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Article 10 and the Siting of Major Electric Generating Facilities in New York State

By Paul Agresta

I. Introduction

"Siting" is a process consisting of a series of steps conducted by a regulatory agency in determining whether to allow a facility to be located and operated on a site. Since 1970, New York's laws have provided for major power lines to be sited by the Public Service Commission instead of by multiple state agencies and local governments.[1] Similarly, as a result of Governor Andrew M. Cuomo's Power NY Act of 2011,[2] major power plants will now be sited by a statewide Board on Electric Generation Siting and the Environment (the "Siting Board"). The new law is set forth in a portion of the New York Public Service Law designated "Article 10."[3] It is a general state law that is applicable in all of New York State.[4] Article 10 empowers the Siting Board to issue Certificates of Environmental Compatibility and Public Need ("certificates") authorizing the construction and operation of major electric generating facilities. An electric generating facility is deemed to be "major" if it has the capacity to generate 25 megawatts or more of electricity.[5] Article 10 supplants the need to obtain most other state and local approvals.

New York has a history of several different power plant siting laws, going back to the early 1970s. The last such law expired in 2002. The Power NY Act re-establishes the State's role of siting power plants on a coordinated basis.

II. Historical Antecedents

On the edge of the Hudson Highlands, Buckberg Mountain overlooks the Hudson River's Haverstraw Bay. It was used as an observation point by George Washington and General "Mad" Anthony Wayne to plan a surprise attack on British troops in the Battle of Stony Point.[6] Approximately 200 years later, Buckberg Mountain was the site of a battle of a different sort that ultimately resulted in New York's adoption of statewide siting processes for major power lines and power plants.

In the aftermath of the Great Northeast Blackout of 1965, Orange and Rockland Utilities, Inc. ("O&R") wanted to construct a new power line to tie the New York Power Pool electric system grid into the neighboring grids served by the New England (NEPOOL) and the Pennsylvania/New Jersey/Maryland (PJM) power pools. The interconnection of these three systems was part of an overall regional plan to give each system wider capability to absorb equipment failures without destabilizing the necessary continuous balance between generation and consumption of electricity on the electric grid. Minor unexpected equipment failures that cause instantaneous losses of either generation or consumption can cause other equipment to trip off-line to try to match the loss and return the grid to a state of equilibrium. In some instances, shedding of unequal equipment causes the instability to grow and cascade across the grid, in the worst case resulting in wide-scale blackouts.

To achieve the interconnection, it was going to be necessary to build a major power line across the Hudson River. The path chosen by O&R for the new power line went up and over the top of Buckberg Mountain and down its side to the western shore of the Hudson. The many towers to be constructed along the path to be cleared down the wooded slope were to be approximately 125 feet in height. The adverse visual impact of the project was considered significant by many.

The Hudson River Valley Commission objected to the proposal. Governor Nelson A. Rockefeller had used his executive powers in 1965 to create the Commission to provide for the "best protection and preservation of the resources of the Hudson River" such that our society may grow "in an environment rich in natural beauty, historic ties and aesthetic values."[7] The Hudson River Valley Commission found that "'[t]he benefits of the project, though substantial in terms of reducing the possibility of a power blackout, are not sufficient to justify constructing the project, which will have a permanent effect on the scenic resources of the valley.'"[8] O&R sought rehearing; protests against the project intensified.[9]

What happened after that was significant when compared to the famous 17-year legal dispute over Consolidated Edison's failed plan to embed a large pumped storage hydroelectric plant into the face of Storm King Mountain only a few miles upriver. Enlightened Rockland County officials worked with the Hudson River Valley Commission, utility experts, state experts, local governments and local citizen groups to fashion a compromise solution that everyone could accept.[10] As a result, the line was rerouted around the base of Buckberg Mountain. According to the Hudson River Valley Commission, "[t]he line was kept off the mountain, the valley was not marred by a new slash across a prominent scenic resource, and the utility company was able to thus avoid a long and costly legal battle with area citizens."[11]

The Federal Power Commission cited the negotiated resolution "as the best case history in the United States

of how the power-ecology dilemma can most sensibly be resolved."[12] It also separately noted that:

