

Speaker 1: Welcome to Eagle environment of insights podcast.

Speaker 2: You're listening to another episode of empire environmental, a mini series of legal environmental insights. This is Steve Russo. I am head of the New York environmental practice in the New York city office of Greenberg Traurig. And I'm [00:00:30] here with my guest today, the president of the New York league of conservation voters. Julie tie. Hello Julie. Hello, Steve. Thanks for having me on my pleasure now, a little disclosure, Julie and I have known each other for many years. I'm the chair of the New York league of conservation voters. We also used to work together at the department of environmental conservation. And today we're going to speak a little bit about renewable energy siting in New York. Something that both of us know a little bit about. So now getting those disclosures [00:01:00] out. If we were a fancy podcast, Julie, we'd have a cool little voiceover with a little bit of background, but we're not we're

Speaker 3: Low tech. So what

Speaker 2: We're going to do instead is I'm going to set the table for our listeners about renewable siting in New York that you and I had, uh, had a bird's-eye view of, which was that in 2011, when I went into New York state government, you were there at the department of environmental conservation. Uh, New York passed a new energy citing law called article 10, [00:01:30] which there had been an older article 10 that had elapsed, and then it was readopted and it was for traditional fossil fuel power plants siding. But one of the innovations or we thought was an innovation, was that it would also include renewable projects like utility share scale, wind, and solar. Um, so the idea there was, it would be a one-stop shop. There'll be very efficient embedded in the department of public service. And there would be the ability to overrule local laws. [00:02:00] Uh, in the event, there were people who were just trying to oppose projects for the sake of opposing them, but while also allowing for robust local government and stakeholder involvement.

Speaker 2: So fast forward six or seven years later after it had been adopted and there had been a lot of applications filed because the state of New York had really been encouraging developers to propose these projects, but none of them up to today actually [00:02:30] had actually been built and the process had become extremely bureaucratic and cumbersome. The development community energy development community had become up in arms. I'm just wondering Julie, you were there when it was adopted, you were there during this entire process having left state government only a couple of years ago, what happened, what went wrong?

Speaker 4: So, Steve, I think there was a very good setup. I think, um, you know, when they, when the law [00:03:00] was established in 2011, right, the idea was lowering the threshold to 25 megawatts would make the pro the program or open from 50 megawatts, which is what a previously had been under old article 10. And we'll call. It was really focused on, on how can we allow more renewable energy to be cited because it seemed as though the secret process, which is what products were otherwise using was not working well. And there was a lot of objections from local governments, but there was also, um, uncertainty [00:03:30] from one town to another about what the rules were. And so

there was a desire to create sort of this uniformity, I think like any new law, initially it took some time to, uh, to adopt rules and regulations and get a process stood up that, you know, would allow for projects to come into the application process.

Speaker 4: And so that was sort of the first delay, but then you had a lot of difficulty with getting clarity from the department of public service about [00:04:00] what it meant for a local law to be quote unreasonably burdensome, and therefore the state would supersede it, uh, during the proceeding. And I think there was reluctance on the part of the DPS to overrule local governments out of difference. I mean, New York is what's known as a home rule state. And so there's a deference for land use to local governments. Obviously in this instance, there's a concern that there's these great state objectives of renewable energy for [00:04:30] awhile. There, it was a 50% clean energy standard. The new law now makes up 70%, but in a hundred percent ultimately, but it was really the sort of this deference towards local governments. And that was making it very challenging for developers.

Speaker 4: And I also think that there was a situation where there was sort of not enough communication once the article 10 process had formally started, uh, between project applicants, you know, the renewable developers and the agency staff [00:05:00] that would allow for, uh, addressing concerns outside of a formal for hearing process that article 10 and vision, I think that was a real barrier that seemed to be partially sort of a way agencies do business and the way the law was constructed, that certainly seemed to be, um, you know, something that sort of dragged things, things out there was also a rigorous process that was by statute supposed [00:05:30] to take two years, but we know that no projects have gotten done in that, that like the time. And we had done a report in 2018, that 42 projects have come into article 10 since it had been adopted, uh, for renewable energy, only two had been, uh, had received their certificate and more had been withdrawn. So this was really a process that was taking far longer than anyone expected when the law was adopted. Yeah, Julie, I think

Speaker 2: Having, [00:06:00] having been there for the original article 10 and seeing it in the context of combined cycle, natural gas plants, those kinds of plants, which were five and six and 700 megawatt and had complex air permitting and other issues, I think DPS was used to that kind of project. And then they tried to use that process or your 50 megawatt, 80 megawatt, 60 megawatt, you know, less energy, less profit, less margin, [00:06:30] um, tried to use that same kind of heavy judicial quasi judicial process for the solar and wind projects. And, and they just buckled under it in my view.

