

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

**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.**

ENVIRONMENTAL ASSESSMENT FORM

Prepared By:

**NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
Three Empire State Plaza
Albany, New York 12223-1350**

**Dated: March 14, 2012
Albany, New York**

State Environmental Quality Review Environmental Assessment Form

Introduction

An environmental assessment is an evaluation of the known or potential environmental consequences of a proposed action. Such an assessment also determines whether additional relevant information about such impacts is needed. Environmental assessments help involved and interested agencies identify their concerns about the action and provide guidance to the lead agency in making its determination of significance. This document provides the substantive information solicited by Appendix C of 6 NYCRR 617.20, part of the regulations promulgated by the New York State Department of Environmental Conservation pursuant to the State Environmental Quality Review Act ("SEQRA"), Article 8 of the New York Environmental Conservation Law. Because the proposed action is in the nature of a rulemaking implementing requirements already mandated by a statute rather than physical construction, a narrative exposition of impact categories was chosen to communicate the information solicited rather than using the standard form of the Environmental Assessment Form (EAF). This document also provides the substantive information solicited by the Coastal Assessment Form prescribed by the Secretary of State pursuant to 19 NYCRR 600.4, part of the regulations promulgated by the New York State Department of State regarding waterfront revitalization of coastal areas and inland waterways.

An EAF provides an organized approach to identifying the information needed by the lead agency to make its determination of significance. A properly completed EAF describes a proposed action, its location, its purpose and its potential impacts on the environment. The EAF is the first step in the environmental impact review process and leads to either a positive declaration (requiring further analysis of the environmental impacts) or a negative declaration (requiring no further action) of potentially significant adverse environmental impact(s).

Part I – PROJECT INFORMATION

1. Applicant/Sponsor:

New York State Board on Electric Generation Siting
and the Environment ("the Siting Board")
Three Empire State Plaza
Albany, New York 12223

2. Name of Action:

Article 10 Implementation Regulations.

3/4. Location of the Action/Precise Location:

New York State

5. Proposed Action:

New regulations; not an expansion or modification/alteration.

6. Description of Action:

The New York State Board on Electric Generation Siting and the Environment is proposing to add Subchapter A (consisting of Parts 1000-1002) to 16 NYCRR Chapter X in order to implement Article 10 of the Public Service Law (PSL) with respect to the authorization of the construction and operation of major electric generating facilities, and to repeal existing Subchapter A (consisting of Parts 1000-1003) of 16 NYCRR Chapter X, which implemented former Article X. The proposed regulations implement provisions in Article 10 that were not in former Article X but, to the extent the experience gained in proceedings under former Article X remains relevant, the regulations take advantage of such experience by specifying in some detail the applicable procedures and requirements, while still allowing some flexibility in tailoring such requirements to specific cases.

Proposed Part 1000 contains sections on applicability, definitions, adoption of Public Service Commission procedures, public involvement, pre-application procedures, procedures regarding the filing, service and notice of applications, water quality and coastal certification procedures, procedures regarding discovery of additional information, documents and evidence, the fund to assist municipal and local parties in participating in Article 10 proceedings, amendment and dismissal of applications, acceptance, amendment, revocation, suspension and transfer of certificates and designation of counsel. Regarding public involvement, experience has demonstrated that active and adequate public involvement can be critical to the success of an Article 10 review process if it engages

