

An Introduction to the Rhode Island Energy Facility Siting Board

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Disclaimer

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General Description & Context for Energy Generation Siting Process

- The Energy Facility Siting Board (“EFSB”) has jurisdiction over alterations to “major energy facilit(ies)” that “will result in a significant impact on the environment, or the public health, safety, and welfare.”
- Serves as “the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state.”

General Description & Context for Energy Generation Siting Process

- “Major energy facility(ies)” are defined as:
 - facilities for the extraction, production, conversion, and processing of coal;
 - facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more;
 - transmission lines of sixty-nine (69) Kv or over;
 - facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases;

General Description & Context for Energy Generation Siting Process

- “Major energy facility(ies)” continued...
 - facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts;
 - facilities for the refining of oil, gas, or other petroleum products;
 - facilities of ten (10) megawatts or greater capacity for the generation of electricity by water power;
 - facilities associated with the transfer of oil, gas, and coal via pipeline; and
 - any energy facility project of the Rhode Island economic development corporation.

Recent Siting Activity

- Since 2008, there have been four new dockets:
 - A reconductoring
 - 2 new transmission lines (primarily 345 Kv)
 - A transmission interconnection over our 69 Kv threshold
- Dockets within the last decade have focused almost exclusively on transmission-related projects
- Last major generation docket nearly 14 years ago
- Some fuel burning/stack height licensing and LNG transfer station matters in early-2000s

EFSB Members and Staffing

- Rhode Island's Siting Act creates a three-member Board
 - Chair of the Public Utilities Commission (EFSB Chair)
 - Director of Dept. of Environmental Management
 - Associate Director of Statewide Planning
- Quorum consists of a majority, however, one Board member may conduct any authorized hearings
- Board members and staff are not paid separately for their work

EFSB Members and Staffing

- No full-time dedicated staff on distinct payroll; staff support comes from the Public Utilities Commission
- Staff consists of a Coordinator and Legal Counsel
 - Coordinator is responsible for application review, docketing, minutes, reports, scheduling, and works on all discovery and evidentiary hearings. Also the PUC's Principal Policy Analyst
 - Legal Counsel is also the PUC's Chief Legal Counsel
- During EFSB Dockets, these staff members and Chair recuse themselves from any related PUC matters

Application Guidelines

- Project Applicants must address:
 - Site Plans
 - Project Cost
 - Number of facility employees
 - Financing
 - Required support facilities
 - Research on EMF impacts
 - Life-cycle management
 - A study of alternatives, including estimated costs

Process and Deadlines

- Coordinator has 30 days to accept/reject filing and assign it a docket numbers
- Board convenes a Preliminary Hearing within 60 days to designate agencies that must file an advisory opinion
- Advisory agencies generally have 6 months to submit findings
- Board required to schedule at least one public hearing in every community impacted by proposal

Designated Agencies

- Includes political subdivisions which, absent the Act, would have the statutory authority to grant permits, licenses, variances, etc.
 - Town Councils, Building Inspectors, Planning Boards
- Public Utilities Commission
 - Holds its own separate proceedings to render an advisory opinion on the need for the proposed facility

Designated Agencies

- Statewide Planning
 - Addresses socio-economic impact and consistency with state guide plans
- Other designated agencies often include:
 - State Historical Preservation
 - Dept. of Environmental Management
 - Dept. of Health
 - Dept. of Transportation

Exceptions to Authority

- Two exceptions
 - Where state Dept. of Environmental Management (DEM) exercises permitting functions under the delegated authority of federal law (i.e. Clean Water Act)
 - Where there is specific permitting authority delegated to DEM and the state's Coastal Resources Management Council (CRMC)

Process and Deadlines

- Final hearings commence within 45 days after advisory deadline
- Final Decision and Order due within 120 days
- Final decisions may be appealed to the State Supreme Court within 10 days of ratification

Expedited Processes

- Construction or relocation of power lines less than 1,000 ft.:
 - Notice to construct must be filed 60 days before commencing construction
 - Applicant must state reasons why not a major energy facility or alteration
 - Board has 45 days to act

Expedited Processes

- Construction or relocation of power lines greater than 1,000 f.t but less than 6,000 ft.:
 - Similar to above, but requires a public hearing and more detailed analysis, including EMF analysis
 - Board has 60 days to determine if project will result in significant impact on environment or public health and safety
 - If considered an alteration, matter is docketed and proceeds as normal

Public Participation

- All hearings – Preliminary and Final – are open to the public. Board Rules specify notice requirements
- One Public Hearing must be held in every community impacted by the proposal (i.e. transmission line through 3 towns)
- Board generally gives the public an opportunity to comment before or after all hearings, which are transcribed
- Most non-CEII or protected materials are posted on the EFSB website, www.ripuc.org/efsb/index.html

Support Resources

- Siting Act allows for the Board to purchase materials and employ legal counsel, stenographers, engineers, expert witnesses, etc.
- Board is also authorized to establish fees for investigations, applications, and hearings
- In practice, the Board does not maintain a fee list, but can ask applicant to assume consulting costs incurred by the Board

Post Licensure Proceedings

- Board may issue license conditionally upon applicant's receipt of federal licenses
- Although the Board retains final permitting authority, applicant still has burden to apply for, receive, and maintain all applicable permits
- Board can hire consultants (up to \$20k; paid by applicant) to visit plant during construction
- May hold suspension hearings and issue "Show Cause" and "Cease and Desist" orders

Recommendations

- Strengths
 - Defined processes/timeframes governed by detailed rules
 - Public input allowed and transparency at nearly every stage of the process
- Weaknesses
 - If there were a period of robust siting activity, no dedicated staff to conduct work/oversight

Questions?

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www.ripuc.org/efsb/index.html