

Renewable Energy Siting

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RENEWABLE ENERGY FACILITY SITING IN NEW YORK

**CAASNY 2020 ANNUAL MEETING
SEPTEMBER 15, 2020**

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AGENDA

- ❖ Review of current Article 10 process
- ❖ Review of the new “Accelerated Renewable Energy Growth and Community Benefit Act”
- ❖ Questions and Answers

INTRODUCTION

- ❖ 2011: Public Service Law Article 10 enacted for siting of power plant of 25MW and greater
- ❖ July 2019: New York enacted the Climate Leadership and Community Protection Act (“CLCPA”)
 - ❖ 40% emissions reductions from 1990 levels by 2030 and 85% emissions reductions by 2050
 - ❖ 70% electricity must be renewable energy by 2030
 - ❖ 100% of electric supply must be emissions free by 2040.
- ❖ April 2020: New York enacted the Accelerated Renewable Energy Growth and Community Benefit Act

PSL ARTICLE 10

- ❖ Applies to non-renewable and renewable energy facilities of 25 MW or greater
- ❖ State Board on Electric Generation Siting and the Environment (“Siting Board”)
 - ❖ Members: PSC, DEC, DOH, ESD, NYSERDA and 2 ad hoc local members
- ❖ Siting Board oversees siting process
- ❖ Siting Board issues a Certificate of Environmental Compatibility and Public Need
- ❖ Proscribed process: one-stop permitting with specific steps and time frames

PSL ARTICLE 10

- ▶ Article 10 Supplants SEQRA Review
 - ▶ SEQRA still applies to facilities under 25 MW
- ▶ Other State or Local Approvals Not Required
- ▶ 2 Stages:
 - ▶ Pre-application Stage: Preliminary Scoping Process
 - ▶ Application Stage:
 - ▶ Discovery, issue identification, adjudicatory hearing, briefing and Siting Board decision

PSL ARTICLE 10

- ❖ Intended to ensure broad public involvement opportunities throughout the Article 10 siting process
- ❖ Intervenor Parties
 - ❖ Municipality and residents where facility is located
 - ❖ Others
- ❖ Intervenor Funding
 - ❖ Paid by applicant
 - ❖ For legal and expert fees and expenses
 - ❖ Pre-application stage: \$350/MW up to \$200,000
 - ❖ Application stage: \$1,000/MW up to \$400,000
 - ❖ Minimum of 50% funding to municipalities
 - ❖ Remainder to local parties such as citizens groups

PSL ARTICLE 10

- ❖ Siting Board must make certain “Explicit Findings” regarding:
 - ❖ Nature of probable environmental impacts of construction and operation
 - ❖ Cumulative environmental impacts on:
 - ❖ Ecology, air, ground and surface water, wildlife, and habitat
 - ❖ Public health and safety
 - ❖ Cultural, historical and recreational resources
 - ❖ Transportation, communication, utilities and other infrastructure

PSL ARTICLE 10

- ❖ Siting Board must also determine that:
 - ❖ Facility is a “beneficial addition to or substitute for” generation capacity
 - ❖ Construction and operation are in the public interest
 - ❖ Adverse environmental effects “will be minimized or avoided to the maximum extent practicable”
 - ❖ Facility is in compliance with local laws and regulations unless:
 - ❖ Local law is “unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality”

Accelerated Renewable Energy Growth and Community Benefit Act

- ❖ April 2020: “Accelerated Renewable Energy Growth and Community Benefit Act”
 - ❖ Aims to help achieve CLCPA targets
 - ❖ Significantly streamlines siting/permitting process
 - ❖ Reduces and specifies clear permitting time frames
 - ❖ Will replace Article 10

Accelerated Renewable Energy Growth and Community Benefit Act

- ❖ Section 94-C to the Executive Law entitled “Major Renewable Energy Development”
- ❖ Does away with Preliminary Scoping Process
- ❖ Reduces Public Involvement
- ❖ New and very streamlined permitting scheme for major renewable energy projects of 25 MW and greater
 - ❖ Projects of 20 MW can also opt into the process
 - ❖ Projects in Article 10 with complete applications can opt into new process

Accelerated Renewable Energy Growth and Community Benefit Act

- ❖ Creates an entirely new office in the New York Department of State:
 - ❖ Office of Renewable Energy Siting (“ORES”)
- ❖ Executive Director of ORES solely responsible for approval of project
 - ❖ No longer multi-agency decision making board
 - ❖ No other state agency or local municipal approvals allowed provided that municipality has received notice
- ❖ Staff from other State agencies with expertise to be transferred to ORES.