stakeholders early enough in the process so that stakeholder concerns can be considered in the design phase of the proposal when the applicant has the most flexibility as to its plans. Early and informative engagement of stakeholders also minimizes later delays in the review process. Well-conducted public involvement programs by applicants tend to minimize misunderstandings and conflicts in Article 10 proceedings whereas poorly-conducted public involvement programs by applicants tend to exacerbate differences and conflicts. In that regard, it is proposed that applicant public involvement programs, with Department of Public Service (DPS) Staff input, be made a mandatory component of the Article 10 process. The proposed regulation is intended to create a specific process for DPS Staff to provide input into the adequacy of an intended public involvement program without being overly burdensome as to time or iterations. Regarding pre-application procedures, in establishing deadlines, a balance has been struck between the time realistically needed to perform tasks and a desire to keep the process moving. It is difficult to gauge the need for and amount of time that will be needed to negotiate stipulations, but the proposal threads the most workable path through the various competing provisions of the statute. Applicants are encouraged to seek stipulations wherever possible based on DPS Staff experience that stipulations on the methodology and scope of studies creates efficiencies for all parties regardless of perspective. In keeping with the statute, private facility applicants may limit their description and evaluation of alternative locations to parcels owned by, or under option to, such private facility applicants or their affiliates, and private facility applicants may limit their description and evaluation of alternative sources to those that are feasible considering the objectives and capabilities of the sponsor. Review of case history under former Article X demonstrates that many applicants, in the early stages of their projects, tend to focus on electric system and environmental issues and fail to understand and fully consider key issues regarding, among other topics, state laws, local laws, real property rights, and the interplay between the siting statute and other required approvals. Such shortcomings ultimately lead to delays in the review process or the later identification of flaws in a proposal after applicants and the stakeholders have expended considerable time and resources on the review of a proposal. The proposed regulations would require the applicant to address such issues as part of their preliminary planning and will hopefully lead to better proposals. The proposed regulations also require a consideration of environmental justice issues at the earliest stage possible. In addition the proposed regulations provide for funds to be made available to municipalities and local parties (during both the pre-application and post-application phases of proceedings) on an equitable basis in relation to the potential for such funding to make an affective contribution to the proceedings.

Proposed Part 1001 contains sections specifying general application requirements and exhibits concerning overview and public involvement, location of facilities, land use, electric system effects, wind, natural gas

and nuclear power facilities, electric system production modeling, alternatives, consistency with energy planning objectives, preliminary design drawings, construction, real property, cost of facilities, public health and safety, pollution control facilities, air pollutant emissions, safety and security, noise and vibration, cultural resources, geology, seismology and soils, terrestrial ecology and wetlands, water resources and aquatic ecology, visual impacts, effects on transportation and communications, socioeconomic effects, environmental justice, site restoration and decommissioning, state and local laws and ordinances, other filings, electric, gas, water, wastewater and telecommunications interconnections, electric and magnetic fields, back-up fuel, and applications to modify or build adjacent to existing facilities. The goal of proposed Part 1001 is to require enough information in applications to allow the board to make the findings and determinations required by PSL Section 168, 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 until after generating facilities are authorized.

Proposed Part 1002 contains general procedures and requirements regarding compliance filings, reporting and inspection. Detailed information to enable construction to proceed consistent with certificates is required after certificates are granted.

The action of promulgating regulations does not include any direct approval for the siting or construction of any facilities, but rather outlines procedural processes and filing requirements for submission of an application for a Certificate of Environmental Compatibility and Public Need to construct and operate major electric generating facilities in New York State. Each application for a Certificate of Environmental Compatibility and Public Need will be individually reviewed by the Siting Board to determine, among other factors, the environmental impacts of constructing any particular facility.

7-9. Amount of Land Affected; Will Proposed Action Comply with Existing Zoning or Other Existing Land Use Restrictions; What is Present Land Use in Vicinity of Project:

The action to be undertaken by the Siting Board does not include direct approval for the siting or construction of any facilities. Therefore, a consideration of site-specific amounts of land affected and present land uses are inapplicable to this evaluation.

While PSL § 172(1) does not supplant any existing zoning, other existing land use restrictions, or other local substantive requirements applicable to the construction or operation of a 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), 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 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. If the Siting Board finds an existing local ordinance to be unreasonably burdensome, the Siting Board may elect not to apply it. PSL § 168(3)(e) requires the Board to provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation or other local action issued thereunder that might be found to be unreasonably burdensome. The ability of the Siting Board to allow an applicant to not comply with existing local zoning or other existing land use restrictions has its genesis in the statute. The regulations do not go further in that regard than the statute, so the regulations themselves are not a cause of any action that does not comply with existing local zoning or other existing land use restrictions.

