

US EPA ARCHIVE DOCUMENT

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ENVIRONMENTAL APPEALS BOARD

MEMBER OF THE
MASSACHUSETTS AND RHODE ISLAND BARS

OUR FILE NO. _____

April 30, 2009

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

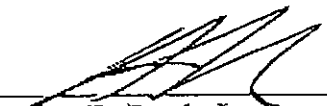
**Re: Dominion Energy Brayton Point, LLC
PSD Permit No. 052-120-MA14**

Dear Sir or Madam:

Please be advised that this office represents Bristol County Broadcasting, Inc. regarding the above matter.

Enclosed please find an original and five (5) copies of my client's Petition for Review.

Very truly yours,



Arthur D. Frank, Jr., Esquire

ADFjr/clg
Enclosures
VIA FEDERAL EXPRESS

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ENVIRONMENTAL APPEALS BOARD

MAY -1 2009

ENVIRONMENTAL APPEALS BOARD

IN THE MATTER OF: *
 DOMINION ENERGY *
 BRAYTON POINT, LLC *
 PSD PERMIT NO. 052-120-MA14 *

PETITION FOR REVIEW

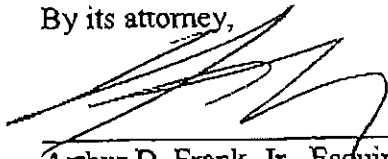
Bristol County Broadcasting, Inc. (hereinafter "Bristol County") hereby appeals the permit issued to Dominion Energy Brayton Point, LLC (hereinafter "Dominion") on April 2, 2009 (a copy of which is attached hereto as Exhibit "A") on the following basis:

1. On March 13, 2009, Bristol County filed with the Massachusetts Department of Environmental Protection formal comments with respect to the proposed permit (see Exhibit "B" attached hereto).
2. On March 16, 2009, Bristol County, through counsel, submitted these same comments at the public hearing held at the Somerset Old Town Hall, 1478 County Street, Somerset, Massachusetts.
3. Both the oral and written comments set forth Bristol County's concerns with the issuance of the requested permit. Specifically, the construction of the cooling towers in proximity to Bristol County's broadcast tower would have a significant adverse affect on its AM radio transmissions.
4. Bristol County is federally licensed and therefore there is no pre-emption of the issue under federal law.
5. The permit as issued does not address this important policy consideration nor does it require mitigation by Dominion to insure the continued transmission of broadcasts to the public.

ARTHUR D. FRANK, JR.
 ATTORNEY-AT-LAW
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 FALL RIVER,
 MASSACHUSETTS 02720
 (508) 678-4556

Based upon the foregoing, Bristol County Broadcasting, Inc. requests review of the permit by the Environmental Appeals Board.

Bristol County Broadcasting, Inc.
By its attorney,



Arthur D. Frank, Jr., Esquire
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209 Bedford Street, Suite 402
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(508) 678-4556

April 30, 2009

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tabbies

A

United States
Environmental Protection
Agency New EnglandOne Congress Street, Suite 1100
Boston, MA 02114**Prevention of Significant Deterioration Air Permit**

issued to the

Dominion Energy Brayton Point, LLC**1 Brayton Point Road****Somerset, MA 02726**

for the

Brayton Point Station**PSD Permit Number****052-120-MA14**

Pursuant to the provisions of the Clean Air Act (CAA), Subchapter I, Part C (42 U.S.C. Section 7470, *et. seq.*), and the Code of Federal Regulations (CFR) Title 40, Section 52.21, the United States Environmental Protection Agency-New England (EPA) is issuing a *Prevention of Significant Deterioration* (PSD) air quality permit to Dominion Energy Brayton Point, LLC (Dominion). Dominion operates an existing 1,600 megawatt fossil-fueled fired power station known as the Brayton Point Station (Facility) located at 1 Brayton Point Road, Somerset, Massachusetts. The permit applies to the construction and operation of two new natural draft Cooling Towers.

