

# Overview

- (a) Early Origins of NYS Siting Statutes
- (b) The Siting Board
- (c) Intervenor Funding
- (d) Process Steps and Deadlines
- (e) Local Laws/Home Rule
- (f) Open Questions

## Early Origins of Siting Statutes in New York

- 1963 Storm King Application filed with Federal Power Commission (Scenic Hudson – founding of modern environmental movement - standing for environmental groups)
- The Northeast Blackout of 1965, creation of Northeast Reliability Council
- 1969 National Environmental Policy Act (NEPA) enacted, suggested new framework
- O&R Power Line to complete connection between PJM, NY & NE turned down by Hudson River Valley Commission for environmental impact reasons
- Revised O&R Power Line to complete connection between PJM, NY & NE approved on new route balancing environmental and power need concerns

## NEW YORK PUBLIC SERVICE LAW

- Article VII. Siting of major utility transmission facilities**  
**Permanent since 1970 – many electric power lines and natural gas pipelines constructed**
- Article VIII. Siting of major electric generating facilities [expired]  
**(1972 – 1978)**  
**In-Service Article VIII Projects**  
NYSEG Somerset Station
- Article VIII. Siting of major electric generating facilities [expired]  
**(1978 – 1988) – no projects constructed**
- Article X. Siting of major electric generating facilities [expired and repealed]  
**(1992 – 2002)**  
**In-Service Article X Projects**  
Astoria Energy(SCS Energy, LLC)  
Athens Generating Plant (Athens Generating Co., L.P.)  
Besicorp - Empire State Newsprint Project  
Bethlehem Energy Center (PSEG Power New York Inc.)  
East River Repowering (Consolidated Edison Co., of New York, Inc)  
KeySpan Ravenswood Cogeneration Facility  
Poletti Station Expansion (NYPA)  
**Certified Article X Projects**  
Bowline Unit 3 (Mirant Bowline, LLC )  
Reliant Energy Astoria Repowering Project Application (Orion Power Astoria Repowering Project)  
Spagnoli Road Energy Center **[Relinquished]**
- Article 10. Siting of major electric generating facilities**  
**(Effective: July 12, 2012)**

# **Board on Electric Generation Siting and the Environment**

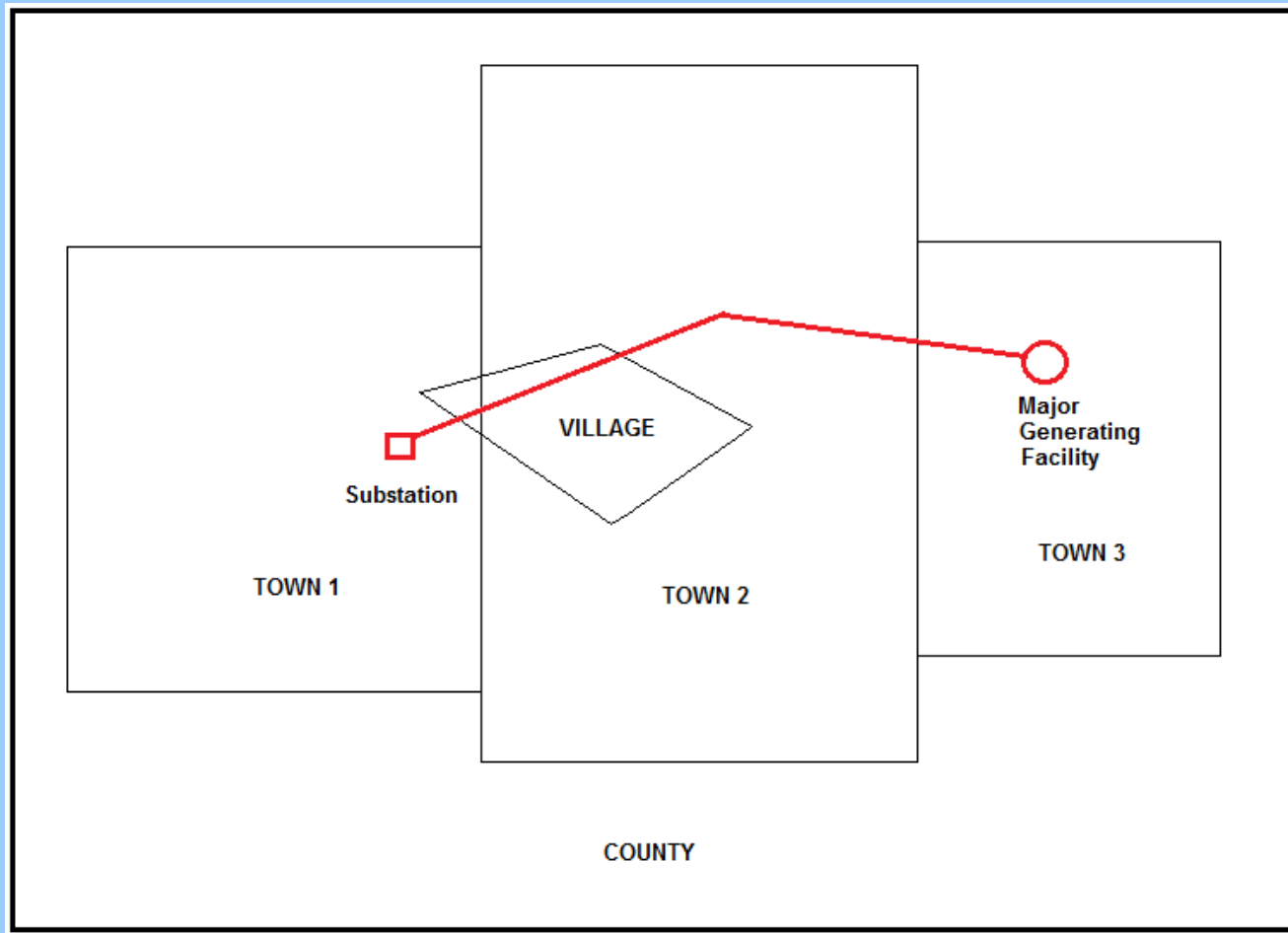
**The Siting Board oversees the Article 10 process.**

