

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: INDECK-NORTH SMITHFIELD L.L.C. :
NEED ASSESSMENT TO CONSTRUCT A : DOCKET NO. 3094
GAS-FIRED POWER GENERATING FACILITY :

ADVISORY OPINION TO THE ENERGY FACILITY
SITING BOARD PURSUANT TO SECTION
42-98-9(D) OF GENERAL LAWS OF RHODE ISLAND

On April 30, 1999, Indeck-North Smithfield, L.L.C. (“Indeck”) filed an application with the Energy Facility Siting Board (“EFSB”) seeking authority to construct a major energy facility. Indeck proposes to build and operate approximately 350 megawatt (“MW”) gas-fired combined cycle independent power production facility and ancillary facilities in the town of North Smithfield, Rhode Island (“Project”). On September 16, 1999, the application was revised so as to incorporate changes to the design of the project with respect to fuel, water and wastewater discharge. Rhode Island law requires such facilities to be approved and licensed by the EFSB (See R.I.G.L. § 42-98-4).

In response to the filing, the EFSB conducted preliminary hearings on August 16, 1999 and to determine the issues to be considered by the Board in evaluating the application, to designate those agencies which are to act at the direction of the Board for the purpose of rendering advisory opinion and to identify those licenses required by the facility which are under the direct control of the Department of Environmental Management (“DEM”) and the Coastal Resources Management (“CRMC”). (R.I.G.L. § 42-98-9(a)).

As a result of the evidence proffered by the parties at the aforementioned EFSB preliminary hearings on the Indeck-North Smithfield application, and in accordance with Rhode Island General Laws, Section 42-98-9(d), the EFSB issued a preliminary order which, inter alia, directed the Rhode Island Public Utilities Commission (“Commission”) to provide the EFSB with an advisory opinion “as to the need for the proposed facility” (EFSB Order 39, issued on March 9, 2000). The EFSB has asked the Commission to file its advisory opinion no later than September 8, 2000.

As noted above, the basis for the EFSB’s request for a Commission advisory opinion on the Indeck-North Smithfield Project is contained in Rhode Island General Laws, Section 42-98-9(d), which reads as follows:

The public utilities commission shall conduct an investigation in which the division of planning of the department of administration, the governor’s office of energy assistance and the division of public utilities and carriers shall participate and render an advisory opinion as to the need for the proposed facility.

In furtherance of the Commission’s responsibility to provide the EFSB with an advisory opinion, the Commission convened a pre-hearing conference for the purpose of bringing the agencies identified above together. Indeck was also invited and attended the conference. Each party agreed to participate in the Commission’s investigation so that an advisory opinion could be rendered.

At the pre-hearing conference, it was agreed that the Division of Public Utilities and Carriers (“Division”) would take the lead role among

the State agencies involved, in the preparation of a need assessment conclusion for the project. The Division of Planning and the State Energy Office represented that they would assist the Division. The Division and Indeck were directed to submit their needs assessment positions in advance of the public hearing to be conducted in this docket.

The Commission conducted a duly noticed public hearing on August 17, 2000 at the Commission's hearing room located at 100 Orange Street in Providence. The following counsel entered appearances:

FOR INDECK:	Patricia French, Esq. Steven Ferrey, Esq.
FOR THE DIVISION OF PUBLIC UTILITIES AND CARRIERS:	Leo Wold, Esq. Special Assistant Attorney General
FOR THE TOWN OF NORTH SMITHFIELD:	Craig Eaton, Esq.
FOR THE TOWN OF BURRILLVILLE:	Bruce E. Vealey, Esq. Assistant Town Solicitor
FOR WILLIAM JUHR:	Dante J. Giammarco, Esq.
FOR THE COMMISSION:	Steven Frias, Esq.

At the hearing, Indeck proffered one witness in support of its contentions that the Project is needed. The witness was identified as Mr. Daniel E. Peaco, Managing Director, LaCapra Associates, 333 Washington Street, Boston, Massachusetts. The Division did not proffer any witness in this docket.

Mr. Daniel E. Peaco testified that his consulting firm was retained by Indeck to conduct an assessment of the need for generating capacity in Rhode Island and New England. In his prefiled testimony, Mr. Peaco reached the following conclusions:

The North Smithfield Energy Center (NSEC) project is needed to ensure a competitive market for power in Rhode Island and the region. It will add an efficient, low cost power supply source which, in the new competitive market, will help ensure that consumers realize the benefit of competition. The need for new sources of low cost electrical energy in the region is the central premise of the electric industry restructuring effort underway in Rhode Island and New England. The introduction of new generating market participant is essential to the attainment of the economic benefits sought by moving to a deregulated electric generating market.¹

According to the evidence presented by Indeck, Rhode Island's in-state demand for electricity would exceed supply by 108 MW in 2002, and by 260 MW in 2006 assuming the successful completion of the Tiverton and Hope Energy power plant projects.² Indeck also submitted evidence which indicated New England's regional demand for electricity would exceed supply, in a low supply scenario, by 691 MW in 2005, and 1,680 MW in 2006.³ Furthermore, Indeck presented evidence which indicated New England's regional demand for electricity would exceed supply, in a high load scenario, by 23 MW in 2005, and 1,317 MW in 2006.⁴ At the hearing, Mr. Peaco testified that merchant plants such as

¹ Prefiled Testimony of Mr. Peaco, Indeck Exhibit 2, p. 3

² Indeck's Revised Application to EFSB, Indeck's Exhibit 1: Appendix F, Table 1, p. 12.