The design, construction and operation of the Cooling Towers shall be subject to the attached permit conditions and permit limitations. This Permit is valid only for the equipment described herein and as described in an August 28, 2008 PSD permit application and a January 9, 2009 supplemental PSD application submitted to EPA under 40 CFR 52.21. This permit shall be effective 30 days after the date of signature and shall remain in effect until it is surrendered to EPA. This permit becomes invalid if Dominion does not commence construction within 18 months after the date of signature. EPA may extend the 18-month period upon a satisfactory showing that an extension is justified. This permit does not relieve Dominion from the obligation to comply with applicable state and federal air pollution control rules and regulations.

Ken Moraff, Acting Director
Office of Ecosystem Protection

4/2/09

Date of signature

Dominion Energy Brayton Point, LLC
Prevention of Significant Deterioration Air Permit
PSD Permit Number 052-120-MA14

Environmental Protection Agency - New England

Prevention of Significant Deterioration Air Permit

Dominion Energy Brayton Point, LLC Brayton Point Station

Background for informational purposes:

Dominion currently operates the Brayton Point facility at one Brayton Point Road, Somerset, Massachusetts. On August 28, 2008, Dominion submitted a PSD permit application to the U.S. EPA to construct and operate a new dry scrubber and fabric filter on the Unit # 3 boiler and two new natural draft Cooling Towers #1 and #2 at the existing Brayton Point facility. This application was significantly revised in a January 9, 2009 submittal. This permit applies to Cooling Towers #1 and 2. The Cooling Towers are part of a closed cycle cooling system that Dominion is installing at the Brayton Point facility. The Cooling Towers project will result in a significant emission increase of Particulate Matter less than 2.5 micrometers and Particulate Matter less than 10 micrometers and is a major modification for these pollutants at the facility.

Permit Terms and Conditions

I. Emission Limitations

1. The owner/operator shall not discharge or cause to discharge into the atmosphere in excess of the following emission limits for Cooling Tower #1:
 - a. Particulate Matter less than 2.5 micrometers ($PM_{2.5}$) (24-hour block average): 1,066 lbs
 - b. Particulate Matter less than 10 micrometers (PM_{10}) (24-hour block average): 1,066 lbs
2. The owner/operator shall not discharge or cause to discharge into the atmosphere in excess of the following emission limits for Cooling Tower #2:
 - a. $PM_{2.5}$ (24-hour block average): 1,066 lbs
 - b. PM_{10} (24-hour block average): 1,066 lbs

Dominion Energy Brayton Point, LLC
Prevention of Significant Deterioration Air Permit
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II. Monitoring Requirements

1. The owner/operator shall determine the Cooling Towers #1 and #2 total dissolved solids in parts per million by weight (ppm_w) using continuous conductivity monitors.
2. The owner/operator shall determine the Cooling Towers #1 and #2 circulating water flow rate using pump curves supplied by the manufacturer or pump curves established through testing by the owner/operator.
3. The owner/operator shall obtain guarantees from the drift eliminator vendor that show the drift eliminators installed in Cooling Towers #1 and #2 will meet a drift rate of 0.0005%.
4. The owner/operator shall install and maintain non-resettable elapsed operating hour meters or equivalent software to accurately indicate the elapsed operating time of Cooling Towers #1 and #2 circulating water pumps.
5. The owner/operator shall install, maintain and calibrate in accordance with the manufacturer's recommendations conductivity monitors for the circulating water or blowdown water in Cooling Towers #1 and #2.
6. The owner/operator shall inspect Cooling Towers #1 and #2 from the internal walkways not less than every three months to assure that the drift eliminators are clean and in good working order and shall keep records of the inspection. Not less than once per calendar year, the owner/operator shall conduct a complete inspection of the towers using an inspector with recognized expertise in the field of natural draft cooling tower drift eliminators and shall keep records of the inspection, including the inspector's resume or credentials.
7. The owner/operator shall determine PM_{2.5} emissions and PM₁₀ emissions for each cooling tower using the following equation. Dominion shall obtain the information for the Total Circulating Water Flow Rate from data obtained from Section II.2. Dominion shall obtain the information for the Total Dissolved Solids from Section II.1.

