Pace Environmental Law Review

Volume 18
Issue 2 *Summer 2001*

Article 6

6-1-2001

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Recommended Citation
Paul Tonko, *Addressing Environmental Values in Resource Planning, Siting, and Acquisition*, 18 Pace Envtl. L. Rev. 319 (2001)
Available at: http://digitalcommons.pace.edu/pelr/vol18/iss2/6

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Addressing Environmental Values in Resource Planning, Siting, and Acquisition

PAUL TONKO*

For the last four years I have been sounding the alarm about New York State's energy price crisis. While states around us are statutorily guaranteeing rate reductions for all customer classes and opening their markets to competition, New York, under the failed restructuring policy of this administration, falls further behind. In fact, we have seen the exact opposite of what was promised by the administration and the industry when the settlement cases went forward. We have experienced escalating prices, reduced reliability, and no retail competition. It is unlikely that this state can reverse these trends unless we, as a State, enact a comprehensive, statutorily-based energy policy that deals with all the elements of restructuring. If we fail to do that, I believe it is inevitable that the energy price crisis will become a full-blown energy crisis and will put our economy at risk and jeopardize the health and safety of our citizens.

In the summer of 2000, spot market prices at the New York Independent System Operator hit $1,300 per megawatt hour. At the same time, Consolidated Edison (ConEd) and Orange & Rockland Utilities had instituted a market supply charge that passed on those price increases to ratepayers. Consumers shouldered the burden of higher costs - bills increased fifty percent - while investor-owned utilities enjoyed the benefits of "risk-free" capitalism. At an Assembly hearing, Eugene McGrath, CEO of ConEd, testified that his company was merely a deliverer of goods much like a milkman or Federal Express. The fact is, however, that electric

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utilities' statutory responsibility to provide electricity at just and reasonable prices has not been altered.

New Jersey and the New England states also experienced higher price spikes and scattered brownouts. In the near term, it is unlikely the utilities will be able to assist consumers by wheeling power as the capacity shortfall continues. New generation will not be online for another two to three years – in the best case scenario. Without that new capacity, and a plan to deal with the shortfall, the wholesale generation market and New York's electric grid is vulnerable.

With that as a backdrop, I will address the issues related to the Article X Siting process in New York State.[1] Very little has changed in the laws of this state with regard to energy. In the past four years, the state has enacted a net metering law, cuts in the gross receipts tax, a new tax on the third-party sale of electricity and amendments to the Siting Law. So, while the world of energy has changed dramatically during that time, the laws of New York have changed very little.

In 1999, the Legislature and the Governor enacted changes (Chapter 519)[2] to the Siting Law, which was originally enacted in 1992 (Chapter 636).[3] The amendments authorized the Commissioner of the Department of Environmental Conservation (DEC) to issue the environmental permits necessary for the siting of an electric generation facility. At the time, the New York State Board on Electric Generation Siting and the Environment was the only agency of State government capable of issuing the environmental permits necessary for the siting of electric generating facilities. However, the power to issue such permits required delegation or authority from the federal Environmental Protection Agency (EPA). EPA had not delegated or authorized the Siting Board to issue some of the permits. As a result, it was impossible to site a new electric generating facility under New York law. The amendments restored the permitting power to the Commissioner of DEC who shares the power with the Siting Board.

The amendments also included a pre-application process that includes a preliminary scoping statement. The statement must include: (1) a description of the proposed facility and its environmental setting; (2) potential environmental impacts from the con-

1. *See generally* N.Y. PUB. SERV. LAW art. 10, § 160 (McKinney 2000).
2. *See generally id.*
3. *See generally id.*

struction and operation of the proposed facility; (3) any proposed study or program of studies designed to evaluate potential environmental impacts; (4) any measures proposed to minimize environmental impacts; (5) reasonable alternatives to the proposed facility; and, (6) any other information that may be relevant or that the board may require.

