Understanding Article X of the Power NY Act of 2011

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On August 4, 2011, Governor Andrew Cuomo signed the Power NY Act, a bill containing a number of provisions meant to ensure the future availability of reliable energy sources in New York State. The bill passed both the State Assembly and Senate with overwhelming margins.

Taking effect immediately under the new bill is a reauthorization of Public Service Law Article X, a power plant siting law that expired January 1, 2003.[1] Under Article X, any electric generating facility having a capacity of 25 thousand kilowatts (or 25 MW) or more must submit an application for approval to a seven-member siting board appointed by the state legislature. The previous version of the law required only facilities sized 80 megawatts (80,000 KW) or larger to receive approval by a state siting board.[2]

While the new law will streamline the state's decision-making process with respect to the construction and operation of new, modified, and repowered generating facilities, it effectively centralizes energy siting decisions by removing a certain amount of land use authority granted to local governments under home rule.

Out of consideration for local conditions, the new law does require that applicants submit an extensive analysis of each project, however. As a memo on Bill No. A8510 states,[3]

> The application must contain, among other things, information related to the facility's environmental setting, potential environmental, health, and safety impacts, including a cumulative impact analysis air quality based on projected emissions from the proposed facility, a comprehensive demographic, economic and physical description of the community within which the facility is to be located, an evaluation of reasonable alternative locations for the proposed facility, and measures to minimize significant environmental impacts.

In addition, all applicants must also provide funds to support "intervenor-participation [sic] in the siting process" both during the pre-application and hearing phases of the committee hearing.

Upon receiving an application, the siting board has 60 days to determine whether the application is complete. Within a "reasonable time thereafter," the board is required to hold a public hearing during which concerns can be aired by members of the community that live nearby the proposed facility as well as state agencies and the municipality in which the facility is to be located. The law does not specify where the public hearing is to be held.

The board will make a final decision within one year after an application has been deemed complete. As a memo summarizing the reauthorization of Article X states,[4]

> The Board may not issue a certificate for the construction or operation of a major electric generating facility absent findings and determinations that, among other things, the facility will (i) beneficially add or substitute capacity in the State, (ii) minimize or avoid adverse environmental impacts, (iii) minimize or avoid adverse disproportionate impacts; and (iv) comply with all state and local laws and regulations unless such laws and regulations are found to be unreasonably burdensome with respect to the proposed project.

Proponents argue the new law will simplify the regulatory process for siting new power plants by streamlining the actual licensing process. And while there is an obvious attempt to provide transparency and time for public comment, opponents see nothing more than state intervention in what should is a local issue.[5]

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[1] New York Affordable Reliable Electricity Alliance (AREA), 2008, "Article X, New York's Power Plant Siting Law: A Primer on Its History, Status, and Importance," available at www.area-alliance.org.

[2] In terms of wind power, according to the Wind Power Law Blog (http://windpowerlaw.info), the decrease from 80 MW to 25 MW will facilitate the "installation of sites with, depending on turbine size, only some 10-17 turbines."

[3] Power NY Act of 2011, S. 5844, A. 8510, regular sess. (2011), available at http://assembly.state.ny.us/leg/.

[4] Power NY Act, 2011.

[5] Bryon Ackerman, "State will have a say in local wind projects," *Little Falls Times*, August 8, 2011, available at http://www.littlefallstimes.com/news/x1852602529/State-will-have-a-say-in-local-wind-projects; Nancy Madsen, "Power Project Bill OK'd," *Watertown Daily Times*, June 24, 2011, available at http://www.watertowndailytimes.com/article/20110624/NEWS03/306249978.