> utilities serving major load centers in which restrictions to the construction of new facilities are mounting rapidly, must present [their] expansion programs individually to a multitude of regulatory, licensing, and approving authorities. These extend from local bodies, counties and municipal authorities, up through the echelons of agencies operating under State and Federal authority. Many of these entities have a single interest or responsibility, act unilaterally and with a minimum of interagency coordination. To say the least, the process of securing approvals is time consuming and often frustrating. The greater concern is a break-down in the ability of these utilities to provide facilities on a schedule that will assure the adequacy and reliability of the power supply. A few States have recognized the need to establish some form of coordinating mechanisms to assist utilities in more constructive review of utility proposals. These first attempts at coordination are still in the trial stage but participants have expressed confidence they will be beneficial.[13]

Governor Rockefeller praised the "very thorough job well done" while learning that single-focus agencies like the Hudson River Valley Commission he had created to make scenic values paramount in the Hudson Valley were just as one-sided as the traditional agencies that only considered economic factors and ignored environmental impact. What was needed was a "consultative process"[14] where power needs and the environment could be considered together.

Shortly thereafter, Governor Rockefeller obtained the adoption in New York of a siting law for major power lines[15] that requires the Public Service Commission to "protect environmental values, and take into account the total cost to society of such facilities"[16] in addition to having to find need for the facility. The introduced concept of "environmental compatibility and public need"[17] requires that the facility be needed to serve electric and economic needs, but that it will only be approved if it is to be constructed in a manner that is found to be compatible with the environment. At the time the power line siting law was enacted, a temporary state commission was also formed whose recommendations ultimately resulted in the adoption of the first New York power plant siting law, which reflected similar principles regarding environmental compatibility and public need.[18]

Other historical antecedents having an influence on the ultimate fashioning of the New York siting laws include the 1965 "Storm King/Scenic Hudson" decision that established the principle that conservation groups have "standing" to sue to protect against injury to aesthetic or recreational values,[19] a 1966 N.Y. Court of Appeals decision that affirmed the right of a municipality on Long Island to require that power lines be constructed underground to preserve aesthetic values,[20] and the enactment of the National Environmental Policy Act of 1969 (NEPA) that requires Federal agencies to consider environmental impacts in their decision-making processes by preparing environmental assessments and environmental impact statements.[21]

The new Article 10 law builds upon these antecedents, but is notably different from past siting laws in that, among other things, it is permanent, it provides for enhanced public participation, and it requires the Siting Board to determine whether a proposed facility will create a disproportionate environmental impact in a community and, if so, requires the applicant to minimize, avoid or offset those impacts.

III. Implementing Regulations

The Siting Board has adopted comprehensive regulations to implement the new Article 10 law.[22] The regulations require applicants to provide a robust body of information up front in the process, thereby enabling parties and the public to effectively and promptly engage in the Article 10 hearing process, while not unduly burdening applicants that bear the cost of preparing applications. It was important to require enough information in applications to allow the Siting Board to make the findings and determinations required by the statute, recognizing that additional information will be provided as the record of the certification proceeding is developed and also that final construction-type details are unnecessary and costly to provide prior to a determination by the Siting Board. Many of the provisions in the regulations were tailored to accommodate the unique needs of wind projects, from both the perspective of the developer and the host community.

IV. The Article 10 Process

An applicant that wants to build a major electric generating facility, such as a wind farm, needs to obtain a certificate authorizing construction and operation from the Siting Board. The Siting Board is a governmental entity of New York State organized within the Department of Public Service ("DPS"). When the Siting Board is reviewing an application for a certificate, it consists of five permanent members and two ad hoc public members appointed to provide a local perspective.[23] The five permanent members of the Siting Board are the Chairman of DPS who serves as chairperson of the Siting Board, the Commissioner of the Department of Environmental Conservation, the Commissioner of the Department of Health, the Chairperson of the New York State Energy Research and Development Authority, and the Commissioner of Eco-

nomic Development.[24] The two ad hoc public members must be residents of the affected municipality and may not hold another state or local office or hold any official relation to the applicant or the parties that may appear before the Siting Board.[25] The ad hoc public members are appointed, one each, by the President Pro Tem (Majority Leader) of the State Senate and the Speaker of the State Assembly, from a list of candidates submitted to them by the chief executive officers of the affected county and city, town and/or village.[26]