³ Table 4: Joint Exhibit 1A.

⁴ Table 6: Joint Exhibit 1A.

Indeck, are built with the funds of private investors at risk and there is no risk to the ratepayers.⁵ He also emphasized that additional new power plants, such as Indeck, could replace “older, less efficient, less environmentally acceptable” power plants in the region.⁶ Lastly, Mr. Peaco noted that a surplus in electricity supply would create more competition therefore lowering prices for ratepayers.⁷

The Division voiced support for the application of Indeck-North Smithfield. At the hearing, counsel for the Division, argued that “there is still a significant long-term need” under traditional regulatory principles “for the years 2005 [and] 2006”.⁸ Mr. Wold also stated that power plants such as Indeck-North Smithfield will phase out the need for older, less clean and inefficient power plants.⁹ In its advisory opinion to the Commission, the Division also stated Indeck-North Smithfield “will be able to produce electricity at or below the expected average New England busbar cost.”¹⁰ Mr. Wold noted that a surplus of energy supply will maintain or decrease electricity prices for ratepayers.¹¹

The town of Burrillville offered no position on the application. The town of North Smithfield expressed “concerns” regarding the need for the project but placed its “trust” in the Commission to consider the evidence

⁵ 8/17/00 T. 73.

⁶ T. 74.

⁷ T. 84.

⁸ T. 103.

⁹ T. 104.

¹⁰ Advisory Opinion of the Division, Division Exhibit 1; p. 5.

¹¹ T. 104.

and “make the right decision”.¹² Counsel for Mr. Jühr argued that the Commission make a negative recommendation to the EFSB regarding Indeck-North Smithfield. Mr. Giammarco argued that under traditional regulatory principles, there is no need for an additional electric power plant due to the expected surplus of electricity supply.¹³

FINDINGS

In two previous advisory opinions to the EFSB, the Commission perceived “obvious inconsistencies and anachronisms” between the Energy Facilities Siting Act (“EFSA”) and the Utility Restructuring Act of 1996 (“URA”), and that the more recently enacted URA effectively repealed by implication the much older need assessment provision of the EFSA. Tiverton Power (Order No. 15456, pp. 8-10); Hope Energy (Order No. 15744, pp. 7-8). The opinion of the Commission on this issue has not changed. In the new era of competition, new generating plants are built, such as Indeck, as merchant plants, where the risk of selling electricity and the cost of plant construction are placed upon private investors rather than ratepayers.¹⁴ In this new era, the need for generating plants is performed by the free market, and therefore the Commission certifies “need” to the EFSB utilizing liberalized standards.¹⁵

The Commission has considered the issue of whether the record supports a conclusion of the need for the Project, and finds that such

¹² T. 107.

¹³ T. 106.

¹⁴ Division Exhibit 1, pp. 2-3.

support is present. In-state demand for electricity will exceed supply, and under various scenarios there is a possibility New England's regional demand will exceed supply. Even if sufficient generation exists, replacement of inefficient, old plants with clean, efficient new plants will have the effect of improving the overall total effectiveness of generation and constitutes "need".¹⁶ Lastly, a surplus of electricity supply could have the effect of stabilizing or possibly reducing the price of electricity for ratepayers. The testimony of Mr. Peaco, and the data offered by Indeck-North Smithfield support a conclusion that the project is presently needed and will be needed in the future.

Accordingly, it is

(16388) ORDERED:

That the Commission finds, after due deliberation, that there is a State and regional need for Indeck-North Smithfield's proposed 350-megawatt gas-fired combined cycle independent power production facility and ancillary facilities and so advises the Energy Facility Siting Board.

That the Commission finds that the Utility Restructuring Act of 1996 effectively repealed by implication the much older need assessment provision of the Energy Facility Siting Act. As a result, in the new era of competition, the need for generating plants is determined by the free market, and therefore the Commission's determination of "need" is

¹⁵ Id., at 3.

¹⁶ Id. at 3, fn. 1.

limited to whether the proposed electric supply is necessary to meet demand.

This advisory opinion is not intended to address any other issue other than the need for electric power supply in Rhode Island and in New England. The Commission was solely directed to determine if a need existed in Rhode Island and in New England for greater production of electric power. All other discussions and comments related to other issues rest with other entities involved in this proceeding. At no time did the Commission conduct hearings in the town of North Smithfield or elicit responses regarding Indeck's application for any other issues. Our mission in this matter is single in purpose and the findings reflect a single directive: to determine the need for electric power. The Commission has met its statutory obligation on this single issue.

Albeit this advisory opinion has been issued with an order number, it is not the intention of the Commission to treat it as a final order. It merely represents an advisory opinion to the Energy Facility Siting Board. The order number is included exclusively for record keeping purposes.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND, ON AUGUST 17,

2000, PURSUANT TO OPEN MEETING DECISION. WRITTEN OPINION
ISSUED ON SEPTEMBER 6, 2000.

PUBLIC UTILITIES COMMISSION

*

Elia Germani, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner

*Under the provisions of R.I.G.L. § 42-98-5(A), the Chairman of the Public Utilities Commission is designated as a member and the Chairman of the Energy Facility Siting Board. Accordingly, Mr. Germani has recused himself from participation in Docket No. 3094.