Speaker 4: Yep. I think that's exactly right. You're right. They were sort of treated as though they were automatically going to be, you know, projects that were amending a lot of air pollution, um, that we're going to be having impacts on, on water with discharges, from cooling, um, things like that. And I don't think it quite [00:07:00] quite fit. Um, and you had the same staff doing both kinds of projects. Um, so I think there was sort of a partially it's a mindset, you know, you've done things a certain way for a certain period of time and changing how you do that is, is challenging.

Speaker 2: So fast-forward around 2017. I mean, the development community started to throw up their hands and get very frustrated, which is something I know about. But then the environmental advocates, I think, started to become very active after seeing this process [00:07:30] unfold after a number of years. And I wonder if you could give us some perspective about how that happened, both when you were in the government and then when you came out as an environmental advocate yourself.

Speaker 4: Sure. So in the, in the government, I think people were starting to get very frustrated that projects weren't moving forward. There were starting to be more pressure on, you know, agency staff to advance things, but there was pressure on sort of multiple fronts and trying to figure out how to make sure that that agencies were doing their jobs while [00:08:00] also trying to get projects through the pipeline. I think I actually have more perspective on this from the outside, you know, in 2019, the state adopted the climate leadership and community protection act, which has they, you know, these massive, very ambitious climate goals of carbon neutrality by 2050, but more explicitly, it has a goal of having 70% renewable energy by 2030 and a hundred percent clean energy by 2040. And right now [00:08:30] we have, you know, on any given day, we have about 26 to 28% renewable energy.

Speaker 4: Most of which is hydro power that has been in place for decades. So I think the advocates all started coming around to the fact that like, okay, in order to meet these climate goals, which, you know, all of our objectives hinge upon, uh, really having a clean grid, um, we, we realized that we needed to change the law to make it work better. Um, and governor Cuomo recognize that too, after [00:09:00] advocates and the industry all came to him and said, please help us fix this process. It's not moving as quickly as it needs to, to meet the goals that you've set out and the legislature has adopted. Um, and we really need to do that. So in 20, you know, in, in, uh, in 2020 it earlier this year, governor Cuomo proposed as part of a state of the state and executive budget. Um, the, what is now the accelerated, uh, renewable energy and community [00:09:30] benefits act.

Speaker 4: Doesn't exactly roll off the tongue. Yeah. I sometimes call it are, I just sort of make it shorter. Um, and, and really what, that, that, that God is actually interesting. It was the energy advocates or the energy developers and the, the environmental advocates and, um, many in the real estate community, interestingly in New York city, um, all, all supported, advancing this law to make it easier to streamline [00:10:00] that process. Um, and there was really, uh, a big push to get that done. Uh, it was literally being done in March in the middle of the pandemic when all of a sudden state government shut down, um, or that shut down, but they no longer allowed the public into the state Capitol, which is normally when you would be lobbying and advocating, uh, with the legislature and the governor's office for advancing legislation. I mean, I remember

Speaker 2: It, [00:10:30] it really moved super fast. It seemed like eventually the governor just snapped, announced that the process, the existing process was broken, which everybody was like, wow. And once he did that, it seemed like things really moved quickly.

Speaker 4: Well, three months later it got done this law was included in the state budget that got adopted in April that will address many of the concerns that had been identified it's specific to renewable energy. [00:11:00] So it's not burdened by the same, um, uh, by the same sort of constraints or mindset as, uh, article 10 is, although projects are, that are in article 10 are welcome to stay in article 10. It changed the ownership of the regulatory program to the department of state by establishing a whole new office, uh, the office of renewable energy siting or [inaudible]. Um, uh, many people are calling it, you know, they're right now in the, in the midst of, uh, [00:11:30] trying to find an executive director for that office, but they, they are moving full steam ahead. And it really tried to ties to streamline the process while taking into consideration community concern. Right? The new law requires that local governments, where the project will be, be consulted before a project is an application is submitted to the state so that you ensure that there's been communication. It requires there'll be a public meeting with the [00:12:00] community so that they have an opportunity to voice any concerns they might have about impacts on their, on their community.