A. Public Involvement Program[27]

There are several important pre-application procedures that must be completed before an application may be submitted. The first is submission of a Public Involvement Program ("PIP") plan.[28] "Public involvement" is the process of enabling the public to participate in decisions that may affect public health, safety and the environment.[29] It is the Siting Board's policy to encourage public involvement in the review of the applicant's proposal at the earliest opportunity so that public input can be considered.[30] In addition, to ensure that the public and interested parties are fully assisted and advised in participating in the Article 10 process, an Office of Public Information Coordinator has been created within DPS.[31]

The PIP plan must include:

(1) consultation with the affected agencies and other stakeholders;[32]

(2) pre-application activities to encourage stakeholders to participate at the earliest opportunity;[33]

(3) activities designed to educate the public as to the specific proposal and the Article 10 review process, including the availability of funding for municipal and local parties;[34] the establishment of a website to disseminate information to the public;

(4) notifications; and

(5) activities designed to encourage participation by stakeholders in the certification and compliance process.[35]

In addition, an applicant is expected to communicate with the public early in the pre-application process through the use of various means such as media coverage, direct mailings, fliers or newsletters, and the applicant is expected to hold public meetings, offer presentations to individual groups and organizations, and establish a community presence. Establishing a local office, a toll-free telephone number, Internet website, and a community advisory group are among the actions an applicant may take to establish its presence in the community.

"Applicants [must] submit...proposed [PIP] plan[s] in writing to DPS for review as to their adequacy at least 150 days prior to the submittal of any preliminary scoping statement[.]"[36] DPS has 30 days to make written comments on the adequacy of the PIP plan, and if the plan is deemed inadequate, DPS will make specific written recommendations as to what measures are necessary to make it adequate.[37] Thereafter, the applicant has 30 days to consider the measures recommended by DPS and, in a final written PIP plan filed with the Secretary, must as to each specific measure either revise the PIP plan to incorporate the DPS recommendation, or provide a written explanation as to why the applicant is not incorporating it.[38]

B. Preliminary Scoping Statement[39]

A Preliminary Scoping Statement ("PSS") is a written document to inform the Siting Board, other agencies, and the public that the applicant is contemplating making an Article 10 application. It is prepared by an applicant after consulting with the public, affected agencies, and other stakeholders. The term "consulting" in this context means providing information to and effective opportunities for input from the public, affected agencies, and other stakeholders, concerning the proposal.

The information that must be included in a PSS falls into two major categories. The first category is a description of the proposed facility and its environmental setting. Among other things, the information provided must include the description of potential environmental and health impacts resulting from the construction and operation of the proposed facility; measures proposed to minimize environmental impacts; reasonable alternatives to the facility; and the identification of all other state and federal permits, certifications, or other authorizations needed for construction, operation or maintenance of the proposed facility. The second category is a description of the proposed studies or program of studies designed to evaluate potential environmental and health impacts that the applicant intends to include in its application for an Article 10 certificate. The description of the studies must include the extent and quality of information needed for the application to adequately address and evaluate each potentially significant adverse environmental and health impact, including existing and new information where required, and the methodologies and procedures for obtaining the new information. The PSS must also include an identification of any other material issues raised by the public and affected agencies during any consultation and the response of the applicant to those issues.

The PSS must be filed no less than 90 days before the date on which the applicant files its application for an Article 10 certificate. In addition, at least three days before the PSS is filed, the applicant must publish a public notice and summary of the PSS in local newspapers in the affected area and serve a copy of the notice and summary upon public officials and all persons who requested to receive such notices. Within 21 days after the filing of the PSS, any person, agency or municipality may submit comments on the PSS by serving such comments on the applicant and filing a copy with the secretary. Within 21 days after the closing of the comment period, the applicant must

prepare a summary of the material comments and the applicant's reply thereto, and file and serve its summary of comments and its reply in the same manner as it files and serves the PSS. Thereafter, it is expected that the applicant will work with interested parties to resolve any disagreements about the sufficiency of the planned scope and methodology of studies to be included in the application.

C. Pre-application Fund for Municipal and Local Participants[40]

When submitting a PSS, applicants are assessed a fee equal to $350 for each megawatt of generating capacity of the proposed facility, but no more than $200,000. For example, for a 100 megawatt wind farm, the fee would be $35,000 (100 x $350). If the PSS is later substantially modified or revised, the Siting Board may require an additional fee in an amount not to exceed $25,000. The funds collected are to be used to defray expenses for expert witnesses, consultants, administrative costs (*e.g.*, document preparation and duplication costs) and legal fees incurred by municipal and local participants in the pre-application process. The funds may not be used to pay for judicial review or litigation costs. The presiding examiner must reserve at least 50 percent of the pre-application funds for potential awards to municipalities.

A notice of availability of the funds will be issued providing a schedule and related information describing how interested members of the public may apply for pre-application funds. Requests for pre-application funds must be submitted to the presiding examiner not later than 30 days after the issuance of the notice of availability. An initial pre-application meeting to consider fund requests will be convened within no less than 45 days but no more than 60 days of the filing of a PSS. The presiding examiner is required to provide for an expedited pre-application funding award schedule to assure early and meaningful public involvement. Funds will be awarded to participants on an equitable basis to be used during the pre-application phase to make an effective contribution to review of the PSS.

D. Pre-application Stipulations[41]

"Stipulations" are agreements among the participants designed to simplify or shorten administrative litigation and save costs. Any participants can enter into a stipulation setting forth an agreement on any aspect of the PSS and the scope of studies or program of studies to be conducted. It is often in the interests of applicants and other participants to agree in advance to the content and methodology for conducting studies that will be submitted as part of the application. So that all parties will have an opportunity to participate, the applicant may not commence consultations or seek agreements on proposed stipulations until the pre-application fund for municipal and local parties has been allocated by the presiding examiner. Within 60 days of the filing of a PSS, the presiding examiner will convene a meeting of interested parties in order to initiate the stipulation process. The presiding examiner will also oversee the pre-application process and mediate any issue relating to any aspect of the PSS and the methodology and scope of any such studies or programs of study in order to attempt to resolve any questions that may arise.

Before a stipulation may be executed, notice of the proposed stipulation must be provided and the public and other participants must be afforded a reasonable opportunity to submit comments on the proposed stipulation before it is executed by the signatories. A signatory to the stipulation is not barred from timely raising objections to any aspect of the PSS or the methodology and scope of any stipulated studies or program of studies. A signatory to a stipulation, however, may not object to any aspect of the PSS and the methodology and scope of any stipulated studies or program of studies covered in the stipulation, unless the applicant fails to comply with the stipulation.

E. Submission of an Application[42]

Upon receipt of an Article 10 application, the Chairperson of the Siting Board has 60 days to determine whether the documents submitted comply with the requirements of the law, regulations and stipulations. The Department of Environmental Conservation also advises within the 60-day period whether the documents submitted contain sufficient information. If the documents submitted are insufficient, the Chairperson will issue a letter advising the applicant of the deficiencies that must be corrected before the documents can be deemed a complying application. The Chairperson may also require the filing of any additional information needed to supplement an application before or during the hearings. If the documents submitted are sufficient, the Chairperson will issue a letter advising the applicant that the documents submitted constitute a complying application. The Chairperson will also fix the date for the commencement of a public hearing and the Department of Environmental Conservation will initiate its review pursuant to federally delegated or approved environmental permitting authority of air and water permit applications. Within a reasonable time, the presiding examiner will hold a prehearing conference to expedite the orderly conduct and completion of the hearing, to specify the issues, to obtain stipulations as to matters not disputed, and to deal with other matters deemed appropriate. The presiding examiner will then issue an order identifying the issues to be addressed by the parties. Additional issues may be added later in the proceeding if they warrant consideration in order to develop an adequate record.

F. Designation of Parties[43]

There are three kinds of parties to an Article 10 proceeding: automatic statutory parties; parties that have a right to be a party merely by giving notice; and parties that may be permitted to join. The automatic statutory parties include the applicant; DPS Staff; the Departments

of Environmental Conservation, Economic Development, Health, Agriculture and Markets, and State; the New York State Energy Research and Development Authority; the Office of Parks, Recreation and Historic Preservation; and in certain instances, the Adirondack Park Agency. Provided they file an appropriate notice within 45 days of the date of the filing of the application, the following have a right to be a party: the affected municipality; any individual resident of an affected municipality; any non-profit corporation or association, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups or to promote the orderly development of any area in which the facility is to be located; and any other municipality or resident of such municipality located within a five-mile radius of such proposed facility (their notice of intent must include an explanation of the potential environmental effects on such municipality or person). In addition, the presiding officer may for good cause shown permit a municipality or other person to become a party and to participate in all subsequent stages of the proceeding, and such other persons or entities as the Siting Board may at any time deem appropriate may be permitted to participate in all subsequent stages of the proceeding.

A notice of intent to be a party must be filed with the Secretary to the Siting Board. A form for that purpose is available for download on the Siting Board website.

G. Fund for Municipal and Local Parties[44]

When submitting an application, applicants are assessed a fee equal to $1,000 for each megawatt of generating capacity of the proposed facility, but no more than $400,000. For example, for a 100 megawatt wind farm, the fee would be $100,000 (100 x $1,000). In addition, for facilities that will require storage or disposal of fuel waste byproduct, an additional fee will be assessed of $500 for each megawatt of capacity, but no more than an additional $50,000. If an application is later amended and the amendment is deemed a revision requiring substantial additional scrutiny, the applicant will be assessed an additional fee equal to $1,000 for each megawatt of capacity of the proposed project, as amended, but no more than $75,000. The presiding examiner may increase the level of the additional fee up to a maximum level of $75,000 if the presiding examiner finds circumstances require a higher level of funding in order to ensure an adequate record. The funds collected are to be used to defray expenses for expert witnesses, consultants, administrative costs (*e.g.*, document preparation and duplication costs) and legal fees incurred by municipal and local parties in the proceeding. The funds may not be used to pay for judicial review or litigation costs. The presiding examiner must reserve at least 50 percent of the funds for potential awards to municipalities.

A notice of availability of the funds will be issued providing a schedule and related information describing how municipal and local parties to the proceeding may apply for funds. Requests for funds must be submitted to the presiding examiner not later than 30 days after the issuance of the notice of availability. Funds will be awarded to parties on an equitable basis to be used during the proceeding to contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility.

H. Hearings[45]

Both public statement hearings and trial-type evidentiary hearings will be held. Public statement hearings are designed to obtain input from the general public. The format is designed for the taking of unsworn oral statements, although written statements ordinarily may also be submitted. Parties to the proceeding are not permitted to cross-examine the persons making such statements. Any person may make a limited appearance in the proceeding by filing a statement of his or her intent to limit his or her appearance in writing at any time prior to the commencement of the hearing. All papers and matters filed by a person making a limited appearance shall become part of the record. No person making a limited appearance shall be a party or shall have the right to present testimony or cross-examine witnesses or parties. The trial-type evidentiary hearings are designed to obtain sworn testimony from witnesses (usually expert witnesses) that are subject to cross-examination by the parties to the proceeding. The format is designed like a trial and it is recommended that the participants be assisted by legal counsel, although the assistance of legal counsel is not mandatory. The usual practice is for written direct and rebuttal testimony to be circulated to the parties in advance so that the hearings can focus on the cross-examination of witnesses. Any party to a proceeding is also subject to the pre-trial discovery process used by parties to obtain facts and information about the case from other parties. The most common discovery device is the written information request, but oral depositions and other devices are also available.

The hearings will be conducted by a presiding examiner designated by DPS. An associate examiner will also be designated by the Department of Environmental Conservation. A written transcript record is made of the hearings and of all testimony taken and the cross-examinations thereon. After the parties present post-trial legal briefs to the examiners, a recommended decision will be presented to the Siting Board by the examiners. The parties will then have one last opportunity to present additional legal briefs to the Siting Board addressing the recommended decision.

I. Timing of the Decision[46]

All proceedings on an application, including a final decision by the Siting Board, must be completed within 12 months from the date of the determination by the Chairperson that an application complies, except that the Siting Board may extend the deadline in extraordinary cir-

cumstances by no more than six months in order to give consideration to specific issues necessary to develop an adequate record. The board must render a final decision on the application by the aforementioned deadlines unless the deadlines are waived by the applicant. If during the proceeding there is a material and substantial amendment to the application, the deadlines may be extended by no more than six months to consider such amendment, unless the deadline is waived by the applicant.[47]

J. Substance of the Decision[48]

The Siting Board can grant a certificate in the manner requested by the applicant, it can grant a certificate subject to modifications and or conditions, or it may deny the application. In rendering a decision on an application for a certificate, the Siting Board must issue a written opinion stating its reasons for the action taken. The Siting Board is required to make certain statutory findings and determinations, and the required determinations can only be made after considering certain required factors.

The Siting Board must make explicit findings regarding the nature of the probable environmental impacts of the construction and operation of the facility, including the cumulative environmental impacts of the construction and operation of related facilities such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines. The findings must include impacts on ecology, air, ground and surface water, wildlife, and habitat; public health and safety; cultural, historic, and recreational resources, including aesthetics and scenic values; and transportation, communication, utilities and other infrastructure. The findings must also include the cumulative impact of emissions on the local community including whether the construction and operation of the facility results in a significant and adverse disproportionate environmental impact, in accordance with regulations promulgated by the Department of Environmental Conservation regarding environmental justice.[49]

The Siting Board must also make explicit determinations that the facility is a beneficial addition to or substitution for the electric generation capacity of the state; that the construction and operation of the facility will serve the public interest; and that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable. If the Siting Board finds that the facility results in or contributes to a significant and adverse disproportionate environmental impact in the community in which the facility would be located, the Siting Board must make an explicit determination that 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. The Siting Board must make an explicit determination that the facility is designed to operate in compliance with applicable state and local laws and regulations concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the Siting Board may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation or any local standard or requirement, including, but not limited to, those relating to the interconnection to and use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. The Siting Board must first have provided the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation or other local action.

In making the required determinations, the Siting Board must consider the state of available technology; the nature and economics of reasonable alternatives; the environmental impacts found; the impact of construction and operation of related facilities, such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines; the consistency of the construction and operation of the facility with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan; the impact on community character; whether the facility would affect communities that are disproportionately impacted by cumulative levels of pollutants; and such additional social, economic, visual or other aesthetic, environmental and other considerations deemed pertinent by the Siting Board.

K. Compliance and Enforcement[50]

Following any rehearing and any judicial review of the decision, the Siting Board's jurisdiction over an application ceases, except that the permanent board[51] retains jurisdiction with respect to the amendment, suspension or revocation of a certificate. DPS or the Public Service Commission monitors, enforces and administers compliance with any terms and conditions set forth in the Siting Board's order granting a certificate.

L. Wind Issues Framed by the Stakeholders

Based on comments made by stakeholders during the outreach process conducted for the Siting Board in promulgating the implementing regulations, there are likely to be a robust number of issues to resolve in relation to Article 10 wind farm applications. The site-specific nature of environmental impacts unfortunately makes it difficult and inadvisable to try to resolve wind issues on a generic basis. In particular, applicants proposing wind farms should be prepared to address noise levels and impacts, including low-frequency sound and vibrations; the application of minimum setback distances between wind

turbines and streets, property lines, homes and other facilities; turbine heights; visual and community character impacts; the appropriate scope of the study area; local law applicability and reasonableness; real property ownership and access issues; wildlife issues, including impacts on bats, raptors and migratory birds; and mechanisms to ensure the building of safe structures, site restoration and decommissioning.

V. Conclusion

The key to Article 10 is to understand that the concept of "environmental compatibility and public need" requires that the facility be needed to serve electric and economic needs, but that it will only be approved if it is to be constructed in a manner that is found to be compatible with the environment.

