

**THE ASSOCIATION OF THE BAR  
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**COMMITTEE ON ENERGY**

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December 19, 2002

Hon. George E. Pataki  
Governor  
State Capitol  
Albany, NY 12224

Hon. Sheldon Silver  
Speaker of the Assembly  
932 Legislative Office Building  
Albany, NY 11248

Hon. Joseph L. Bruno  
Senate Majority Leader  
909 Legislative Office Building  
Albany, NY 11248

**Re: Reauthorization of Article X of the Public Service Law governing the process  
for the siting of electric generation facilities in New York**

Dear Governor Pataki, Speaker Silver and Senator Bruno:

This letter is submitted on behalf of the Committee on Energy of the Association of the Bar of the City of New York (hereinafter "the Committee")<sup>1</sup> regarding the extension of Article X of the Public Service Law, Pub. S. L. § 160 et seq. (hereafter Article X), which will sunset on January 1, 2003. The Committee strongly favors the reauthorization of Article X for the siting of power plants as discussed below.<sup>2</sup>

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<sup>1</sup>Members of the Committee are drawn from the private, government and public interest sectors, and represent diverse viewpoints with respect to energy matters in the State.

<sup>2</sup>A majority of the members of the Committee support the continued use of the Article X process, including its separate environmental review, in lieu of that set forth in the State Environmental Quality Review Act.

- **First, the Committee recommends that Article X be reauthorized for ten years to ensure planning as well as economic stability.** Given the length of time it takes for new facilities to be financed and constructed, reauthorizing Article X for ten years makes good business sense, especially now, when the electric industry is experiencing turbulent market conditions. Article X provides a specialized, expeditious and clearly defined process for the siting of new facilities that benefits both power plant developers and electric customers by having a structured system that provides New York State with newer, cleaner and more efficient energy sources. Therefore, the Committee urges the reauthorization of Article X for ten years through January 1, 2013.
- **Second, the Committee endorses allocating a reasonable amount of intervenor funds for use during Article X's preliminary scoping process.** Currently, no funds under Article X are permitted for distribution during the pre-application stage. The Committee, however, believes that robust public participation during the initial stages of a project would make for a more constructive and efficient siting process. Furthermore, such early participation would foster settlement and result in less litigation.
- **Third, the Committee supports retaining the current streamlined process for projects that replace older, less efficient units to provide incentives for newer, cleaner, more efficient plants.** Regulatory incentives for repowering projects should continue and be enhanced rather than "rolled back". The Governor's bill proposes some additional regulatory benefits for such projects, including an Article X equivalent of a SEQRA negative declaration. Such proposed measures will further encourage repowering as long as the proposed language is clarified to ensure that a project that fails to qualify for a shortened environmental review process is not required to start over at the beginning of the regular application process, but rather be allowed to continue on an expedited schedule while addressing the additional environmental review requirements of the Siting Board.

The Committee would be pleased to discuss its recommendations with you in further detail and to assist in any way it can on this important matter.

Respectfully,

**Sarah Barish-Straus**  
**Chair, Energy Committee**  
**The Association of the Bar of the City of**  
**New York**