Cooling tower emissions in pounds/hour (lb/hr) = Total Circulating Water Flow Rate (gallons/minute) x 60 (minutes/hour) x Drift Rate (0.0005%) x Density Water (8.57 pounds/gallon) x Total Dissolved Solids (ppm_w)/1,000,000

Dominion Energy Brayton Point, LLC
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III. Recordkeeping Requirements

1. The owner/operator shall maintain a record of all information used to show compliance with the terms and conditions of this permit for five years in a location accessible to representatives of EPA and the Massachusetts Department of Environmental Protection.
2. For Cooling Towers #1 and #2, the owner/operator shall maintain, at a minimum, the following information:
 - a. Hours of operation of each circulating water flow pump for each operating day.
 - b. For each 24 hour time block, an average of the circulating water flow rate in gpm.
 - c. Continuous readings of total dissolved solids in the circulating water.
 - d. Quarterly and annual drift eliminator inspection records, including certification as to whether the drift eliminators are properly installed and in good working order.
 - e. Monitoring equipment design data, maintenance, and repair information, including dates and times of repairs or maintenance.
 - f. For each operating day, record total PM_{2.5} and PM₁₀ emissions.
3. The owner/operator shall maintain the following records for the control and monitoring equipment on the Cooling Towers. For purposes of this permit, a malfunction is a sudden and reasonably unforeseeable failure that results in the possible exceedance of the emission limits or conditions in this permit:
 - a. Periods of malfunctions including, at a minimum, the date and time the malfunction occurred;
 - b. A description of the malfunction and the corrective action taken;
 - c. The date and time corrective actions were initiated; and
 - d. The date and time corrective actions were completed and the repaired equipment was returned to compliance.
4. The owner/operator shall comply with any request by EPA to supply any of the above records.

Dominion Energy Brayton Point, LLC
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IV. Reporting Requirements

1. The owner/operator shall submit all notifications and reports required by this permit to the address listed in Section XI below.
2. After either Cooling Tower #1 or #2 commences operation, the owner/operator shall submit to EPA New England semi-annual reports postmarked by January 30th and July 30th of each year. Each semi-annual report shall contain the following information from the prior calendar 6-month period:
 - a. Cooling Towers #1 and #2 rolling 12-month total PM_{2.5} and PM₁₀ emission rates using data reported in Section III.2;
 - b. Date and time of all emission limit and permit condition violations; and
 - c. All equipment malfunctions and corrective actions.

V. General Requirements

1. The owner/operator shall affix a copy of this permit in the control room.
2. After the occurrence of any upset or malfunction to Cooling Towers #1 or #2 equipment or control devices that may result in a violation of any emission limitation or condition contained herein, the owner/operator must notify EPA New England, Office of Environmental Stewardship, attention Compliance and Enforcement Chief, by FAX at (617) 918-0905 within two business days, and subsequently in writing to the address listed in Section XI below within seven calendar days or by e-mail to: R1.AirReports@epa.gov.

VI. Right of Entry

The owner/operator shall allow all authorized representatives of EPA, upon presentation of credentials, to enter upon or through the facility where records required under this permit are kept. The owner/operator shall allow such authorized representatives, at reasonable times:

- a. to access and copy any records that must be kept under this permit;

Dominion Energy Brayton Point, LLC
Prevention of Significant Deterioration Air Permit
PSD Permit Number 052-120-MA14

- b. to inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit; and
- c. to monitor substances or parameters for the purpose of assuring compliance with this permit.

VII. Transfer of Ownership

In the event of any changes in control or ownership of the Dominion facility, this permit shall be binding on all subsequent owners and operators. The owner/operator shall notify the succeeding owner and operator of the existence of this permit and its conditions. Notification shall be by letter with a copy forwarded to EPA.

