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## Power NY Act Creates Streamlined Site Approval Process

On August 4, 2011, Gov. Andrew M. Cuomo signed into law The Power NY Act of 2011 (the Act), an energy bill that includes, among other things, a new Article X to the New York State Public Service Law, which offers a streamlined approval process for siting major electric generating facilities. Major electric generating facilities are defined under the Act to be facilities with a nameplate capacity of at least 25 MW. As required by the Act, procedural rules and regulations related to the site certification process are expected to be adopted by the New York State Board on Electric Generation Siting and the Environment.

With the passage of The Power NY Act of 2011, developers of major electric generating facilities will be required to seek approval from a newly created New York State Board on Electric Generation Siting and the Environment (the Board). This Board will comprise heads of multiple state agencies, including the Department of Environmental Conservation, the Department of Health, the New York State Energy Research and Development Authority and the Department of Economic Development. For each project, two ad hoc public members who reside in the municipality in which the facility is proposed to be located will be appointed to the Board.

Noteworthy provisions of the act include the requirement that only a single application be filed with the multi-agency Board. Except as provided by statute, project developers will no longer be required to seek approvals from individual municipalities and state agencies. The application to the Board will require project developers to provide information on the potential environmental, health and safety issues resulting from the construction and operation of the facility. The Act provides, that prior to issuing a certificate for the construction or operation of a facility, the Board must determine that: (1) the facility is a beneficial addition or substitution for electric generation capacity in the state;

(2) the facility will serve the public interest; (3) adverse environmental effects of construction and operation will be minimized or avoided to the extent practicable; (4) to the extent that the Board finds a significant and adverse disproportionate environmental impact in the community in which the facility would be located, that the applicant will avoid, offset or minimize such impacts; and (5) the facility is designed to operate in compliance with applicable state and local laws and regulations.

The statute also requires that the Board issue final decisions within one year of an accepted application.

For more information on the content of this alert, please feel free to contact Theodore Duver, Richard Lorenzo, or any other member of our Energy Practice Group.

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