

MAJOR CHANGES to the approval and permitting of renewable energy projects in NYS

By Kathy Spencer, Principal Environmental Analyst, LaBella Associates

In early April 2020, the NYS Legislature passed a budget bill that included an amendment meant to dramatically speed up the permitting of renewable energy projects in New York State. The new amendment – referred to as Section 94c of the Executive Law – stems from (and successfully maintained) many aspects of the Governor Cuomo’s “Accelerated Renewable Energy Growth and Community Benefit Act” proposed earlier this year.

The proposed changes have already gone in to effect and include: the establishment of an Office of Renewable Energy Siting (ORES), a Clean Energy Resource Development and Incentives Plan, Grid Planning and Energy Delivery Constraint Relief, and Local Community and Participation Benefits.

What do these changes mean for your town?

Here’s what your town needs to know about some of the major impacts of the law.

You may be familiar with the current approval process for large-scale renewable energy projects referred to as “Article 10.” The Article 10 review and approval process came into play in 2012 and replaced the typical SEQR/site plan review and approval processes most familiar to municipalities. Under Article 10, the final decision to approve a large-scale solar or wind project rested with the state instead of local government. Now, Article 10 is being replaced for almost all large-scale projects with a new process intended to streamline approvals.

State regulations for the new Section 94c are currently under preparation.

It appears that intervenor funds will still be available to local municipalities to support their participation in the Section 94c process (\$1,000/Megawatt), but since the process will be streamlined, the total amount of intervenor

funding will be decreased.

Projects approved under 94c will need to demonstrate “compliance with local laws.” This appears to be one of the few avenues local governments will have to shape approval conditions for utility-scale wind or solar projects. Does your municipal code have up-to-date solar and wind laws? Are your current solar and wind laws stringent enough to protect your community’s priorities? Your community’s success at maintaining a local voice in these projects hinges on having robust and up-to-date local laws.

Municipalities might be best served by acting now to review their current laws. Although the state has one year to develop detailed regulations, project applications can now be submitted under 94c, and approvals will be expedited (one year or less). Therefore, updating solar and wind laws by adding the provisions your town will need to protect your priorities is crucial to ensure your community has a voice when the next large-scale project comes knocking on your town door.

To find out about how LaBella Associates can assist you and your town attorney with local law updates, please LaBella’s Renewable Energy Team at renewables@labellapc.com. ☐

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New 94-C Permitting Process Timelines

RENEWABLE ENERGY AND CO-LOCATED ENERGY STORAGE FACILITIES >25 MW*



New timeline for projects sited on greenfields.



New timeline for projects sited on an existing or abandoned commercial use.