VIII. Severability

The provisions of this permit are severable, and if any provision of the permit is held invalid, the remainder of this permit will not be affected thereby.

IX. Other Applicable Regulations

The owner/operator shall construct and operate Cooling Towers #1 and #2 in compliance with all other applicable provisions of federal and state regulations.

X. Credible Evidence

For the purpose of submitting compliance certifications or establishing whether or not the owner/operator has violated or is in violation of any provision of this permit, the methods used in this permit shall be used, as applicable. However, nothing in this permit shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether the owner/operator would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed.

Dominion Energy Brayton Point, LLC
Prevention of Significant Deterioration Air Permit
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XI. Agency Addresses

All correspondence required by this permit shall be forwarded to:

Air Compliance Clerk
U.S. EPA New England
One Congress Street, Suite 1100-SEA
Boston, MA 02114-2023

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY

1401 Eye Street, NW
Seventh Floor
Washington, DC 20005

Telephone: (202) 467-6900
Fax: (202) 467-6910
www.wcsr.com



John F. Garziglia
Direct Dial: (202) 857-4455
Direct Fax: (202) 261-0055
E-mail: jgarziglia@wcsr.com

March 13, 2009

VIA FEDERAL EXPRESS

Massachusetts Department of Environmental Protection
Bureau of Waste Prevention, Southeast Region
20 Riverside Drive
Lakeville, MA 02347

Attention: John Winkler, Permit Chief

Re: Dominion Energy Brayton Power Station Cooling Towers

Dear Mr. Winkler:

This letter constitutes formal comments on behalf of Bristol County Broadcasting, Inc., the Federal Communications Commission licensee of AM radio station WSAR, Fall River, Massachusetts. These comments are submitted with respect to the proposed Dominion Power Brayton Power Station cooling towers and the effect of the towers upon the FCC licensed broadcast signal propagation of WSAR from its two tower directional array of antennas.

Bristol County Broadcasting, Inc. is opposed to the construction of the proposed 500-foot natural draft cooling towers. The WSAR FCC licensed transmitter site is approximately 0.7 mile from the anticipated location of the proposed cooling towers. At this distance, two structures 500 feet in height, several hundred feet in width, containing massive amounts of steel rebar, will have a profound detrimental effect upon the propagation of the WSAR broadcast signal.

The diminishment of the WSAR broadcast signal will have several significant adverse effects. From the standpoint of WSAR's service to the public, many listeners that now enjoy reception from WSAR will be denied such reception. From the standpoint of the FCC licensing standards, WSAR will have its signal altered so as to cause the operation of WSAR to be outside the stated parameters of the WSAR license. From the standpoint of Bristol County Broadcasting, Inc., it will suffer significant monetary damages both from the loss of listeners with a resultant loss in revenue, and the need for significant expenditures to re-license the WSAR facility.

The rules and policies of the FCC are clear regarding construction within 3 kilometers (1.86 miles) of a directional AM tower array. I am attaching FCC Public Notice No. CL-90-40, released November 14, 1989, regarding the specific obligations of FCC regulated entities when towers and other structures are planned within three kilometers of a directional AM tower array. As noted above, the WSAR antenna system is a two tower directional AM array.

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& RICE
P.L.L.C.

Massachusetts Department of Environmental Protection
March 13, 2009
Page 2

With respect to the WSAR FCC licensed facility, the FCC requires that measurements be taken of the AM signal to document the radio frequency environment before any construction begins in proximity to its AM towers. Once construction is complete, similar measurements must be taken. If the "before" and "after" measurements do not agree, as is to be expected with any tall structure built proximate to an AM directional radio station tower array, then the person or entity responsible for the construction of the structure must take measures to bring the AM radio station's signal back to the FCC licensed parameters. If remedial measures cannot be undertaken which bring the AM radio station's signal back to the FCC licensed parameters, then the person or entity undertaking the construction is responsible for the costs to the AM station to readjust and re-license the facility.

