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Article X. Siting of major electric generating facilities [expired and repealed]
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

- Written Public Comments
- Oral Public Statements
- Discovery
- Pre-Filed Testimony & Exhibits
- Cross Examination & Exhibits
- Briefs
- Recommended Decision
- Briefs on Exceptions
- Analysis by ALJ & Advisory Staff
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