**The Board is headed by the Chair of the Department of Public Service.**

**Other Board members include: Heads of NYS DEC, Health Department, NYSERDA, Economic Development, and two members of the public who are residents of a project area.**

**The Board can issue a Certificate of Environmental Compatibility and Public Need for a generating project.**

# Ad Hoc Candidates



## **Pre-Application Phase**

### **Intervenor Fund**

- **The applicant submits the initial intervenor fee when it files the PSS.**
- **The funding fee is \$350 per MW of proposed generating capacity, up to \$200,000.**
- **The Presiding Examiner or Secretary issues a notice on the availability of the funds and explains how to apply.**
- **Half of the funds are available for municipal parties and half for local parties.**
- **Funds are made available to hire expert witnesses, consultants or lawyers, to assist intervenor groups in efforts that will contribute to a complete record.**
- **After the PSS is submitted, and review has started, initial requests for intervenor funds may be submitted. Forms for funding requests are posted at the NYS Siting Board webpage.**
- **The Hearing Examiners will consider funding requests. A conference will be held to discuss funding requests and to hear any objections.**

## **Application Phase**

### **Intervenor Fund**

- **An Application must be accompanied by an intervenor funding fee of \$1,000 per MW of capacity, up to \$400,000.**
- **The fund is available to hire expert witnesses, consultants, and lawyers. At least half of the fund is available for municipal parties and the remainder is for local parties.**
- **Funds are administered by Hearing Examiners. Reports on use of funds is required.**
- **If an Application is later substantially amended, additional funding may be required.**

### III. PROCESS

#### Rules of Procedure

#### Pre-application

- Public Involvement Program plan
- Informal Consultation
- Preliminary Scoping Statement
- Stipulations
- Intervenor Funding

#### Service of Application

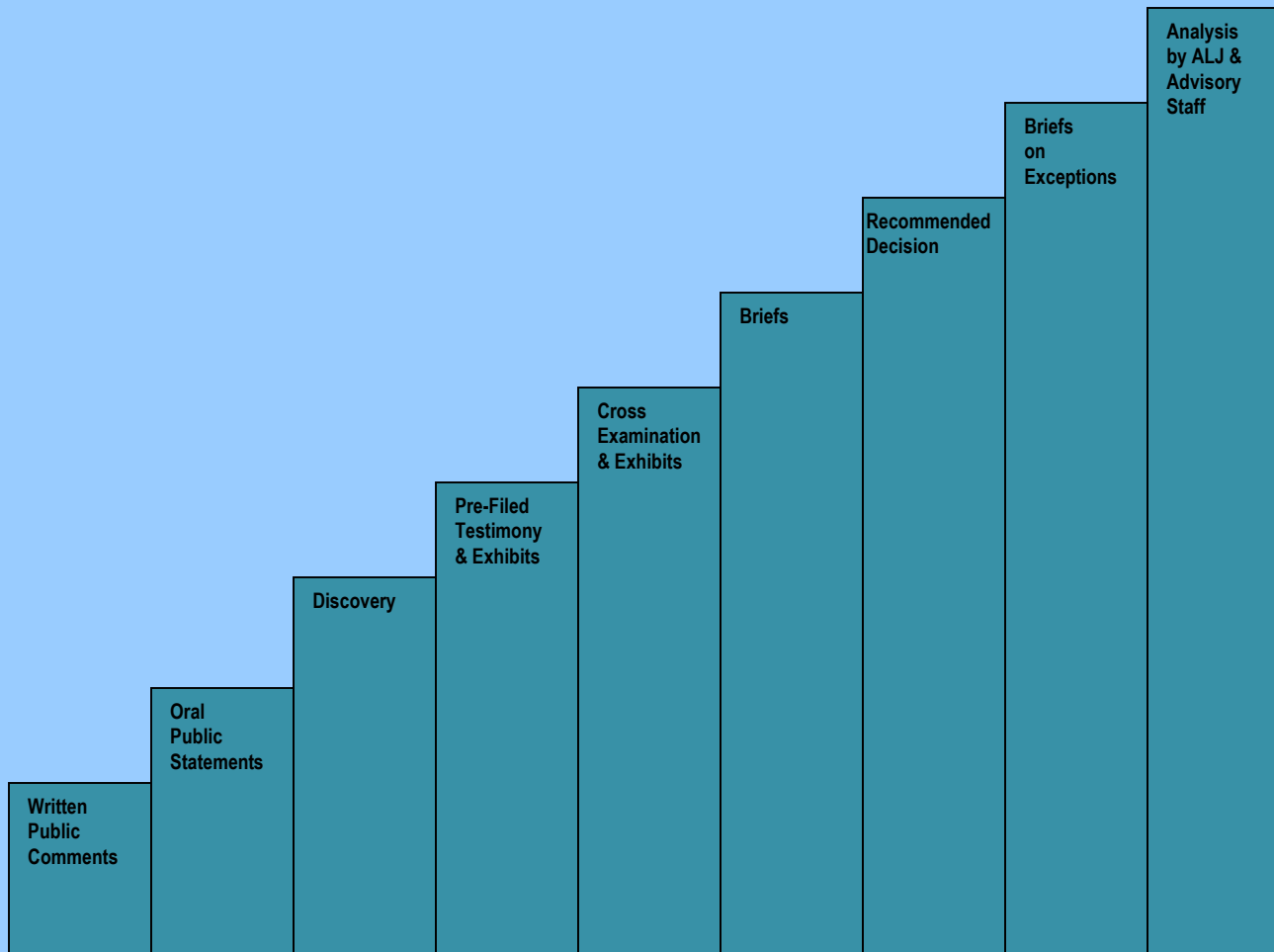
- Siting Board/State Agencies/Municipalities/State Legislature/  
Libraries/Interested Persons and Organizations

