



CAPE COD COMMISSION

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DATE: July 24, 2000 #JR-98033 (A) (Modification) #6 of 6

TO: Norm Cowden
Southern Energy Canal, LLC
C/of Attorney D. Michael Ford, Esquire
72 Main Street
P.O. Box 665
West Harwich, MA 02671

FROM: Cape Cod Commission

RE: Development of Regional Impact – Modification
Section 12(i) of the Cape Cod Commission Act
Sections 2 and 3(e) of the Enabling Regulations Governing Review of

APPLICANT: Norm Cowden, Southern Energy Canal, LLC

PROJECT: Canal Plant Redevelopment - Phase Two of Installation of SCRs on Unit
#1 - Modification

BOOK/PAGE: Book 11961 Page 224
Book 11961 Page 226
Certificate of Title No.: 151549

DECISION OF THE REGULATORY COMMITTEE

SUMMARY

The Cape Cod Commission's Regulatory Committee (the Committee) hereby approves the request of Attorney Michael Ford, representing Southern Energy Canal, LLC for minor modifications to an approved Development of Regional Impact pursuant to Section 7 of the Administrative Regulations. This modification request affects conditions G4, AQ1, AQ2, AQ3, CC1, CC2 and CC3 of the DRI decision rendered by the full Cape Cod Commission on October 21, 1999 which approved with conditions Phase Two work to prepare Canal Station Unit #1 for installation of Selective Catalytic Reduction (SCR) pollution control technology. This decision is rendered as a result of a vote by the Committee on July 24, 2000.



DESCRIPTION of MODIFICATION REQUEST, PROCEDURAL HISTORY and JURISDICTION

In a fax dated July 19, 2000 and received by the Cape Cod Commission on the same date, Attorney Ford requested a minor modifications to the October 21, 1999 Commission DRI decision. The modification related to allowing the issuance of a Preliminary and Final Certificate of Compliance relative to conditions in the original decision.

Staff reviewed Attorney Ford's request relative to Section 7 of the Administrative Regulations and determined it was a Minor Modification Type #2 which involved "a minor change to the site plan, or a technical correction or a small change to the findings or a condition of the original approval which does not affect the intent or outcome of the finding or condition."

The original Development of Regional Impact (DRI) project, Canal Station Redevelopment (DRI# JR98033 and MEPA# 11703) was categorically included as DRI under Section 12(i) of the Cape Cod Commission Act. It was also a DRI based on Sections 2 and 3(e) of the Cape Cod Commission DRI Enabling Regulations (as amended).

The Administrative Regulations provide that Minor Modifications of Type #2 may be approved by the Regulatory Committee and do not require further review by the Commission. They also provide per Section 9 that there is no review fee for this category of modification.

At a previously scheduled meeting of the Committee on July 24, 2000, the Committee reviewed and unanimously approved Attorney Ford's modification requests.

MATERIALS and COMMENTS SUBMITTED TO THE REGULATORY COMMITTEE

Applicant

Fax, from Attorney Ford, requesting modifications	7/19/00
Letter, from Attorney Ford, requesting modifications	7/20/00

Commission

Memorandum, from Commission staff	7/19/00
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From Federal, State or Local Agencies

No written materials received

Staff described the proposed modifications noting that they would allow the Commission to issue a Preliminary Certificate of Compliance to allow Southern Energy to use the SCR on Unit #1. Ms. Adams, the project planner, noted the Commission had had a

SCR on Unit #1. Ms. Adams, the project planner, noted the Commission had had a meeting with Attorney Ford on July 21, 2000 concerning a draft ambient air quality monitoring plan. She noted changes to condition AQ2 would provide additional assurance that the in-the-field monitoring would actually take place. She also noted that changes to the community character conditions would make it clear that these items were tied to a Final Certificate of Compliance.

Attorney Ford noted the SCR was still undergoing testing, but that all indications were favorable that it would be capable of operating soon and based on this, the applicant was requesting a Preliminary Certificate of Compliance.

Mr. Olsen, Chair of the Subcommittee reviewing the Canal project, urged the Regulatory Committee to support the applicant's request.

FINDINGS of REGULATORY COMMITTEE and APPROVAL OF MODIFICATION REQUEST

The Committee has considered the request of Attorney Ford for modifications to conditions G4, AQ1, AQ2, and AQ3 of the October 21, 1999 DRI decision (JR-98033A) as shown below. The Committee finds that these are Minor Modifications Type #2.