Accordingly, Bristol County Broadcasting, Inc. opposes to the construction of the two cooling towers in such close proximity to the WSAR towers. It is the understanding of Bristol County Broadcasting, Inc. that there are environmentally friendly alternatives to the two 500-foot towers. The proposed cooling towers, in addition to being an aesthetic blight, will have significant detrimental effects upon radio station WSAR. If such cooling towers are approved, it is requested that any approval be conditioned upon remedial measures being required to either bring the WSAR operations back into compliance with its FCC license, or in the unlikely event that more extreme measures are necessary, relocating the WSAR towers so that the same audience that is now served continues to be served. The cost of remedial measures or relocation could be substantial.

Accordingly, Bristol County Broadcasting, Inc. respectfully requests that the Massachusetts Department of Environmental Protection deny approval of the proposed cooling towers at the Brayton Power Station, or in the alternative, that any such approval be conditioned upon Dominion Energy Brayton Point LLC, its successors and assigns, and any other entity responsible for the construction of the cooling towers, taking whatever remedial action is required to preserve the integrity of the WSAR broadcast signal in conformance with its FCC license.

Respectfully submitted,

BRISTOL COUNTY BROADCASTING, INC.

By: 
John F. Garziglia
Its Attorney

Enclosure

cc: Arthur Frank, Esq.
Robert Karam

Pike & Fischer

Communications Regulation

☐ Call 1-800-255-8131

☐ Email [Customer_Care](#)

COMMON CARRIER PUBLIC MOBILE SERVICES INFORMATION REPUBLICATION OF STANDARD BROADCAST RERADIATION AND TOWER CONSTRUCTION AUTHORIZED UNDER PART 22 OF THE RULES

66 RR 2d 1777
November 14, 1989

SHOW DISCREPANCIES

Report No. CL-90-40 November 14, 1989

PUBLIC NOTICE (582)

Public Notice, Mimeo Number 4396, dated August 11, 1987 is republished to again advise Part 22 cellular licensees and permittees of their obligations to protect existing AM broadcasting licensees prior to construction of Cellular Radio towers.

The Mobile Services Division of the Common Carrier Bureau has received a number of complaints from AM Broadcasters concerning the construction of Cellular Radio towers near their AM facilities that modify the authorized pattern of the AM facilities.

The Mobile Services Division is hereby reminding Part 22 licensees and permittees of their responsibility to protect existing licensees. The Commission's policy is clear. Whether by imposition of specific conditions or by operation of law, a licensee building a new facility is obligated to take all the necessary steps, including the financial burden, to correct interference problems caused by new or modified construction. See e.g. Sudbrink Broadcasting of Georgia, 65 FCC 2d 691 (1977); Athens Broadcasting Co., 68 FCC 2d 920 (1978); Midnight Sun Broadcasting Co., 11 FCC119 (1947); B & W Truck Service, 15 FCC 2d 769 (1986).

Licensees and permittees planning to construct or modify a tower within 2 miles of a directional AM array or within 1/2 mile of a non-directional AM tower should take certain precautions.

If construction is planned within 1/2 mile of a nondirectional AM tower the licensee should, prior to construction of the proposed tower, notify the AM station so that the station may commence determining operating power by the indirect method (See Section 73.51 (e)&(f)). The common carrier shall be responsible for the installation and continued maintenance of any detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Measurements shall be taken both prior to the construction of the tower and subsequent to the installation of all appurtenances thereon. Antenna impedance measurements of the AM station shall be made and sufficient field strength measurements taken at a minimum of ten locations along each of eight equally spaced radials to establish that the AM radiation pattern is essentially omnidirectional. The results of the field strength and impedance measurements should be reported to the Commission in an application for the AM station to return to the direct method of power determination.

If construction is planned within 2 miles of a directional AM array the licensee should notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits (See Section 73.51 (e)&(f)). The common carrier shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneous with the filing of the FCC 489 notification, the results of the measurements must be submitted to the Commission.

For further information contact Sid Briggs at (202) 653-5560.

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