

An Introduction to Massachusetts Generation Facility Siting Considerations

Presented to:

***VT Energy Generation
Siting Policy Commission***

Meeting #2 – Learning from Other States
(Nov 14, 2012)

General Description & Context for Energy Generation Siting Process

- 100 MW is the threshold for jurisdiction of the Energy Facilities Siting Board (EFSB) – there are no opt-ins
 - EFSB approval is required in addition to other state and local permits and approvals; facilities are typically approved with conditions or withdrawn
 - An applicant can seek a “Certificate of Environmental Impact and Public Interest” which is a “one-stop” composite permit of all state and local permits and approvals.
 - Approximately 100 generating sites in MA (not including DG) comprising about 16,000 MW of installed capacity
- In 2012, only 1 generation applicant (Footprint Salem Harbor). No new applications filed in 2008 -2011. Three approvals in 2009
- It has been several years since EFSB saw multiple new projects in a single year.

Siting Approval Practices #1

- EFSB is a nine-member board Chaired by the Secretary of Energy & Environmental Affairs; also includes DPU (2), EOHED, DEP, DOER, and three public members (labor, environmental, energy)
 - Statutory authority specified in MGL c. 164 §§69 G-S
 - Regulations specified in 980 CMR 1.00-12.00
 - EFSB is administratively part of the Dept. of Public Utilities (DPU)
- DPU Siting Division (currently 11 positions) is staff to the Siting Board; adjudicates cases; prepares and presents decisions for Board vote (or DPU approval, if non-jurisdictional); advises the Siting Board or DPU Commissioners
- EFSB must issue approval before other state agencies can issue construction permits; EFSB can coordinate hearings and procedures with other state and local agencies, but is rarely asked to do so or initiates this mechanism
- One year timeline is specified in statute for EFSB cases, but there are no penalties or “constructive approval” if not met. There is no “expedited” process. Certificate of Environmental Impact review has a 180-day timeframe.

Siting Approval Practices #2

- Generation facilities required to demonstrate that environmental impacts and mitigation costs have been minimized; need, project cost, reliability, and alternative site reviews no longer required since restructuring
- EFSB siting guidelines/standards
 - Statutory authority specified in MGL c. 164 §§69 G-S
 - Promulgates Technology Performance Standards for air emissions and use of water that provide presumptive acceptance of the generating technology proposed
 - Uses existing regulatory standards and guidelines of federal, state, and local authorities; can impose more stringent requirements to achieve necessary mitigation
 - Can grant individual and comprehensive zoning exemptions per delegated authority from the DPU under MGL c. 40A §3 if a project is “reasonably necessary for the convenience or welfare of the public.” There is no size threshold for granting zoning exemptions. Has been used for a small municipal wind facility on one occasion.
 - Siting decisions apply other “policies of the Commonwealth” specifically enacted to guide the EFSB
- Appeals of EFSB (or DPU) decisions made directly to the Supreme Judicial Court;

Public Participation/Representation mechanism

- General public participates in public hearings that are held at the beginning of the proceeding in the project vicinity; can offer comments for the record
- Notice of filing sent to neighbors, legislators and officials and published in local and area newspapers and posted in municipal offices and libraries; special outreach efforts made for Environmental Justice communities per state policy
- Individuals and groups can also participate as “limited participants” or “full intervenors”
- Cities/towns or regional commissions typically seek and are granted intervenor status
- Intervenors are not provided with any financial, legal or technical support for their cases; EFSB provides general guidance to all parties

Alternative Dispute Mechanism

- There is no formal alternative dispute mechanism although parties in cases are welcome to propose settlements to the EFSB – which is rare
- In practice, facility applicants actively engage with host community officials and members of the public to discuss mitigation measures and other agreements that can lead to support (or at least lack of active opposition)
- EFSB approval conditions can formalize agreements and commitments between project proponent and parties

Adequate protection of lands, environmental & cultural resources

- EFSB issues an approval that allows other state agencies to issue construction permits; all other permits and approvals issued by other federal, state and local authorities
- Massachusetts Environmental Policy Act (MEPA) process usually occurs prior to or concurrent with EFSB review
- EFSB is required to consider “local and regional cumulative health impacts” which can include multiple generation facilities as well as other contributors
- MA permitting process generally viewed as very comprehensive and thorough and protective of the public. 100 MW threshold for EFSB review is too big to address land-based wind facilities and other small or distributed generation, although zoning exemptions can still be granted under DPU authority
- Projects typically receive intensive review of air and wetlands impacts through MA DEP and local conservation commissions

Monitoring Compliance

- Monitoring compliance with permit conditions
 - EFSB decisions typically include required periodic reporting
 - Significant project changes must be reported to the EFSB for review and approval
 - The Siting Board is authorized to levy a civil penalty when an applicant has violated any order of the Board. G.L. c. 164, § 69H. The maximum fine is \$1,000 per day per violation, with a maximum civil penalty of \$200,000 for any related series of violations
 - Post-decision site visits and inspections are infrequent; there is no specific budget for enforcement
 - Project owner/operator is required to notify the Siting Board when the project fails to meet conditions specified in the approval decision
 - Complaints from local officials or members of the public are sometimes a means by which non-compliance with EFSB conditions is identified and enforced

Strengths

- Very active public participation in generation cases is the norm
- Most project proponents take steps to listen to host communities and improve project designs before the applications are filed with the EFSB
- EFSB can impose more stringent standards than otherwise applicable in federal, state and local permits
- Review process for generation facilities is relatively timely – though it does not always meet the 12-month statutory timeframe
- Very active involvement by Siting Board members
- The EFSB process has historically been successful in approving gas-fired facilities that have gained community acceptance – with some notable exceptions

Weaknesses

- Scope of review since restructuring no longer includes need, costs, reliability or evaluation of alternative sites. The public still seems to perceive these topics as part of EFSB case review
- The 100 MW threshold for EFSB review leaves out smaller generation facilities such as renewables and distributed generation. Some developers of such facilities believe that expanded EFSB jurisdiction would be helpful
- Some developers would like to see more stringent timelines in cases that would have consequences if not met. However, in practice, many delays can be attributed to project changes, and delays by the applicant
- Intervenors often have limited resources and find it difficult to retain skilled counsel and consultants