

Proposed Amendments to RI's Energy Facility Siting Act

December 7, 2017

How did we get here?

- It is important to understand the background and purpose of the Energy Facility Siting Act ("Act").
- The Act was passed 30+ years ago and created the Energy Facility Siting Board ("EFSB").
- The Act gave the EFSB sole authority (with certain limited exceptions) to grant or deny siting permits for new energy facilities over a minimum size.
- The Town of Burrillville has experienced the power plant siting process twice in the last 30 years – first for the Ocean State Power gas-fired electric plant, and now for the proposed Invenergy gas- and oil-fired electric plant.
- The Town recognizes that the authority to grant or deny an energy facility siting permit should generally rest with the EFSB, but the Town's experiences have demonstrated that revisions to the Act would be beneficial to RI's siting process.
- Legislative changes suggested by the Town are intended to be prospective only and would not affect any docket currently pending before the EFSB.

The Town conducted a multi-state review:

- Rhode Island:
 - RI Energy Facility Siting Act - R.I.G.L. § 42-98-1 et seq (*adopted 1986, last updated 2008*)
 - RI Energy Facility Siting Board Rules of Practice and Procedure (*last updated 1996*)
- Massachusetts:
 - Legislation related to energy facility siting – Mass. Gen. Laws Ch 164, §§ 69G-R
- Connecticut:
 - Connecticut Public Utilities Environmental Standards Act – CGS Sec 16-50g – 16-50ll
 - Connecticut Energy Facility Siting Board Regulations – 980 CMR 1.00-2.09
 - Connecticut Siting Council Rules of Practice – CT Regs of State Agencies §§ 16-50j-1 to 16-50z-4
- New Hampshire:
 - Legislation related to energy facility siting – RSA 162-H
- Multi-state reviews prepared by other entities:
 - State Generation & Transmission Siting Directory; prepared by Edison Electric Institute; summary of siting processes, agencies, and regulations for all 50 states and DC (*dated October 2013*)
 - Multi-state energy facility siting review (NH, CT, ME, MA, RI, VT, NY); prepared by Raab Assoc. for NH Senate; independent study of site evaluation committees' organization, structure, and process (*dated Nov 2013*)
 - Multi-state energy facility siting review (AZ, CA, CO, FL, MA, MN, MT, NV, NH, NY, OH, OR, RI, SC, VT, WA); prepared by CT Office of Legal Research; summary comparing CT to other state's siting entities (*dated August 2002*)

How can the Act be improved?

1. Increase participation of municipalities, and especially host communities, in the siting process
2. Ensure host communities are not unfairly burdened financially
3. Increase opportunities for public participation in the siting process
4. Improve notification procedures to the public and adjacent land owners
5. Increase the size of the EFSB to be more like neighboring states
6. Give the EFSB the benefit of advice and expertise from additional RI entities
7. Ensure all applications contain enough information to allow a thorough vetting of the proposed energy facility by the EFSB and advisory agencies
8. Require the consideration of impacts on state carbon-emission-reduction goals
9. Increase the ability of host communities and the EFSB to ensure that energy facilities are operated in compliance with their certificates.

Why should we increase municipal participation in the siting process?

- Host communities are uniquely affected by the siting process
 - Host community: Municipality in which all or a portion of an energy facility is located
 - A host community should not be unfairly burdened financially or excluded from the siting process due to budgetary constraints; nor should a host community be burdened by the existence of a power plant in their city or town.
- All municipalities deserve to be heard during the siting process
 - An energy facility may be located in one community, but the impacts of a proposed facility are placed upon the entire state.
 - The Act does not require that the EFSB consider council resolutions supporting or opposing the proposed facility. For example, in the Invenenergy docket, the EFSB has ruled that council resolutions from 32 RI municipalities opposing the facility are 'irrelevant' and will not be considered as evidence by the EFSB.

How can we increase municipal participation?

