

# **An Introduction to New York State Electric Generation Siting**

Presented to:

**VT Energy Generation Siting Policy  
Commission**

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by

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# General Description & Context for Energy Generation Siting Process

- NYS Power Act of 2011 re-created the NYS Siting Board
  - (prior jurisdiction elapsed 12/31/2002)
- Article 10 Rules adopted August 2012
- Public Service Law Article 10 gives NYS Siting Board responsibility for review of power projects of 25 MW or greater
- Article 10 has opt-in provisions:
  - projects previously in other state or local review pursuant to general SEQRA environmental impact review process
  - Generation facilities for on-site industrial-use
  - Repairs or replacements of existing facilities
- Currently 2 proposed wind projects in early development, and one gas-fired plant has requested certificate amendment
- Total MW installed: None under Article 10 – new program ca. 2012

# General Description & Context for Energy Generation Siting Process - 2

- For context, compare Article 10 with Article X and SEQRA
  - Expired Art X: reviewed 24 proposals 80+ MW
  - All were gas-fired, most with oil backup fuel
  - 24 cases over 8 years of peak activity (1998-2006)
  - Article X resulted in:
    - 13 facility certifications
    - 2 applications withdrawn mid-process
    - 2 certification denials
  - Article 10 maintains many key provisions of Article X

# General Description & Context for Energy Generation Siting Process - 3

- After Art X expired (2002), siting review was done under SEQRA - general NYS environmental review process
  - Municipality typically serves as “Lead Agency”
  - State agencies act as “Involved Agency”
  - All individual permit jurisdiction is maintained
- +/- 20 gas-fired plant EIS reviews in 9 yr period
- 32 wind-energy project DEIS reviews in 5 yr period
- 1440 MW wind energy sited under SEQRA & now in operation
- Several wind projects stalled in SEQRA process (or were cancelled)

# Article 10 Siting Approval Practices #1

- Permanent NYS Siting Board comprised of:
  - Chairpersons of 5 NYS agencies:
    - PSC, DEC, DOH, Econ.Dev., & NYSERDA
- Project Siting Boards comprised of:
  - Permanent Board, plus
  - 2 Ad Hoc members – residents of “host” municipality
- Staffing of siting process:
  - DPS
  - DEC
- Coordination of state-level permit issuance with other agencies: DEC - air, water, SPDES, RCRA
- Timeline for review/deadline or decision: 12 months from complete application, can be extended w/ app. consent

# Article 10 Siting Approval Practices #2

- Substantive Criteria & Standards overview\*
  - Law, rules & project scope establish application stds.
  - Local ordinance evaluation
  - Waiver provision for unduly restrictive codes
- General Siting Guidelines are not detailed
  - No setback standards specified
  - Study protocol for bird and bat studies in rules
- Appeals process/authority: appeals to NYS Supreme Court
- Expedited processes:
  - Board decisions generally within 12 months of complete application
  - Public Involvement Plan schedule can be curtailed for good cause
  - Existing plant add-ons or mods.: decision within 6 mo. of application

# Public Participation Mechanism

- Public participation and input process is required:
  - Public Involvement Program plan before scoping
  - Public scoping with applicant-sponsored intervenor funding
  - Public statement hearings required early
  - Party status, with add'l applicant-sponsored funds available
- Funds for experts & legal rep. for development of record
  - Scoping phase: \$ 350/MW up to \$200,000
  - Application phase: \$1000/MW up to \$400,000
- Funds administered by Hearing Examiners
- Municipality involvement
  - Municipalities are parties upon filing of notice of interest
  - Municipality seeking to enforce local laws must participate or is barred from enforcement authority
  - Municipalities nominate 2 Ad Hoc Siting Board members

# Alternative Dispute Mechanism

- Hearing Examiner for pre-application scoping can mediate issues of study scope and methodology
- Settlement Procedures can be utilized by agreement of parties: may request Settlement Judge
- Intervenor funding available to parties
- Does ADR work? Pros and cons:
  - Has been helpful in resolving complex cases/issues
  - Can help local parties/municipalities gain benefits
  - May extend review period
  - Managing concurrent settlement and litigation tracks
  - Parties may need to conserve funds for litigation of some issues

# Adequate protection of lands, environmental & cultural resources

- Which environmental permits are required?
  - §401 Water Quality Cert. – by Board or DPS
  - Federally-delegated authority permits issued by DEC
  - Siting Board denial effectively over-rides DEC permit issuance
- Other permits are issued as subsequent conditions to granting of Article 10 certification
- Cumulative impact of all project components considered
- Cumulative impact issues addressed in rules (for air & visual ) others should be identified at scoping stage for analysis

# Monitoring Compliance

- Monitoring construction and operational compliance with permit conditions:
  - DPS Compliance staff
  - DEC permits by DEC staff
  - Local enforcement as delegated by Siting Board
- Compliance contingent with permit conditions
- State agency staffing available
  - e.g., Dept. of Agriculture and Markets for ag lands impact mitigation
- Building permits administered per NYS code requirements

# Strengths and Weaknesses

- Strengths:
  - Schedule & timing requirements specified
  - Early & continuing public involvement opportunities
  - Intervenor funding enables local participation
  - Environmental Justice provisions address minority/low income groups
  - Public policy goals considered
  - Flexibility to address range of interests & issues
  - Over-ride of unreasonably restrictive local laws
- Weaknesses:
  - Determining acceptable impact standards?
- If there were anything you would change, what would it be?
  - Time will tell : Experience with new regulations will identify potential improvement opportunities

# Recommendations

- Intervenor funding program administration
  - Specified use for qualified representation
  - Payments should be keyed to “deliverables” per schedule
- Assure public access to information
  - Website access to all electronic files
  - Maintain key document files at public locations
- Provide flexibility to utilize ADR
- Use public outreach for rules development
  - Develop interest groups including:
    - Generation developers
    - Municipal representatives
    - Environmental groups