

December 2015 Amendments to New York's Utility Transmission Facility Siting Statute

June 13, 2016

On December 11, 2015, Governor Andrew Cuomo signed legislation that amends Article VII of the New York Public Service Law ("PSL"), which governs the siting of certain utility transmission facilities. This legislation amended Article VII in three primary ways.

First, it added a new defined term, "Landowner," to PSL § 120. The term is defined as "the holder of any right, title, or interest in real property subject to a proposed site or right of way as identified from the most recent tax roll of the appropriate city or county." The term landowner was previously undefined in PSL § 120; however, the term commonly was understood to mean an owner or occupant of a property impacted by the project. The new definition clarifies that the term includes a "holder of any right, title, or interest" in such property "as identified from the most recent tax roll."

Second, the legislation amended Article VII to add an additional notice requirement to each of PSL §§ 121(2), 121(3), and 122(2)(c). Specifically:

To the greatest extent practicable, each landowner of land on which any portion of such proposed facility [or such fuel gas transmission line] is to be located shall be served by first class mail with a notice that such landowner's property may be impacted by a project, including a description of the project and an explanation of how to file with the commission a notice of intent to be a party to the certification proceedings and the timeframe for filing such application.

Prior to this amendment, in order to inform landowners (and other persons residing in affected municipalities) about the project, Article VII required only that applicants publish a summary of the application in local newspapers. While the publication requirement remains, applicants are now also required to mail landowners information about the project and the Article VII process.

Third, Article VII was amended to add an additional finding that the New York Public Service Commission ("Commission") must make pursuant to PSL § 126 in order to issue a Certificate of Environmental Compatibility and Public Need. Specifically, the Commission must find:

that the facility represents a minimum adverse impact on active farming operations that produce crops, livestock and livestock products, as defined in section three hundred one of the agriculture and markets law, considering the state of available technology and the nature and economics of various alternatives, and the ownership and

easement rights of the impacted property.

While minimization of a project's impacts to agricultural lands always has been required in an Article VII proceeding, the Commission now must separately state its finding with respect to farming operations and consider "the ownership and easement rights" of the impacted farmland.

The Sponsor's Memorandum that accompanied the Assembly Bill states that the Legislature enacted these amendments to Article VII for two main reasons. First, it wanted to ensure that landowners are provided with as much information as possible to make navigating the Article VII process as easy as possible so that they may become involved in the proceeding if they so choose. Second, the Legislature sought to provide guidance to the Commission regarding the nature of the findings that it must make in order to protect agricultural interests. In particular, the Legislature intends for the Commission to consider:

[T]he viability of active farming within the proposed location and any irreversible and irretrievable commitments of agricultural resources which would be involved in the proposed location. Further, if the proposed location contains land designated with specific prime soil groups, the Public [Service] Commission must consider the availability of alternative locations that do not contain land with such designated soil.

If there are questions or concerns about this topic, or you would like further information, please email David T. Metcalfe at dmetcalfe@cullenanddykman.com

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