#### Initial process

- Is the application in compliance?
- ALJ Assigned
- Pre-hearing Conference (Scheduling)
- Issues Conference
- Public Statement Hearings
- Limited Appearance Statements
- Discovery



# Evidentiary Steps



## Adjudicatory Path

Pre-filed direct testimony and rebuttal testimony

Evidentiary Hearings – Cross Examination

Briefs

Recommended Decision (RD)

Briefs on Exceptions

Final Findings & Decision by Siting Board

## Settlement Path

Settlement Rules & Guidelines

Notice of commencement

Confidential negotiations

Joint proposal

Statements in Support and Opposition

Possible Hearing concerning Joint Proposal

Final Findings & Decision by Siting Board

## Environmental Management and Construction Plans (EM&CP)

Content

Process

## GENERIC ISSUES

**What studies should be required? [stipulations]**

**Is the application in compliance?**

**What discovery do I need to pursue?**

**What testimony do I need to submit?**

**What opposing testimony do I need to cross examine?**

**What arguments do I need to make in the briefs?**

## Required Statutory Findings and Determinations

- (1) the nature of the probable environmental impacts of the construction and operation of the facility;
- (2) the cumulative environmental impacts of the facility and related facilities (interconnections);
- (3) the cumulative impact of emissions on the local community;
- (4) whether there is significant and adverse disproportionate environmental impact on environmental justice communities; if yes:  
the applicant will avoid, offset or minimize the impacts caused by the facility upon the local community for the duration that the certificate is issued to the maximum extent practicable using verifiable measures;
- (5) the facility is a beneficial addition to or substitution for the electric generation capacity of the state;
- (6) the construction and operation of the facility will serve the public interest;
- (7) the adverse environmental effects will be minimized or avoided to the maximum extent practicable;
- (8) the facility is designed to operate in compliance with applicable state laws and regulations;
- (9) the facility is designed to operate in compliance with applicable local laws and regulations, except that the Siting Board may elect not to apply local laws that are unreasonably burdensome in view of:  
the existing technology;  
the needs of ratepayers; or  
the costs to ratepayers.

## **The Siting Board must consider:**

- (a) the state of available technology;
- (b) the nature and economics of reasonable alternatives;
- (c) the environmental impacts found;
- (d) the impact of related facilities (interconnections);
- (e) consistency with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan;
- (f) the impact on community character and whether the facility would affect communities that are disproportionately impacted by cumulative levels of pollutants; and
- (g) such additional social, economic, visual or other aesthetic, environmental and other considerations deemed pertinent by the Siting Board.

## **The Siting Board can:**

Approve, Approve with Modifications, Deny

## INTERPLAY WITH OTHER LAWS

### Federal

Substantive Requirements (Applied)

Procedural Requirements (Applied)

### State

Substantive Requirements (Applied)

Importance of Certificate Conditions

Procedural Requirements (Supplanted)

### Local

Substantive Requirements (Applied Unless Waived)

Refusal Power & Criteria

Procedural Requirements (Supplanted)

SEQRA Generally Supplanted [6 NYCRR Section 617.5(c)(35)]

Real Property Rights Unaffected