Accelerated Renewable Energy Growth and Community Benefit Act

- ❖ ORES must establish Uniform Standards and Conditions
 - ❖ Within one year
 - ❖ Regarding design, engineering, construction and operation of major renewable projects
 - ❖ To avoid or minimize significant adverse environmental impacts to “maximum extent practicable” *common* to each type of renewable facilities
 - ❖ Developed in consultation with other State agencies
- ❖ ORES can set site-specific conditions to address environmental impacts not completely address by uniform standards and conditions
- ❖ ORES must also promulgate regulations to implement siting program
- ❖ Four public hearings before adoption of Uniform Standards and Conditions

Accelerated Renewable Energy Growth and Community Benefit Act

Permitting Process and Time Frames

- ❖ Application Filed
 - ❖ Must include showing that applicant consulted with local municipality regarding substantive requirements of local laws
 - ❖ Municipality is county, city, town or village
- ❖ Within 60 days: Application must be deemed complete
- ❖ Within 60 days later: ORES to publish *draft permit conditions* for 60 day public comment period
- ❖ Municipality must submit statement on whether proposed facility complies with applicable local law/regulations regarding environment, public health and safety
 - ❖ If not, then ORES can hold non-adjudicatory hearing

Accelerated Renewable Energy Growth and Community Benefit Act

Permitting Process and Time Frames

- ❖ 1 Year from complete application:
 - ❖ ORES must make a final determination *or*
 - ❖ *Default:* Permit automatically issued with conditions in draft permit
- ❖ 6 Months: ORES to make final determination *or* permit is automatically issued for projects on:
 - ❖ Existing or abandoned commercial use sites
 - ❖ Brownfield, landfills, abandoned properties
 - ❖ Dormant electric generating facilities
- ❖ PSC/DPS must monitor and enforce terms of final permit

Accelerated Renewable Energy Growth and Community Benefit Act

Permitting Process and Time Frames

Adjudicatory Hearings

- ❖ Unlike Article 10, a hearing will be held *only if* public comments raise issues which are “substantive and significant”
- ❖ Substantive and Significant standard will be set out in regulations
- ❖ DEC Regulations are a good example:
 - ❖ Issue is substantive if “sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project...” 6 NYCRR 624.4(c)
 - ❖ Issue is significant if “it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions..” 6 NYCRR 624.4(c)

Accelerated Renewable Energy Growth and Community Benefit Act

Compliance with Local Laws

- ❖ ORES can issue Final Siting Permit only if in compliance with applicable local laws and regulations
- ❖ Can “elect not to apply” local law if ORES finds that it is:
 - ❖ “unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed major renewable energy facility.”
- ❖ Much less stringent standard than Article 10 standard:
 - ❖ “unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality”

Accelerated Renewable Energy Growth and Community Benefit Act

Judicial Review

- ❖ Appeal must be filed within 90 days after ORES final determination on permit
- ❖ Article 78 rules apply to appeal
- ❖ But review limited to whether determination was:
 - ❖ Supported by substantial evidence in record
 - ❖ Conformed to procedures in the statute or regulations
 - ❖ Arbitrary, capricious or abuse of discretion
 - ❖ “Made pursuant to a process that afforded meaningful involvement of citizens affected by the facility....”

Accelerated Renewable Energy Growth and Community Benefit Act

Intervenor Funds

- ❖ \$1,000/MW
- ❖ Awarded to
 - ❖ “local agencies”
 - ❖ County, City and other subdivisions
 - ❖ “Community Intervenors”
- ❖ Funds awarded for participation in public comment periods and hearing proceedings
- ❖ Funds to be awarded to municipalities to determine if project will be in compliance with local laws and regulation
- ❖ Funds already awarded in Article 10 will transfer over to new process

Accelerated Renewable Energy Growth and Community Benefit Act

Host Community Benefits

- ❖ Final Siting Permit must require developer to provide a “host community benefit” which may be:
 - ❖ A host community benefit as determined by the PSC or
 - ❖ Another project as determined by ORES or
 - ❖ One “subsequently agreed to” between the developer and the host community

Off-Site Mitigation

- ❖ Permit may require environmental impacts to be mitigated by off-site mitigation effort funded by developer
- ❖ Permit may require payment into Endangered And Threatened Species Mitigation Fund to facilitate a “net conservation benefit”

Questions and Answers

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