- Ensure host communities have a voice on the EFSB by adding 2 members designated by the council of the host community (for matters related to an existing or proposed energy facility).
- Require host communities to prepare a report for the EFSB, including:
 - Consistency of the proposed facility with local ordinances, regulations, standards and criteria that would apply to the proposed facility;
 - Determine whether the proposed facility conforms to municipal comprehensive plan.
- Amend the Act to invite all municipalities to submit a council resolution supporting or opposing the project at any time after the application is docketed.
 - Require the EFSB to consider all such resolutions from RI municipalities as evidence.
 - Require the EFSB to abide by host community council resolutions, if a host community is already burdened by one or more fossil fuel energy facilities of 80MW or more, unless there is convincing evidence to justify disregard of the host community's wishes.
 - Require the EFSB to specifically address any such resolutions in its final decision and order.

How can we ensure municipalities are not unfairly burdened financially?

- Require the applicant to pay compensation and expense reimbursement to members of the EFSB who are not employees of the state, as well as for consultants or expert witnesses utilized by the EFSB or the host community.
- Require the applicant to pay all fees and expenses incurred by a host community (including quasi-municipal corporations within a host community):
 - To fully participate in the siting process (including legal counsel, expert evaluations, transcripts and other costs).
 - For studies related to the effects of the proposed facility, up to \$150k or .1 % of the estimated capital cost of the proposed facility (whichever is greater).
 - To retain a special inspector to assist the fire marshal for the duration of construction, to assist with an appropriate safety plan, and conduct inspections during construction to ensure compliance.
 - To train local public safety and emergency management personnel (in the host community and neighboring communities that would likely provide mutual aid within the host community) on the complex issues of electric generating facility construction and operation.

Why should we improve communication and increase opportunities for public participation?

- The Act requires that “public input shall be a part of the decision making process.” R.I.G.L. §42-98-9.1
- However, the Act limits the ability for public input, requiring only one public hearing.
- The Act also limits direct notification of residents who reside close to the proposed facility, requiring only notification of “abutting” landowners.

How can we improve communication and increase opportunities for public participation?

- Require an applicant to notify each host community at least 30 days prior to filing an application with the EFSB. This will allow the host community to begin early communications with the applicant, accurately field inquiries from residents about the application, and participate in the siting process from the start.
- Increase to 3 public hearings in each host community. Public hearings should be held only after an application is substantially complete.
- Improve public notice requirements by requiring newspaper notices to be one-half page in size and include a map of the project. If any notice is substantially inaccurate, allow the EFSB to order an additional hearing with correct notice.
- Broaden notification requirements for adjacent landowners:
 - For electric generating facilities: all land owners within 3 miles of site boundaries
 - For all other projects: all land owners within 1 mile of proposed project or corridor

Why should we increase the size of the EFSB?

- The EFSB is currently made up of three (3) members:
 - Chairperson of the Public Utilities Commission (PUC)
 - Director of Department of Environmental Management (DEM)
 - Associate Director of Administration for Planning
- Siting boards of neighboring states have more members than RI. For example:
 - **MA: 9 members** (Sec. of Energy and Environmental Affairs; Sec. of Housing & Economic Development; Comm'r of Dept of Environmental Protection; Comm'r of Division of Energy Resources; 2 Comm'rs from Dept of Public Utilities; 3 public members)
 - **CT: 9 members for energy issues** (Chair of Public Utilities Regulatory Authority; Comm'r of Energy and Environmental Protection; 1 designee of Speaker of House; 1 designee of President Pro-tempore of Senate; 5 public members appointed by Governor – at least 2 with experience in ecology, and not more than 1 with past or present affiliation with utility or utility regulatory agency)
 - **NH: 9 members** (3 Comm'rs of Public Utilities Commission; Comm'r of Dept of Environmental Services; Comm'r of Dept of Resources & Economic Development; Comm'r of Dept of Transportation; Comm'r of Dept of Cultural Resources; 2 public members appointed by the Governor – at least 1 member of NH bar, both NH residents with relevant expertise)

How does the Act limit the thorough examination of proposed energy facilities?

- The Act allows applicants to submit incomplete applications, as long as the information is complete prior to final evidentiary hearings.
 - This method is inadequate, as it prevents stakeholders and other agencies from evaluating the full effects of the proposed siting facility.
 - For example, in the Invenergy docket, significant time, money and other resources were spent collecting necessary information from the applicant. It is the applicant's burden to provide sufficient information with an application.
- The Act limits the agencies from which the EFSB must seek advisory opinions, as well as the information sought from each advisory agency.
- The Act does not require the EFSB to consider the cumulative impacts of related applications, nor does it require consideration of a proposed facility's impact on the state's carbon-emissions-reduction goals.