10-12. Does Action Involve a Permit Approval, or Funding, Now or Ultimately from any Other Governmental Agency; Does any Aspect of the Action Have a Currently Valid Permit or Approval; As a Result of the Proposed Action will Existing Permit/Approval Require Modification:

The action does not involve any permit approval or funding now or ultimately from any other governmental agency. No aspect of the action has a permit or other approval. The action will not require an existing permit or approval modification.

Purpose of the Action:

The proposed regulations are necessary for the effective implementation of PSL Article 10 as enacted by Chapter 388 of the Laws of 2011. 16 NYCRR Subchapter A is proposed to be repealed and replaced to meet the new statutory requirements. The goals of the regulations are to accommodate state and local permitting requirements in a single regulatory process and to focus regulatory review on pertinent issues regarding impacts on the environment, health, safety and infrastructure, effects on the State's electric generation capacity, compliance with state and local legal requirements, and to consider available technology, the nature and economics of reasonable alternatives, consistency with the energy policies and objectives, community character, and social, economic, environmental justice and other public interest considerations. Local procedural requirements applicable to the facility are supplanted unless the Board expressly authorizes the exercise of the procedural requirement by the local government. Local substantive requirements apply unless the Board finds them to be unreasonably burdensome in view

of the existing technology or the needs of or costs to ratepayers. Additional analyses are required where there may be concerns about environmental justice. The regulations would apply to generating facilities governed by certificates under former PSL Articles VIII and X regarding certificate amendments, revocations, suspensions, transfers and compliance matters consistent with the pertinent statutory provisions. A proposal to increase the capacity of such generating facilities by more than 25 MW would be considered under Article 10.

Experience demonstrates that well-conducted public involvement programs by applicants (including early and informative engagement of stakeholders) tend to minimize misunderstandings and conflicts. The regulations provide for an office of public information coordinator to ensure that the public and interested parties are fully assisted and advised in participating in the Article 10 process, and require applicants to conduct public involvement programs. No less than 90-days before the application is filed, the regulations require the applicant to file a preliminary scoping statement addressing key issues in a preliminary manner and giving interested parties an opportunity to give input and negotiate pre-application stipulations on the scope and methodology of required studies. Upon the filing of the preliminary scoping statement, the regulations allow for a presiding examiner to provide for awards of intervenor funds during the pre-application process to encourage municipal and other local participation at the earliest opportunity. They also provide for later separate fund awards to encourage public participation during the formal review phase of certification proceedings.

The Article 10 hearing process is designed in the regulations to operate efficiently. Most testimony is prepared, filed and distributed well in advance of any cross examination. The applicant has the burden of proof associated with any adjudicable issue. Any issue to be litigated must be relevant and material to assisting the Board in making its required findings. The hearing examiner is authorized to preclude irrelevant, repetitive, redundant or immaterial evidence.

The regulations would require each factor specified in the statute to be addressed. They would require preliminary design drawings to allow a thorough evaluation of site conditions, facility layout and structural design so the board can make the applicable statutory findings. They would also memorialize due diligence regarding site control and establish the legal basis for conducting site development activities so the board can make the applicable statutory findings. The regulations would require the characterization and quantification of existing natural resources that may be impacted by construction and operation of a proposed facility, consistent with state law and policy. The regulations would provide for a robust consideration of alternatives, but private applicants would be allowed to limit their evaluation of alternative sites to properties they own or control, and alternative sources to those that are reasonable alternatives

to the proposed facility and feasible considering their objectives and capabilities, as allowed by equivalent assessments required under the State Environmental Quality Review Act.

The regulations provide the benefit of a reasonable level of detail, while retaining flexibility for interested parties by stipulation to tailor applications to particular circumstances. The overarching aim of the draft regulations is to strike a proper balance by providing a robust body of information up front to enable parties and the public to understand proposed facilities and their impacts so they can effectively and promptly engage in the Article 10 hearing process, while not unduly burdening applicants who bear the cost of preparing applications.

Part II – IMPACT ASSESSMENT

A. Does Action Exceed any Type I Threshold in 6 NYCRR, Part 617.4:

No, the action does not exceed any Type I threshold as set forth in 6 NYCRR Part 617.4 and is an “unlisted” action.