Speaker 2: That was the real pressure point. If there was any it, as this thing flew through the legislature was the local governments were afraid. They understood the process was, was not working, but they were afraid that with all the streamlining they were going to be cut out. Right. So that was kind of the real, the real action was

Speaker 4: I will say that we at the league and, uh, Ann Reynolds at the Alliance for [00:12:30] clean energy and some other advocates, uh, we did explicit outreach to the New York state association of counties to the New York state association of towns to the New York conference of mayors. Um, because we wanted to make sure that they knew, like we're not just trying to obviate their concerns or ignore their concerns that we want to help find solutions to those concerns. You know, the law still does include an allowance for local law, but it does allow still the state to supersede that if it's unreasonably [00:13:00] burdensome, I think it tries to narrow what the local governments can actually legislate to make that cleaner for, for the state, but also to provide more certainty for the developers. Article 10 was not providing that certainty. And the intent here is to provide greater certainty and still allow that engagement with the local governments so that they are not being sidestepped as a process. And it requires that the state consults with the local governments as they're reviewing, [00:13:30] um, the permits, so that there is that opportunity for, uh, discussion about projects that are going to be in the community for a long period of time.

Speaker 2: Yeah. I mean, that's interesting because the model you're talking about for the legislation is exactly what's now happening. None of this actually can go into effect until the regulations are issued and the draft oh, Rez regulations have just been issued in, are actually out for public comment. And what I find interesting there, Julie is [00:14:00] the state coupled that, and we did this a little shameless plug for our blog post on the Greenberg Traurig to blog. If you want to do extra homework on this, in which we talked about how they coupled the draft regulations, which again are going out with more details on this streamlined process. And then they also came out with also their community benefits project for the local governments that are going to be, you know,

having these renewable projects in their backyard, so to speak, um, including money off their utility [00:14:30] bills and things like that. So no accident there, Julia, right?

Speaker 4: No, definitely not. I think the only piece that's missing is there is a new conservation mitigation bank, uh, that will be established by the department of environment and conservation. So that we're a project is going to be impacting natural resources in particular, um, you know, threatened and endangered species potentially, uh, that the DEC or another conservation organization [00:15:00] can have a plan and do more regional and holistic mitigation of those impacts to those threatened and endangered species rather than have one-off projects, which will ultimately better be better for the environment having comprehensive plans. And it allows the people who do conservation to do the work rather than developers who really are focused on developing clean energy and that's not their area of expertise. So I think that will be a win-win for the environment and for the developers. And that [00:15:30] has been one of the burdensome components of article 10. So that that's something we, we had advocated for working with the Autobahn. So this is not, this is not something that's just for people who are focused on clean energy, but also for advocates who are focused on that for resources.

Speaker 2: Yeah. I mean, speaking of our old agency, the DC, I think there was some people were troubled that there just seemed to be difficult to strike a balance between the climate goals and fighting climate change and clean energy and other traditional and legitimate environmental [00:16:00] concerns such as endangered species and wetlands that you were, you were looking at different people within different parts of the agency, maybe perhaps somewhat siloed. And it was very the article 10 process. Wasn't really working in allowing the applicant to kind of get in there with the agency directly and try to strike some of these balances. And clearly the old Rez regs do not cut out by any stretch, the DEC or the department of parks and historic, you know, reviews and things like that. Those are [00:16:30] all still involved in the process. But what strikes me about these new regulations Julia's they resemble a lot more, the permitting that is done at our old agency, the DEC, where the applicant submits an application, they get comments back, they may meet on and talk if we ever get to do that again.

Speaker 2: And then eventually a draft permit is put out for comment. And if there are any actual real issues to litigate, it's litigated at that draft permit stage, as opposed to [00:17:00] under the old process where people were litigating project completeness. And it was just, it was impossible to almost get out of the gate to get to this. What would be a draft certificate or draft permit. The draft regulations really follow the laws and 10th there's a lot of streamlining, but there's still going to be opportunities for environmental agencies and groups and local governments to comment on the analyses that are in there.