How can we ensure thorough examination of proposed energy facility applications?

- Ensure all applications are substantially complete before docketing:
 - Require the EFSB to reject an application, prior to docketing, if it is not substantially complete. Require the applicant to remedy all deficiencies before resubmitting the application to the EFSB.
 - To ensure all necessary utilities are in place, require applications to include a detailed description of applicant's access to water, sewer, electric and gas.
 - To ensure the EFSB and advisory agencies receive the necessary information, require applicants to submit all information required to obtain all permits, licenses or variances that would have been required if the Act were not in place.
 - To ensure application procedures and contents are adequate, require the EFSB to review its Rules of Practice and Procedure every 2 years.
- Require the EFSB to seek advisory opinions from additional agencies, including host municipality's zoning, planning and building departments, as well as utilities expected to serve the proposed facility.

How can we ensure thorough examination of proposed energy facility applications? (cont.)

- Ensure advisory agencies promptly receive all requested information:
 - Amend the time period for advisory reports so that it begins to run after the agency receives all information the agency needs to conduct a thorough review.
 - Create a procedure by which the EFSB docket shall be suspended for up to 60 days if an applicant needs time to provide information to advisory agencies. Include penalties for the applicant if it is unable (or unwilling) to provide the requested information within a reasonable time period.
- Where multiple applications relate to a single proposed project, require the EFSB to consider the cumulative effects of the related applications.
- Require the EFSB to consider whether construction of the proposed facility will adversely impact RI's ability to achieve its carbon-emission-reduction goals.

Why should we increase the ability to ensure operational compliance of energy facilities?

- The Act provides that failure to comply with EFSB rules or orders constitute grounds for suspension or revocation of a license, and/or a fine of no more than \$20k per violation.
- However, the Act provides little guidance on how the EFSB, municipalities or the public can ensure compliance and enforcement of EFSB rules and orders.
 - The Act does not require the EFSB to ensure compliance with its certificates, although the Act does allow the EFSB to designate officials to investigate complaints.
 - The Act does not provide for enforcement by the public via civil proceedings if the EFSB fails to ensure compliance.
 - The Act does not guarantee that a host community may enforce local ordinances.

How can we ensure operational compliance of energy facilities?

- Increase permissible fine from \$20k per violation to \$50k per violation (to account for inflation over 30+ years).
- Require the Board to take reasonable steps to ensure the facility is constructed, maintained and operated in compliance with its certificate and other standards.
- Permit the Board to revoke or suspend any license for any materially false statement in the application or supplemental submissions where a true answer would have resulted in refusal by the EFSB to grant the license.
- Permit any host community or the Attorney General to bring civil proceedings in superior court to enforce compliance.
- Permit any host community to enforce municipal ordinances, levy fines, and pursue other legal remedies (unless such ordinances are in direct conflict with a certificate or license granted by the EFSB).

Resources

- The following documents are included in this package for your reference:
 - The Town's proposed amendments to the Act, with all changes redlined
 - Summary of the Town's proposed amendments to the Act
- Additional reference materials are available at the following links:
 - State Generation & Transmission Siting Directory; prepared by Edison Electric Institute; summary of siting processes, agencies, and regulations for all 50 states and DC (*dated October 2013*)
 - http://www.eei.org/issuesandpolicy/transmission/Documents/State_Generation_Transmission_Siting_Directory.pdf
 - Multi-state energy facility siting review (NH, CT, ME, MA, RI, VT, NY); prepared by Raab Assoc. for NH Senate; independent study of site evaluation committees' organization, structure, and process (*dated Nov 2013*)
 - https://www.nh.gov/osi/energy/programs/documents/sb99other_states_process.pdf
 - Multi-state energy facility siting review (AZ, CA, CO, FL, MA, MN, MT, NV, NH, NY, OH, OR, RI, SC, VT, WA); prepared by CT Office of Legal Research; summary comparing CT to other state's siting entities (*dated August 2002*)
 - <https://www.cga.ct.gov/2002/olrdata/et/rpt/2002-R-0692.htm>