

Preparing Your Community for a Fossil Fuel Power Plant Proposal

The proposed Glidepath Lincoln Park gas-fired power plant has revealed that the Mid-Hudson region is a target for new peaker plants. A complex of state regulations makes our region particularly attractive for power plant developers. Although we don't need additional peak capacity here, the New Capacity Zone created by the Federal Energy Regulatory Commission in 2014 means that plants built in our region can be paid for providing backup capacity as if they were located downstate where the capacity is needed. At the same time, the hurdles to getting the necessary state air permits are lower here than they would be in downstate areas that are in "nonattainment" of federal air standards. Combine that with much lower land prices here than downstate, and our region has a bullseye on it. The Lincoln Park plant, if built, could be just the first of many across the region to take advantage of this perverse combination of regulations. We know that Glidepath has already contacted other communities, so it is urgent that communities prepare from a proposal like this.

Power plants smaller than 25 MW in size are regulated by local land use law, rather than at the state level, but most communities do not have specific zoning in place for power plants. They often have language permitting "utility" structures, which Glidepath and other power plant companies may try to use to suggest that their plants are permitted uses, although this usage is usually intended to apply to distribution lines and other essential public infrastructure, not privately-owned power plants.

Don't let your community get caught unprepared for a peaker plant proposal! Communities can get out in front by examining and updating their zoning to be sure it specifies where and how power plants may be located. Communities may also choose to place a moratorium on fossil-fuel burning power plants while they develop zoning that specifically addresses power plants.

We recommend the following steps:

- 1. Review your existing code:** Does it address power plants at all? Is it vague? Could a power plant potentially fit in to a "catch-all" permitted use?
- 2. Consider issuing a temporary moratorium** while you develop zoning specific to power plants. Moratoria should always: have a valid public purpose, have a reasonable time frame, specify the time when the moratorium will expire, and strictly adhere to the procedure for adoption laid down by the enabling acts.
- 3. Decide if fossil fuel power plants should be allowed at all in your town.** You may decide to exclude power plants entirely from your municipality. They have very different impacts than other kinds of facilities. Localities can ban industrial uses as long as prohibiting a use is a reasonable exercise of its police powers to prevent damage to the rights of others and to promote the interests of the community as a whole.

4. **Develop new zoning code provisions** with specific definitions and clear conditions for fossil fuel power plants, if you decide to permit them.

Recommendations for zoning include:

- A robust “purpose and intent” section with description of potential impacts of power plants on health, safety and welfare of residents of town.
- A clear definition of “fossil fuel electric generating facility”: A facility whose primary purpose is for the generation of electric power (in excess of [one megawatt]) powered by fossil fuel for offsite use.
- A clear statement of applicability to siting and construction of fossil fuel electric generating facilities within the municipality
- Acknowledge primacy of state law for power plants 25MW or greater

IF your municipality decides to allow fossil fuel electric generating facilities:

- Limit to only heavy industrial zones
- Require a special use permit and site plan approval, with appropriate conditions
- Set criteria to address and mitigate potential impacts (i.e., screening requirements, stack height limits)
- Establish lot size and coverage limits, appropriate setbacks and building height limitations
- Require all applicable additional permits and approvals
- Require an enforceable plan and financial surety for decommissioning

Sample Code Language for Issuance of Special Use Permit

The Town may not grant a special use permit for the construction or operation of a fossil fuel power generating facility, unless it shall first find and determine:

- a) The nature of the probable environmental impact, including a specification of the predictable adverse effect on the environment, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air and water quality, fish and other marine wildlife.
- b) That the facility:
 - 1) Represents the minimum adverse environmental impact;
 - 2) Is compatible with the public health and safety;
 - 3) Will not discharge any effluent that will be in contravention of the standards adopted by the Department of Environmental Conservation;
 - 4) That the proposed facility is in compliance with criteria and requirements of this [section/chapter];
 - 5) That a harmonious relationship exists between the use of such facility and uses located in adjacent districts as reflected in the comprehensive plan; and
 - 6) That the proposed facility conforms to and is in compliance with, all zoning laws, ordinances, rules and regulations of the Town.

See [this video](#) for more information on why the Hudson Valley is a target for peaker plants (first half) and recommendations for how to prepare your zoning (second half).