Speaker 4: Well, I think, I think two things, one is, is they they've set [00:17:30] out more sort of, here are the things. If you meet all these criteria that unless there's some unique circumstance in, you know, on the ground, then more or less you've met the objectives, right. That you don't have to revisit and relitigate every single thing. And I think that will very much streamline the process, you know, and, and I think this is sort a natural outpouring. We saw this in our old lives with the brownfields program, right? Like they

they're keep, they're kept getting to be more and more standard conditions as you learn more about a program. And I think that's, what's happening here. [00:18:00] We have an evolution from article 10. They're obviously learning everything they need to do from article 10, trying to cut down on duplication, because there were some things that were resubmitted at multiple different places or in different ways.

Speaker 4: So they're getting the same information that they might have under article 10, but they're streamlining for the paperwork process. There's literally like they had a reduction in the number of, of actual filings you needed to do, but they're trying to create these what they're calling standardized conditions, right? And so the standardized conditions, which are things that are out for public common now, as part of the [00:18:30] part of this process will really make it much more predictable for developers, uh, to know that they're going into a project, what they can do and how to avoid some of the problems. Like, you know, what if your need, you need to be set back from a wetland, you know, X number of feet. You're going to look at your projects and figure out where, where, how can you avoid that? To the greatest extent

Speaker 2: You can, as into your construction costs, you can figure it all out when you're doing entering your leases and figuring out everything because, you know, okay, I'm going to have to have this kind of setback when [00:19:00] it comes to curtailing, you know, curtailing turbine speed because of, you know, bats during certain times of the season. I know what I need to do. I know what I'm going to lose. I can figure that in same thing with agricultural land and, and a bunch of issues that really are typically not site-specific. And as you mentioned, the mitigation bank for things where you can have a kind of a formula for when you do have to have an impact on something. So I think those performance standards, I agree with you, they are a critical piece [00:19:30] of this. Uh, I think there are some things in these draft regulations that can be improved.

Speaker 2: There's still a lot of post certificate filings that I think are sort of picked, picked up from article 10, that with this new process that's, so front-loaded where a developer's going to have to do so much of the work in advance to get a complete application, not clear to me, you know, once you have your permit, your certificate, whatever you call it, that you really need to be, that the agency has to be signing off on all these nitty-gritty details. At that [00:20:00] point, it's like, we've given you a permit. It's got a lot of specifics. You've told us where your projects going to be and how it's going to be built, do it, or you have a violation. So I think it could be tweaked.

Speaker 4: I do think, I think you're right. It's out for public comment right now. So it's definitely something that people should be weighing in on. But I also think that what we've heard from, uh, what I've heard from staff at [inaudible] is that one of the reasons why they move some of those things to the end is because there are things that people don't know until you actually go to do construction. [00:20:30] So they're trying to be mindful of that, uh, whether or not they've, they've gotten exactly right. Um, you know, obviously nothing's perfect. The fact of the matter is the law was passed in April and in September, they put out rules, you know, a draft rule. Um, and you, and I know coming from a vast bureaucracy of regulatory agencies, that is a very quick turnaround actually put out a draft rule. So I think that shows their commitment from the Cuomo

administration to making sure that this process gets six, and then [00:21:00] it gets this ball rolling very quickly, so that projects can start moving faster, which is what we all need to do in order to meet that objective of 70% renewable energy by 2030.

Speaker 4: Yeah,

Speaker 2: I think that is, you know, I think, I think there is a lot more an industry that I think had a lot of PTSD from the old process that was starting to kind of throw up its hands is, is gratified by this new process is cautiously optimistic about it. And I think they have, you know, based on what we've been seeing and the pace in which it's been [00:21:30] done, I think you, you correctly express optimism. And I will say on that note of optimism, I think we will. Um, I think we'll complete this episode of empire environmental, Julie. I really appreciate you taking the time to talk about this. You know, game-changing set of laws and regulations for renewable energy that I think are really gonna hopefully get some projects cited and really helped the state move forward towards these super ambitious, clean energy.

Speaker 4: I'm happy to talk [00:22:00] about it. It is a top priority for the league is getting renewable energy sided so that we can meet these very ambitious climate goals. And frankly, to make sure that we have a new green economy that will not just help support our environmental goals, but will really help our economicals and create good jobs.

Speaker 2: Julie Thai president of the New York league of conservation voters. Thank you again. And thank you for listening to empire environmental

Speaker 1: [inaudible].