The amendments also increased intervenor funds to a maximum of $400,000. The Assembly had proposed a fast tracking process for sites with an existing electric plant or industrial site. However, that was rejected at the table. The amendments also required, at the Assembly's insistence, that the Energy Planning Board undertake a study of the reliability of the state's electric system and, in particular, its transmission and distribution system. The purpose of the study, which was released in November 2000, is to examine whether distributing utilities are appropriately prepared to meet the challenges of increased demand for service and the many changes that the industry is experiencing.[4] I hope that this overview will provide a picture of the reliability of the state's electric system so that timely measures may be taken to ensure reliability.

The siting process in New York is by no means a perfect one. However, I believe it is a process that, at the very least, provides a legal and political framework for decision makers to make rational choices with respect to siting electric generation. The Board consists of seven members: the chairman of the Department of Public Service, who serves as chairman of the board; the commissioner of Environmental Conservation; the commissioner of Health; the chairman of the New York State Energy Research and Development Authority; the commissioner of Economic Development; and two ad hoc public members appointed by the Governor. One ad hoc public member shall be a resident of the judicial district in which the facility, as proposed, is to be located and one ad hoc public member shall be a resident of the county in which the facility, as proposed, is to be located.

The challenge for power plant siting in New York State is balancing the need for electricity with the environmental impacts on host communities. Everybody wants electricity to be affordable and available, unfortunately some do not want the consequences of this desire. Almost thirty Article X applications have been pro-

4. *See* N.Y. STATE ENERGY PLANNING BD., REPORT ON THE RELIABILITY OF NEW YORK'S ELECTRIC TRANSMISSION & DISTRIBUTION SYSTEMS (Nov. 2000), *available at* http://www.nyserda.org/t&dreport.pdf.

posed; at this time, only the Athens, New York project has been approved. It is obviously an indication that the process has not worked to date. However, bear in mind that another proposal just up the river from Athens, at the Bethlehem Steam Station, has been hindered by another daunting issue unrelated to Article X but completely related to my earlier point about the laws of this state - the treatment of utility property taxes in this new regime. The project is a slam dunk – it would reduce emissions, it is on an existing site and has been met with almost no public opposition.

However, the company, PSE&G, is negotiating with the town and school board on the issue of taxes looking back and are requesting a twenty year pilot program going forward. Without a resolution, the project will not go forward.

It is clear that there are major obstacles ahead. The potential capacity shortfall should serve as a clarion call to us as policymakers. New York State needs to enact a comprehensive, statutorily-based energy policy that addresses the full scope and complexity of the deregulation issue. Moreover, without new capacity, we need policies in this state that promote energy efficiency and on-site generation to ease the strain on the electric grid.

Components of the Assembly Majority's Competition Plus Plan, which has passed the Assembly in three of the last four years, would do just that. For example, my bill, A.6099B, which passed the Assembly last session, provides $350,000,000 to stimulate energy efficiency projects and innovative technology measures. Part of this program would provide up-front financial assistance through the Power Authority of the State of New York including loans interest subsidies, loan guarantees, and/or principal reductions. This financial assistance would be repaid through energy savings. It is my firm belief that this bill could be passed in the upcoming legislative session. A growing coalition of groups including environmentalists, building owners, equipment manufacturers and trade unions has expressed their firm support for this proposal.

Another bill I proposed (A.9030) would create economic opportunities through incentives from the Power Authority of the State of New York for power plants to reduce their air emissions. The Assembly has attempted to address exit fees, which are a difficult problem that require the balancing of the needs and interests of customers and utilities. I have also sponsored legislation (A.8467), which would address the exit fees paid by farmers who would like to install on-site generation. We need to find more

ways to remove barriers, provide incentives, and create jobs in the energy high tech sector.

In conclusion, New York State needs to enact comprehensive, statutorily-based energy policy that addresses the full scope and complexity of the deregulation issue. The state needs a policy that recognizes the importance of reducing the cost of electricity, while providing an even playing field for all competitors. It needs a policy free of barriers and impediments to utilizing the technology that is available today and the technology being developed by the future. Without that comprehensive policy, and the technological innovation and the economic, environmental and consumer benefits it brings, New York State risks a devastating energy crisis for years to come. It is important that we roll up our sleeves, come to the table, and provide leadership in this critical policy area.