Modifications New text is shown in bold:

"G4. All requirements of all conditions of this decision shall be complied with prior to receipt of a **Preliminary or Final** Certificate of Compliance from the Cape Cod Commission or as otherwise specified by each condition. If compliance prior to issuance of a Certificate of Compliance is not specified, the condition shall be an on-going requirement to maintain the validity of the Certificate."

"AQ1. Installation of an SCR on Unit #1 shall be subject to a technical review by the Cape Cod Commission after a period of 5 years. This period shall commence on January 1st of the first year after issuance of a **Final** Certificate of Compliance by the Commission for Phase Two. The technical review shall be limited to an evaluation of Reasonably Available Control Technology (RACT) for control of NO_x, SO₂, ammonia and particulates. The applicant shall conduct a RACT analysis for these pollutants and shall report back to the Commission in writing within three months."

"AQ2. **Prior to issuance of a Preliminary Certificate of Compliance**, the applicant shall perform an air quality modeling assessment of the pollutant emissions of the Canal facility to select the best remote, in-the-field monitoring location(s) where the maximum concentrations can be expected. Based on the air quality modeling assessment, the applicant shall prepare a **draft** an ambient air quality monitoring plan for review and approval by the Cape Cod Commission or its designee. The ambient air quality monitoring program shall include the measurement of nitrogen dioxide (NO₂), sulfur dioxide (SO₂), ozone (O₃), inhalable particulate matter (PM-10's and PM-2.5's) and

vanadium. The applicant shall be responsible for the final design, installation, and operation of the ambient air quality program. The ambient monitoring program shall meet as a minimum the DEP's approval criteria. The **draft** air quality modeling plan shall be submitted for review and approval by the Commission or its designee by January 1, 2000. **Prior to issuance of a Final Certificate of Compliance, the Commission shall review and approve the final air quality modeling plan and monitoring program.**"

"AQ3. The applicant shall use best efforts to implement the ambient monitoring program prior to operation of the SCR on Unit #1 in order to develop a baseline of existing ambient air quality conditions. **If the ambient air quality monitoring program is not implemented prior to operation of the SCR on Unit #1, the Commission may issue a Preliminary Certificate of Compliance to allow operation of the SCR for all or part of one ozone season. A Final Certificate of Compliance is required for operation of the Unit #1 SCR at the expiration of the Preliminary Certificate.**"

The Committee considered modifications to conditions CC1, CC2 and CC3 of the October 21, 1999 DRI decision (JR-98033A) as shown below. The Committee finds that these are Minor Modifications Type #2.

Modifications New text is shown in bold:

"CC1. Evergreen plant material shall be planted as per the viewshed analysis plan dated 2/14/00 prior to the issuance of a **Final** Certificate of Compliance. Such plantings shall consist of evergreens planted at 4' to 8' intervals, depending on species and size. Species, spacing and size shall be approved by Cape Cod Commission staff prior to the application for a Final Certificate of Compliance.

Should placing plantings in the ground prove infeasible, the applicant shall provide the Commission staff with an alternative plan for placing plant materials in containers of a suitable size. Plant species and size of container shall be approved by Cape Cod Commission staff prior to the application for a **Final** Certificate of Compliance. Prior to issuance of a **Final** Certificate of Compliance, the applicant shall also provide a signed maintenance contract for watering and other plant care as described in condition CC2 of the October 21, 1999 decision. A draft maintenance contract shall be submitted for Commission staff approval prior to execution of the final contract."

"CC2. Prior to the application for a **Final** Certificate of Compliance, the applicant shall provide a signed maintenance agreement for watering of newly installed plant material. Also included in the maintenance contract shall be provisions for mulching, pest management, staking and guying, removal of tree wraps, fertilization, and replacement of dead plant material. The maintenance contract shall take effect at the time the plantings are installed. The contractor shall maintain the specified planting for two full growing seasons, which extends from March 15 through October 31. A draft

maintenance contract shall be submitted for staff approval prior to execution of the final contract.”

“CC3. If all required landscape improvements are not complete at the time a **Final Certificate of Compliance** is sought from the Commission, any work which is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow fund under the escrow agreement shall equal 150% of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow funds shall be payable to Barnstable County. The work shall be approved by Commission staff prior to release of the escrow funds to the applicant.”

SUMMARY

The Committee hereby approves as Minor Modification Type #2 changes to conditions G4, AQ1, AQ2, AQ3, CC1, CC2 and CC3 of the Development of Regional Impact decision for Phase Two work to prepare Canal Station Unit #1 for installation and operation of SCR. No other changes or modifications to the original DRI decision are authorized by this decision.

David J. Ansel
David J. Ansel, Committee Chair

July 29 2000
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 27th day of July, 2000.

Katharine L. Peters
NAME, Notary

My Commission expires:

