

## **Agenda**

- (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

## **Handouts**

Resolution Adopting Local Law Regulations

Selected Article 10 Regulations

Article 10 Deadlines Table

STATE OF NEW YORK  
BOARD ON  
ELECTRIC GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State Board on Electric Generation Siting and the Environment held in the City of Albany on July 10, 2012, by a unanimous vote of its five members present

BOARD MEMBERS PRESENT:

Garry A. Brown, Chairman  
New York State Public Service Commission

Louis Alexander, Alternate for  
Joseph Martens, Commissioner  
New York State Department of  
Environmental Conservation

Robert Chinery, Alternate for  
Nirav Shah, M.D., Commissioner  
New York State Department of Health

Francis J. Murray, Jr., Acting Chairman  
New York State Energy Research and Development Authority

Keith Corneau, Alternate for  
Kenneth Adams, Commissioner  
Empire State Development

CASE 12-F-0036 - In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities.

MEMORANDUM AND RESOLUTION ADOPTING ARTICLE 10 REGULATIONS

(Issued and Effective July 17, 2012)

BY THE BOARD:

INTRODUCTION

In this memorandum and resolution, the New York State Board on Electric Generation Siting and the Environment (Siting

of great value in addressing site restoration and decommissioning issues in individual cases.

1001.30 Exhibit 30: Nuclear Facilities

A facility trade organization asserts that since the Siting Board does not have the authority to override the jurisdiction of the Nuclear Regulatory Commission, it would be a useless exercise and expensive for the applicant to litigate issues outside the Siting Board purview. It requests that the proposed regulation state explicitly that the impacts on public health, public safety and environment information required to be provided for nuclear facilities will not be used by the Siting Board to make statutory findings and determinations.

Discussion

The proposed regulation already provides that the provision of this information shall not result in litigation in the Article 10 proceeding of any issue solely within the jurisdiction of the Nuclear Regulatory Commission. Whether any of the information to be provided would inform the Siting Board in making its statutory findings and determinations within its jurisdiction could only be determined on a case by case basis by examining the information so provided.

1001.31 Exhibit 31: Local Laws and Ordinances

A significant number of individuals and municipalities used the comments to express their opposition to the Siting Board having the power to override local laws. They note that Article 10 removes the decision making power for land use decisions from local governments. They assert that the "home rule" concept for land use decisions has been important in New York for a long time, and that Article 10 violates that concept. Some argue that Article 10 violates the home rule provisions of the New York State Constitution. More specifically, they assert local governments should be able to make decisions about

projects that directly affect them; local government is closest to the people and reflects their needs and concerns; the majority in the community should decide what is best for the people; while the State could standardize construction and siting for energy installations, the decision to have or not have an energy installation in a particular locality should be left for that locality to control; local board members are better able to preserve the local needs than the state; standards of each community have been set by that community with the best interest of the citizens in mind and they should be upheld for those reasons; local laws have been established to protect the beauty and character of the area and should not be overruled just for the sake of industry; the Siting Board does not answer to the citizens and thus their decisions are not reflective of the will of the people; appointees on the Siting Board would be making decisions for the people of the entire state without proper representation; the fact that the local members of the Siting Board would serve only on an Ad Hoc committee will result in local rules being disregarded; State action is unwanted; the 12-month time frame encourages speed over thoughtful consideration; and wind projects are not sustainable without government subsidies, so there is no reason to assert that these projects are essential to the State, and thus the State should not be able to overrule the local governments;

Several individuals welcome Siting Board control. They assert that due to the level of disagreement within communities and the controversy involved regarding wind projects, the State should be responsible for these decisions, not the local governments.

A number of wind developers and wind power supporters also provided extensive comments regarding local laws. An

organization that promotes wind development asserts that the regulations should not limit the basis upon which the Siting Board can rely when determining whether to waive local laws. Specifically, it asserts that the proposed regulations establish three tests for determining override, none of which are in the statute (Section 1001.31(e)(1)-(3)). It further asserts that the standard for demonstrating the override of local laws should be low and once the applicant has met the statutory standard for the findings and determinations for a certificate, the burden to maintain local laws should shift to the municipality. Other wind power supporters assert that applicants should not be required to justify a project's non-compliance with local standards. The Siting Board should rely upon wind-friendly local laws adopted by various municipalities in the State as the standard for determining whether to waive local laws. The regulations should allow an applicant to meet the "unduly burdensome" standard for waiver of local laws if it can demonstrate that the project is consistent with standards employed by wind projects already in operation. Advocates of the local law standard would then have the burden of defending continued application of the standard to the project. They also assert that applicants should not have to demonstrate that they could not comply with local law via design changes or that any departures from the local law are the minimum necessary.

Some assert that the Siting Board should evaluate a project and its compliance with only the local laws in effect at the time the application is submitted. They believe that local governments should not be able to impact the review of an Article 10 application by passing laws addressed towards and potentially with the desired goal of stopping the specific proposed project.

Several wind developers assert that the regulations should provide for an early determination of the waiver of local laws because early decision will allow developers to perform the studies and design work for the facility to satisfy the applicable local laws and make appropriate project revisions resulting in a more efficient and cost effective regulatory process, which is a particular benefit to developers of moderately-sized renewable energy projects.

A developer representative asserts that the Siting Board should retain authority to review and approve building plans, inspect construction work and certify compliance with the N.Y.S. Uniform Fire Prevention and Building Code and other similar codes.

One wind developer asked the Siting Board to provide guidance on how it would apply the "unreasonably burdensome" standard to local laws requiring (1) property value guarantees; (2) U.S.-made components; (3) constantly changing local standards; (4) setback requirements; and (5) sound limits.

Many comments follow the theme that local laws should be earnestly addressed by the Siting Board and should be upheld to the greatest extent possible so as not to deprive the municipality of its ability to protect landowner rights and the health and safety of the community. A member of the State Senate urged that the Siting Board take the needs and desires of the community into consideration when determining if a local law is unduly burdensome. More specific assertions made include local laws should be applied as a default - unless shown to be otherwise, local laws should be presumed to be reasonable, necessary and reflective of community standards; all local public comments should be taken carefully into account; in determining unreasonable and burdensome local laws, the test in the proposed regulations must be maintained; the burden of proof

must rest with the applicant; the State should not override local laws when wind projects intermingle with nonparticipating landowner rights; comparing the local costs of non-compliance with the benefits to ratepayers of electricity in the State is not a reasonable comparison; localities have put a lot of time and effort into making these laws and they are tailored specifically to the needs of the town; the language about "unreasonably burdensome" laws, is too vague and should be tightened to protect the local citizens; "unduly burdensome" should be interpreted in a manner that respects local laws and protects adversely impacted homeowners because town laws regarding wind development, land use and road use containing reasonable guidelines regarding setbacks and noise levels reflect the will of the people and ensure that the rural life-style the community enjoys will not be compromised; the facilities should have to be within substantial compliance of local laws, even if the state laws are allowed to supersede local laws; local setbacks should be respected with regard to siting of the projects; and the views of local residents and elected officials should have more weight than those of the appointed Siting Board with regard to reviewing the applications for facilities.

A locality advocacy organization asserted that local ordinances should be sustained with regard to the following essential provisions, regardless of the cost benefit balance test: (1) where turbines may be located in a town; (2) setbacks; (3) wetland and aquifer protection; (4) historic site protection; (5) sensitive environmental areas; (6) consistency with the town's comprehensive plan; (7) maximum total number of turbines allowed within town; and (8) PILOT (payments in-lieu of taxes) programs.

A municipality asserts that despite Article 10, municipalities remain free to limit the use of land by prohibiting certain types of power plants, or restricting the area in which they may be sited, because Article 10 falls short of preempting a local restriction on land uses that neither requires any local approvals nor addresses facility construction or operations. It bases its assertion on a Court of Appeals holding that state laws that establish a process for obtaining a permit do not preempt a municipality's local law banning such facilities. Analogous with the law of extractive mining in New York (Article 23, Title 27 - Environmental Conservation Law: Mined Land Reclamation), it asserts that Article 10 does not supersede local laws restricting land uses generally, and does not authorize a Siting Board to disregard local laws that do not address power plant operations. It states that this conclusion does not apply to power plants with the power of eminent domain, but notes that wind-powered facilities would not exercise eminent domain.

Some individuals and municipalities oppose any cutoff for the consideration of new local laws. They believe that the local law situation in municipalities hosting wind development is continuously evolving and is not stagnant, local laws are crucial to safeguarding the health, safety, and economy of the localities and the Siting Board should consider the impact on any local laws adopted regardless of the date. They assert that deadlines should not render crucial laws ineffective, which would give a bad name to wind energy and the Siting Board.

Some individuals and municipalities also oppose the idea of looking at the standards of a project in a different community as governing whether local laws are reasonable. They believe all local laws should be considered on a case by case basis. Some also question the behavior of developers and some



elected officials in those other communities and do not believe their actions are legitimate or entitled to precedential value.

In response to the request by the developer representative that the Siting Board should retain authority over building codes, an individual commented that the local governments should retain the right to determine if the project is in compliance with local codes (construction, fire, etc.).

#### Discussion

Some comments challenge the constitutionality of Article 10 and the proposed regulations under the "home rule" provisions of the New York State Constitution. The concept of "home rule" involves the power of a local government to adopt and implement its own laws without state government action or interference. Home rule shifts much of the responsibility for local government from the state legislature to the local community. Without home rule authority, municipalities depend for their governing authority on specific acts of the State Legislature. With home rule authority, municipalities have the right to enact laws within the bounds of the state and federal constitutions that are municipal in nature and that do not frustrate or run counter to a state law or prohibition. The extent of home rule powers, however, is subject to limitations prescribed by state constitutions and statutes.

New York is considered to be a "home rule state". While municipalities in New York generally owe their origin to and derive their powers and rights from the State Legislature, the New York State Constitution<sup>5</sup> grants fairly broad home rule powers to local governments to adopt local laws. The Municipal Home Rule Law implements the home rule provisions of the Constitution. A New York municipality has authority to act by local law (i) with respect to its "property, affairs, or

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<sup>5</sup> N.Y. Const. art. IX, § 2.

government" so long as such local laws are "not inconsistent with the provisions of the constitution ... or any general law"; and (ii) with respect to other powers granted in the Municipal Home Rule Law, "whether or not they relate to its property, affairs, or government," so long as such local laws are "not inconsistent with the provisions of the constitution" or "any general law" "except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government." The power of cities, towns and villages to "perform comprehensive or other planning work relating to the jurisdiction", and to "adopt, amend and repeal zoning regulations", are among the home rule powers granted.<sup>6</sup>

A "general law" is a law enacted by the State Legislature which in terms and effect applies alike to all counties,<sup>7</sup> all cities, all towns, or all villages.<sup>8</sup> It is contrasted with a "special law" which is a law enacted by the State Legislature which in terms or effect applies to one or more, but not all, counties, cities, towns, or villages.<sup>9</sup>

If Article 10 had been drafted to apply only to generation facilities in a particular municipality or group of municipalities, but not to all such municipalities, then it would have been a special law, and because of the home rule prohibitions it could not have been enacted without a home rule message requesting enactment from the affected local governments.

But there is no limit on the State Legislature's authority to act by general laws to supersede such home rule

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<sup>6</sup> See N.Y. Mun. Home Rule Law § 10(1)(a)(14)(McKinney 2012) in conjunction with N.Y. Stat. Local Gov'ts §10(6)&(7).

<sup>7</sup> Means counties outside of New York City.

<sup>8</sup> N.Y. Const. art. IX, § 3.

<sup>9</sup> Id.

powers. Article 10, by its terms, applies alike in every municipality in the State.<sup>10</sup> Therefore, Article 10 is a general law not subject to the home rule prohibitions. Article 10 and the proposed implementing regulations are not in conflict with the New York State Constitution or the home rule powers granted to New York local governments.

As a general matter, PSL § 172(1) supplants all local procedural requirements applicable to the construction or operation of a proposed major electric generating facility (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) unless the Board expressly authorizes the exercise of the procedural requirement by the local government. The default is that the local procedural requirement is supplanted and the Siting Board does not need to take any action or adopt any findings for that to happen. PSL § 172(1) also supplants all local procedural requirements applicable to the interconnection to or use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way that the Siting Board elects not to apply, in whole or in part, pursuant to PSL §168(3)(e). The default is that the local procedural requirement is not supplanted unless the Siting Board elects to not apply it by finding that, as applied to the proposed facility, the requirement 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.

PSL § 172(1), however, does not supplant any local substantive requirements applicable to the construction or operation of a proposed major electric generating facility (includes interconnection electric transmission lines and fuel

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<sup>10</sup> N.Y. Pub. Serv. Law § 162(1)(McKinney 2012).

gas transmission lines that are not subject to review under Article VII of the PSL). Pursuant to PSL §168(3)(e), the Siting Board must find that the facility is designed to operate in compliance with all local substantive requirements, all of which shall be binding upon the applicant, unless the Siting Board elects to not apply them. The default is that the local substantive requirement is not supplanted unless the Siting Board elects to not apply it by finding that, as applied to the proposed facility, the requirement 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. In other words, unless the Siting Board finds a local ordinance to be unreasonably burdensome, the Siting Board itself applies the ordinance.

We do not agree that the information required to be included in the application by paragraphs (1) through (3) of subdivision (e) alters or diminishes the statutory findings as set forth in the statute. The statute speaks for itself. The regulations also do not preclude an applicant from presenting whatever additional relevant and material information it desires to present in the application or at the hearings to support an applicant's request. Similarly, parties on the other side of such issues are also not precluded from providing additional information.

As to the consideration of local laws adopted after the submission of an application, we will have to consider that matter on a case by case basis. We understand that there is precedent in New York in the zoning context that vested rights to construct something without regard to newly enacted local laws do not accrue unless the construction has substantially commenced pursuant to a valid permit. We are not sure whether that precedent applies, or how it would be applied in a case

having a statutory deadline for completion. We also note that the Article 10 process has some built in deadlines that, without imposing a special change in procedure, will act as a practical hindrance on the consideration of new local laws including the application deadline, the deadlines for testimony, and the date upon which hearings are closed. Presumably, a similar conundrum would be presented by a change in state laws adopted after the submission of an application. Therefore, this issue will need to be addressed on a case-by-case basis.

In regard to the request for an early determination of the waiver of local laws, Article 10 and the proposed regulations do not prohibit the Siting Board's consideration of applicant requests to override local laws at a point early on in the Article 10 process. That being said, however, applicants should consider that often the facts necessary for the Siting Board to determine whether to waive a local law will require the development of a record. Specifically, Article 10 expressly recognizes the ability of municipalities to defend their local laws; therefore, it will be likely that some level of evidence and litigation regarding the issue will be necessary prior to the Board rendering a determination.

With regard to the Siting Board retaining authority to review and approve building plans, inspect construction work and certify compliance with the N.Y.S. Uniform Fire Prevention and Building Code and other similar codes, we note, as indicated in the regulations, that the function must be performed by a city, town, village, county, or State agency qualified by the Secretary of State to review and approve the building plans, inspect the construction work, and certify compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical,

plumbing or building code. The Siting Board is not so qualified.

It is difficult to provide guidance as to how the Siting Board in individual cases will apply the "unreasonably burdensome" standard to local laws because the Ad Hoc members for each Siting Board will be different and no Ad Hoc members are on the Permanent Board promulgating the regulations. Also, the statute requires that local governments be given an opportunity to defend their specific laws before the matter can be considered. However, without deciding anything, we will make some generic observations.

While property value guarantees could be offered voluntarily by an applicant, such a requirement being imposed by local law would appear to be a tax and it is not clear that there is municipal authority to impose such a tax or to transfer applicant money to the affected property owner, or that there is Siting Board jurisdiction over tax issues. Requirements that facility components be made in the United States probably violate the interstate commerce clause of the U.S. Constitution and one or more international trade treaties that are the law of the land. Setbacks requirements would have to be considered on a case by case basis by looking at the purpose for their establishment and the circumstances of a specific site or case. A setback might be unreasonable for the purposes of preventing construction encroachments but reasonable to protect migratory flight-paths. A setback might be unreasonable for preventing noise impacts but reasonable if applied as an "overlay zone", a term of art in zoning parlance that creates special zoning districts over ordinary zoning districts further governing which uses are permitted. The reasonableness of sound limits would clearly require a case-by-case analysis. Worst case

considerations should be considered as part of any noise analysis, but they are not necessarily determinative.

Finally, as to the assertion that despite Article 10, municipalities remain free to limit the use of land by prohibiting certain types of power plants, or restricting the area in which they may be sited, without deciding anything we note that the analysis provided is not complete. The extractive mining law cited does not have a local override provision like Article 10. In addition, some uses such as the provision of a fair share of multifamily housing cannot be outright prohibited by a municipality regardless of whether the entity doing the building has eminent domain powers. There is judicial precedent in New York that necessary public utility uses cannot be prohibited, and additional judicial precedent that what constitutes a utility use is rather broad.

Having considered all of the comments, we are satisfied that the proposed regulations in this section are reasonable and that no changes are warranted.

1001.32 Exhibit 32: State Laws and Regulations

No discussion necessary.

1001.33 Exhibit 33: Other Applications and Filings

No discussion necessary.

1001.34 Exhibit 34: Electric Interconnection

A wind developer and a developer representative assert that the information required in this section should be able to be provided through a compliance filing after discretionary approvals have been obtained. They claim that the information requested is too detailed for that stage of development and that it is unnecessary to support any Siting Board determination or finding.

An individual commented that due to the socioeconomic impact of transmission lines on the community, the Siting Board

## SELECTED ARTICLE 10 REGULATIONS

### **1000.2 Definitions**

(r) Local Actions Not for the Construction or Operation of the Proposed Major Electric Generating Facility: Local action requirements that remain subject to local approval processes outside of the Article 10 process and may or may not also require local agency compliance with the State Environmental Quality Review Act (SEQRA), including local approvals required for the subdivision of land; extensions of special improvement or benefit assessment districts; tax assessment or payments in lieu of taxes determinations; consents for the extension of utility franchises to provide station power, private water company service, or similar services to the affected property; the withdrawal or consumption of water from a municipal supply; the discharge of sewage or stormwater into a municipal system; the setting and payment of hook-in fees, water rates, sewer rents and similar capital and consumption charges; industrial development agency leases; the overt grant of property rights or other privileges that would require an affirmative action by a municipality; and other similar approvals.

(s) Local Party: Any person residing in a community who may be affected by the proposed major electric generating facility at the proposed location, or any alternative location identified, who is a party to the proceeding. For the purposes of this definition, the term "residing" shall include individuals having a dwelling within a community who may be affected.

(t) Local Procedural Requirements: County, city, town and village administrative process requirements, including application, hearing, and approval requirements regarding site plans, special zoning exceptions, electrical, plumbing, and building permits, wetlands, blasting, tree cutting, excavation, fill, historic preservation, flood damage prevention, storm water management, highway work, street opening, and traffic safety permits, and other similar requirements.

(u) Local Substantive Requirements: County, city, town and village substantive standards, including zoning use restrictions; zoning lot, setback, bulk, and height requirements; noise limits; electric, plumbing, building, and flood zone construction and materials codes; noise limits; historic preservation requirements; architectural style and color requirements; limits on construction activity times and duration; road weight limits; cut and fill limits; blasting practices requirements; tree preservation requirements; wetland preservation requirements; landscaping requirements; site waste/construction debris disposal/recycling requirements; traffic maintenance and safety requirements; storm water management requirements; paving, curbing, and subgrade requirements; restrictions on date, time, duration and method of street openings; traffic maintenance and safety requirements; separation and depth of cover requirements; tap methods, materials, and sizing requirements; restoration requirements for road subgrade, base and pavement; and other similar requirements.

(ao) State Actions Not for the Construction or Operation of the Proposed Major Electric Generating Facility: State action requirements that remain subject to state approval processes outside of the Article 10 process and may also require state agency compliance with the State Environmental Quality Review



Act (SEQRA), including Commission approvals of incorporations and franchises, financings and transfers pursuant to PSL §§68, 69 & 70; the overt grant of property rights or other privileges that would require an affirmative action by a state agency or authority; approvals for the subdivision of land in the Adirondack Park where the APA has subdivision jurisdiction; and other similar approvals.

(ap) State Procedural Requirements: State agency or authority administrative process requirements, including application, hearing, permit approval, and other similar requirements.

(aq) State Substantive Requirements: State agency or authority substantive standards set by law or regulation, and other similar requirements, including, for the sake of an example, the wetlands weighing standards set forth in 6 NYCRR, Part 663.

### **1001.31 Exhibit 31: Local Laws and Ordinances**

Before preparing the exhibit required by this section, the Applicant shall consult with the municipalities or other local agencies whose requirements are the subject of the exhibit to determine whether the Applicant has correctly identified all such requirements and to determine whether any potential request by the Applicant that the Board elect to not apply any such local requirement could be obviated by design changes to the proposed facility, or otherwise.

As the information to be included in the application pursuant to this section will be used by parties to determine their positions in the issues conference and the remainder of the hearing phase of the proceeding, the lists should be created with care so as not to cause any party to needlessly expend resources due to a misclassification. For local procedural requirements supplanted by PSL §172, the Applicant shall not request that the Board elect not to apply them. Misclassification of items or the inclusion of unnecessary or inappropriate items may be grounds for finding the application not in compliance. Applicants must carefully screen their lists to correctly reflect local actions not for the construction or operation of the proposed major electric generating facility.

Exhibit 31 shall contain:

(a) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the proposed major electric generating facility (includes interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) that are of a procedural nature. These local procedural requirements are supplanted by PSL Article 10 unless the Board expressly authorizes the exercise of the procedural requirement by the local municipality or agency.

(b) A list of all local procedural requirements required to be identified pursuant to subdivision (a) of this section for which the Applicant requests that the Board expressly authorize the exercise of the procedural requirement by the local municipality or agency, including a statement why such local exercise would be desirable or appropriate.

(c) Identification of the city, town, village, county, or State agency qualified by the Secretary of State that shall review and approve the building plans, inspect the construction work, and certify compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing or building code. If no other arrangement can be made, the Department of State should be identified. The statement of identification shall include a description of the preliminary arrangement made between the Applicant and the entity that shall perform the review, approval, inspection, and compliance certification, including arrangements made to pay for the costs thereof including the costs for any consultant services necessary due to the complex nature of such facilities. If the applicable city, town or village has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local electric, plumbing and building codes, the Applicant may make a request pursuant to subdivision (b) of this section that the Board expressly authorize the exercise of the electric, plumbing and building permit application, inspection and certification processes by such city, town or village.

(d) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the proposed major electric generating facility (includes interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) that are of a substantive nature, together with a statement that the location of the facility as proposed conforms to all such local substantive requirements, except any that the applicant requests that the Board elect to not apply. Copies of zoning, flood plain and similar maps, tables and/or documents shall be included in the exhibit when such are referenced in such local substantive requirements. Pursuant to PSL §168(3)(e), the Board must find that the facility is designed to operate in compliance with these local substantive requirements, all of which shall be binding upon the applicant, unless the Board elects to not apply them by finding that, as applied to the proposed facility such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

(e) A list of all local substantive requirements required to be identified pursuant to subdivision (d) of this section for which the Applicant requests that the Board elect to not apply them by finding that, as applied to the proposed facility such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. For each local substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The statement shall include a demonstration:

- (1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility

component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable:

(2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and

(3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.

(f) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the interconnection to or use of water, sewer, telecommunication and steam lines in public rights of way that are of a procedural nature. These local procedural requirements are not supplanted unless the Board elects to not apply them by finding that, as applied to the proposed facility interconnections such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

(g) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the interconnection to or use of water, sewer, telecommunication and steam lines in public rights of way that are of a substantive nature. These local substantive requirements are not supplanted unless the Board elects to not apply them by finding that, as applied to the proposed facility interconnections such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

(h) A list of all local procedural or substantive requirements required to be identified pursuant to subdivisions (f) and (g) of this section for which the Applicant requests that the Board elect to not apply them by finding that, as applied to the proposed facility interconnections such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. For each local procedural or substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The statement shall include a demonstration:

(1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable:

(2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and

(3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.

(i) A summary table of all local substantive requirements required to be identified pursuant to subdivisions (d) and (g) of this section in two columns listing the provisions in the first column and a discussion or other showing demonstrating the degree of compliance with the substantive provision in the second column.

(j) An identification of the zoning designation or classification of all lands constituting the site of the proposed facility and a statement of the language in the zoning ordinance or local law by which it is indicated that the proposed facility is a permitted use at the proposed site. If the language of the zoning ordinance or local law indicates that the proposed facility is a permitted use at the proposed site subject to the grant of a special exception, a statement of the criteria in the zoning ordinance or local law by which qualification for such a special exception is to be determined.

**ARTICLE 10 Deadlines**

	<b>Milestone</b>	<b>Deadline</b>
1	Initial Public Involvement Plan (PIP)	At least 150 days prior to submitting a Preliminary Scoping Statement
2	DPS Comments on PIP	Within 30 days of PIP
3	Final Public Involvement Plan (PIP)	Within 30 days of DPS Comments
4	Public notice and summary of the Preliminary Scoping Statement	Due three days prior to filing Preliminary Scoping Statement
5	Preliminary Scoping Statement (PSS)	At least 150 days after the initial PIP was filed; but at least 90 days prior to submitting an Application
<b>6</b>	<b>List of Ad Hoc Candidates to the President Pro Tem of the Senate and the Speaker of the Assembly</b>	<b>Within 15 days of PSS</b>
<b>7</b>	<b>Comments on PSS</b>	<b>Within 21 days of PSS</b>
8	Summary of Comments and Reply by Applicant	Within 21 days of Deadline for Comments on PSS
9	Notice of Availability of Pre-Application Intervenor Funds	ASAP after filing of PSS (generally 7-14 days)
<b>10</b>	<b>Requests for Pre-Application Intervenor Funds</b>	<b>Within 30 days of Notice of Availability of Pre-Application Intervenor Funds</b>
<b>11</b>	<b>Initial Pre-Application Meeting to consider funding requests</b>	<b>Within no less than 45 and no more than 60 days of the filing of the PSS</b>
12	Funding Awards	At or ASAP after Initial Pre-Application Meeting
13	Notice of Proposed Stipulation	No deadline
<b>14</b>	<b>Comments on Proposed Stipulation</b>	<b>To be determined by Examiners</b>
15		
16	Public notice and summary of the Application	Due three days prior to filing Application
17	Application	At least 90 days after the PSS was filed
<b>18</b>	<b>Notice of Intent to be a Party</b>	<b>Within 45 days after filing of the Application</b>
19	Notice of Availability of Application-Phase Intervenor Funds	ASAP after filing of Application (generally 7-14 days)
<b>20</b>	<b>Requests for Application-Phase Intervenor Funds</b>	<b>Within 30 days of Notice of Availability of Application-Phase Intervenor Funds</b>
21	Determination by Chairperson of the Siting Board as to whether the documents comply as an Application	Within 60 days of the filing of the Application documents
<b>22</b>	<b>Evidentiary Hearing Schedule</b>	<b>To be determined by Examiners</b>