Endnotes

1. N.Y. Public Service Law §§ 120–130 (Pub. Serv. Law).
2. 2011 N.Y. Laws ch. 388.
3. Pub. Serv. Law §§ 160–173.
4. A "general law" is a law enacted by the State Legislature which its terms and effect applies alike to all counties, cities, towns, or villages. Because it is a general law, Article 10 is not in conflict with the New York State Constitution or the home rule powers granted to New York local governments. *See* N.Y. Municipal Home Rule Law § 10(1)(a)(14); N.Y. State Local Governments §10(6),(7); N.Y. Const. art. IX, § 3.
5. The 25 megawatt threshold is roughly equivalent to the average electric power needs of 30,000 households in New York State.
6. The spot where they stood is protected within the Washington-Wayne Lookout, a 5.2-acre historic site purchased by a consortium led by the Open Space Institute, with funds provided by the Lila Acheson and DeWitt Wallace Fund for the Hudson Highlands.
7. Public Papers of Nelson A. Rockefeller 1965, pp. 1265-1266.
8. NELSON A. ROCKEFELLER, OUR ENVIRONMENT CAN BE SAVED 88 (1970).
9. *Id.*
10. *Id.*
11. *Id.* at 89.
12. *Id.*
13. Federal Power Commission, Bureau of Power, *A Review of Consolidated Edison Company: 1969 Power Supply Problems and Ten-year Expansion Plans*, December 1969, p. 69.
14. *Id.*
15. 1970 N.Y. Laws ch. 272.
16. *Id.* § 1.
17. Pub. Serv. Law § 121.
18. 1972 N.Y. Laws ch. 385 (Article VIII of the Public Service Law). Later iterations were enacted by 1978 N.Y. Laws ch. 708 (Article VIII) and 1992 N.Y. Laws ch. 516 (Article X).
19. *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608, 616 (2d Cir. 1965).
20. *Long Island Lighting Co. v. Horn*, 49 Misc.2d 717, 268 N.Y.S.2d 366 (Sup. Ct., Suffolk Co. 1964), *aff'd*, 17 N.Y.2d 652, 269 N.Y.S.2d 432 (1966).
21. 42 U.S.C. § 4321. New York's enhanced version of NEPA, the State Environmental Quality Review Act (SEQRA), did not become law until 1975. *See* N.Y. Comp. Codes R. & Regs. tit. 6, § 617 (N.Y.C.R.R.).
22. 16 N.Y.C.R.R. §§ 1000–1003.
23. Pub. Serv. Law § 160(4); *see also* Pub. Serv. Law § 161 (describing the "[g]eneral provisions relating to the board").
24. Pub. Serv. Law § 160(4).
25. *Id.*
26. Pub. Serv. Law § 161(2). In the City of New York, the chairperson of the community board, the borough president, and the mayor shall each nominate four candidates for consideration. Id.
27. Pub. Serv. Law § 163(3); 16 N.Y.C.R.R. § 1000.4.
28. 16 N.Y.C.R.R. § 1000.4(c).
29. 16 N.Y.C.R.R. § 1000.2(ah).
30. Pub. Serv. Law § 163.
31. 16 N.Y.C.R.R. § 1000.4(b).
32. 16 N.Y.C.R.R. § 1000.4(c)(1).
33. *Id.* at (c)(2).
34. *Id.* at (c)(3).
35. 16 N.Y.C.R.R. § 1000.4(c).
36. 16 N.Y.C.R.R. § 1000.4(d).
37. 16 N.Y.C.R.R. § 1000.4(e).
38. *Id.*
39. Pub. Serv. Law § 163(3); 16 N.Y.C.R.R. § 1000.5.
40. Pub. Serv. Law § 163(4); 16 N.Y.C.R.R. § 1000.10.
41. Pub. Serv. Law § 163(5).
42. Pub. Serv. Law §§ 164(1), (2), 165; 16 N.Y.C.R.R. §§ 1001, 1000.6.
43. Pub. Serv. Law § 166.
44. Pub. Serv. Law § 164(6); 16 N.Y.C.R.R. § 1000.10.
45. Pub. Serv. Law §§ 166(3), 167.
46. Pub. Serv. Law § 165(4).
47. For certain qualifying applications by an owner of an existing major electric generating facility to modify that facility or to site a new major electric generating facility adjacent or contiguous to the existing facility, the deadlines are different such that the final decision by the Siting Board must be completed within six months, the extension permitted in extraordinary circumstances is three months, and the extension permitted to consider a material and substantial amendment to the application is three months, unless the deadlines are waived by the applicant.
48. Pub. Serv. Law §§ 168, 169.
49. See 6 N.Y.C.R.R. § 487. "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
50. Pub. Serv. Law § 168(5); 16 N.Y.C.R.R. § 1002.
51. Ad hoc public members do not serve on the Siting Board when it acts as the permanent board. The permanent board has jurisdiction with respect to the promulgation of regulations for the implementation of Article 10 and with respect to the amendment, suspension or revocation of a certificate.

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