B. Will Action Receive Coordinated Review as Provided for Unlisted Actions in 6 NYCRR Part 617.6:

No state or local agencies have any permitting or regulatory authority regarding the action. There are no “involved agencies” and a “coordinated review” is not required.

C. Could Action Result in Any Adverse Effects:

No, the described action will not cause any direct environmental effects, since the action alone does not involve physical activities that might have impacts on the environment. The regulations establish procedural processes and filing requirements for submission of an application for a Certificate of Environmental Compatibility and Public Need to construct and operate major electric generation facilities in New York State. No authorization to construct such facilities may be granted until the Siting Board has conducted a full environmental impact review.

D. Coastal Assessment

Adoption of the regulations complies with, and does not conflict with the intents and purposes of the New York State Coastal Management Program, the policies of 19 NYCRR Part 600.5, and any Local Waterfront Revitalization Program or Regional Coastal Management Program approved by the Secretary of State. The adoption of the regulations itself will not involve physical activities that might have impacts on the

environment, such as construction activity that would be located in, or contiguous to, or have a significant effect upon any of the resource areas identified on the coastal area map, including significant fish or wildlife habitats, scenic resources of statewide significance, or important agricultural lands. The adoption of the regulations itself will also not involve physical activities that might have significant effect upon commercial or recreational use of fish and wildlife resources, scenic quality of the coastal environment, development of future, or existing water dependent uses, operation of the State's major ports, land and water uses within the State's small harbors, existing or potential public recreation opportunities, or structures, sites or districts of historic, archeological or cultural significance to the State or nation. The action will not involve or result physical alteration of two acres or more of land along the shoreline, land under water or coastal waters, physical alteration of five acres or more of land located elsewhere in the coastal area, expansion of existing public services or infrastructure in undeveloped or low density areas of the coastal area, energy facilities not subject to Article VII or 10 of the Public Service Law, mining, excavation, filling or dredging in coastal waters or inland waterways, reduction of existing or potential public access to or along the shore, sale or change in use of state-owned lands located on the shoreline or under water, development within a designated flood or erosion hazard area, development on a beach, dune, barrier island or other natural feature that provides protection against flooding or erosion. The proposed action will not have a significant effect upon an area included in an approved Local Waterfront Revitalization Program or Regional Coastal Management Program.

E. Will the Action Have an Impact on the Environmental Characteristics that Caused the Establishment of a Critical Environmental Area:

No; the action to be undertaken by the Siting Board does not include approval for the siting or construction of any facilities. There will be no direct impact on the environment.

F. Is There, or is There Likely to be, Controversy Related to Potential Adverse Environmental Impacts:

No; no controversy related to potential adverse environmental impacts is expected as there will be no environmental impacts related to this action.

Part III - DETERMINATION OF SIGNIFICANCE

It has been determined that based on the information and analysis above, and any supporting documentation, that the proposed action WILL NOT result in any significant environmental impacts. The action of promulgating regulations does not include any direct approval for the siting or construction of any facilities, but rather outlines procedural processes and filing requirements for submission of an application for a Certificate of Environmental Compatibility and Public Need to construct and operate major electric generating facilities in New York State. Each application for a Certificate of Environmental Compatibility and Public Need will be individually reviewed by the Siting Board to determine, among other factors, the environmental impacts of constructing any particular facility. Adoption of the rules and regulations will have no impact on environmental conditions.

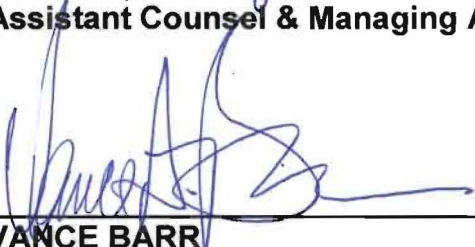
Name of Lead Agency:

New York State Board on Electric Generation Siting and the Environment

Responsible Officers in Lead Agency & Preparers:



PAUL AGRESTA
Assistant Counsel & Managing Attorney



VANCE BARR
Utility Analyst II (Environmental)

Date:

March 14, 2012