specific power agreement offer to TOL in February, 1999. TOL argued that the offer was effectively withdrawn when the Town sought to negotiate specific language, and that therefore the required opportunity was not forthcoming. TOL agreed in oral argument that when originally presented, the proposed power contract constituted an "opportunity" to enter into a low-cost power contract, as discussed in the Committee's Decision. TOL does not deny that the agreement was not accepted by TOL during the intervening 21-month period. TOL was unable to articulate a decision or rule by which the Committee could determine that 21 months [or some much shorter period] is less than a reasonable period of time for an offer to be left on the table and still constitute an opportunity to enter into a contract. TOL argued, in effect, that the offer should remain available indefinitely, through the life of the plant, with no obligation on the part of the Town to accept or reject it, or to negotiate it. Such a provision would constitute more than an opportunity, and was not contemplated in our finding of fact regarding compliance with the state energy policy.

Further, assuming the factual assertions entirely in favor of TOL, the facts would not warrant a revocation or suspension of the certificate. The Committee's finding of compliance with the state energy policy did not rest solely on the finding that AES had offered the Town an opportunity for a low-cost power contract. Even were TOL to be able to prove that no such opportunity were forthcoming, there were ample facts to support the Committee's ultimate finding that the proposed plant is consistent with the state energy policy.

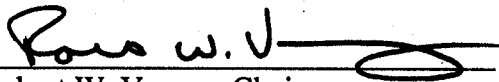
Simply stated, the facts as set forth in the pleadings filed by TOL cannot support a revocation of the Certificate pursuant to RSA 162-H: 12 or under any other law because specific terms of an agreement were not a condition of the Certificate and AES did, in fact, attempt to offer a power agreement to TOL. These facts are not reasonably in dispute and therefore an evidentiary hearing was not necessary.

TOL clearly misunderstands the Committee's Order denying suspension or revocation of the Certificate when it asserts that there was a "finding" regarding the "host community agreement." That portion of the Order was merely cautionary and addressed to both parties. The fact that TOL was attempting to negotiate a "host community agreement" was not considered by the Committee as a factor in its denial of the motion. The Committee simply cautioned the parties (and continues to do so) that any "host community agreement" can not lawfully supercede the terms and conditions of the Certificate.

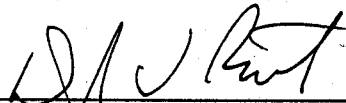
Last, TOL suggests that AES made material misrepresentations during the course of the adversarial hearings in this matter. This claim was addressed by the Committee in its Order on TOL's Motion to Immediately Revoke or Suspend Certificate and there is no reason to re-visit the issue.

In summary, the Committee finds no good reason to order rehearing on TOL's Motion to Immediately Revoke or Suspend Certificate and the Motion for Rehearing is therefore, DENIED.

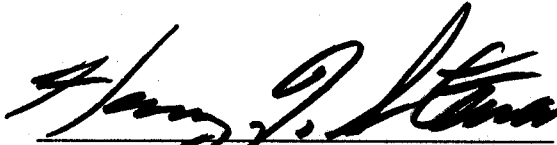
By Order of the Site Evaluation Committee this 30th day of April, 2001:



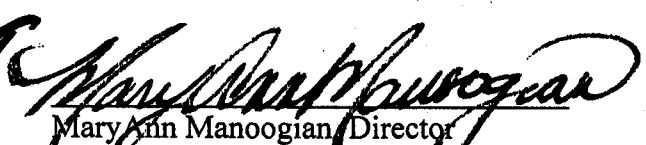
Robert W. Varney, Chairman
Commissioner, Department of
Environmental Services



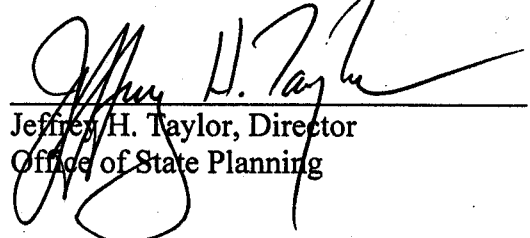
Douglas L. Patch, Chairman
Public Utilities Commission



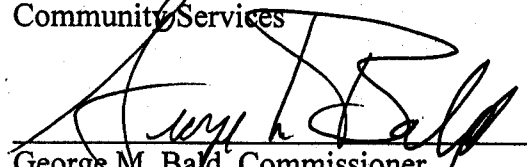
Harry T. Stewart, Director
Water Division
Department of Environmental Services



Mary Ann Manoojian, Director
Governor's Office of Energy &
Community Services



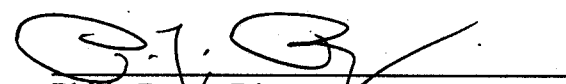
Jeffrey H. Taylor, Director
Office of State Planning



George M. Bald, Commissioner
Department of Resources & Economic
Development



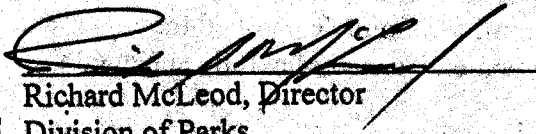
Wayne E. Vetter, Director
Fish and Game Department



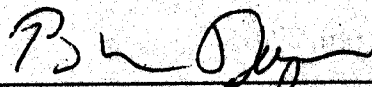
Philip Bryce, Director
Division of Forests & Lands
Department of Resources & Economic
Development

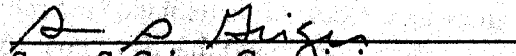


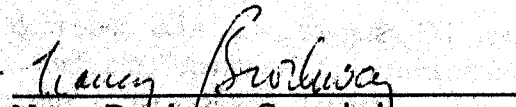
Kenneth A. Colburn, Director
Air Resources Division
Department of Environmental Services

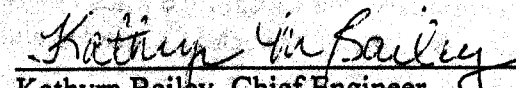

Richard McLeod, Director
Division of Parks
Department of Resources & Economic
Development

Carol Murray, Acting Commissioner
Department of Transportation


Brook Dupee, Assistant Director
Office of Community & Public Health
Department of Health & Human Services


Susan S. Geiger, Commissioner
Public Utilities Commission


Nancy Brockway, Commissioner
Public Utilities Commission


Kathryn Bailey, Chief Engineer
Public Utilities Commission