Section 94-c Renewable Energy Siting Regulations
How Municipalities Can Influence the Outcome

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Agenda

- Overview of the Section 94-c Regulations
- Municipal participation in the 94-c process
- Key takeaways
2020 Accelerated Renewable Energy Growth and Community Benefit Act

- Established Executive Law Section 94-c to replace Article 10 for major renewable energy projects
  - Administered by the Office of Renewable Energy Siting (ORES) within Department of State

- Established program for NYSERDA to secure “build ready sites” for renewable energy projects

- “Host community benefit” required that may be:
  - (Now required) participation in a PSC program to provide a 10-year utility bill discount of $500/MW per year distributed among host community residential customers;
  - A project as determined by ORES; or
  - As agreed to between the applicant and host community.

- Required DPS and PSC to initiate state power grid study and planning to achieve renewable energy targets. Establishes accelerated transmission project siting approvals.
Future Large-Scale Projects-2020 NYSERDA RES Awards

Source: NYSERDA 22020 RES Solicitation Fact Sheet
NY-SUN Dashboard, Upstate Commercial
## Siting Process Comparison

<table>
<thead>
<tr>
<th>Issue</th>
<th>Local Zoning</th>
<th>Section 94-c</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project Capacity</strong></td>
<td>&lt;25 MW</td>
<td>&gt;=25 MW (required), optional for &gt;=20 MW</td>
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<tr>
<td><strong>Approval Authority</strong></td>
<td>Planning/Zoning Boards, Town Boards and other involved agencies</td>
<td>Director of ORES&lt;br&gt;DEC for federally delegated permits</td>
</tr>
<tr>
<td><strong>Presiding Authority</strong></td>
<td>Planning/Zoning Boards, Town Boards and other involved agencies</td>
<td>ORES with DEC</td>
</tr>
<tr>
<td><strong>Application Process</strong></td>
<td>Municipal Site Plan/Special Use Permit (typ)&lt;br&gt;Review Process&lt;br&gt;Other agency processes</td>
<td>ORES Regulations/SAPA</td>
</tr>
<tr>
<td><strong>Environmental Review</strong></td>
<td>SEQRA</td>
<td>• Supersedes SEQRA.&lt;br&gt;ORES and DEC identify site-specific environmental impacts that may be caused by project not addressed by uniform standards and conditions.&lt;br&gt;ORES and DEC draft site-specific permit terms and conditions for such impacts, taking into account the CLCPA targets and the environmental benefits of the project.</td>
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<tr>
<td><strong>Public Hearings</strong></td>
<td>Public statement hearings (typ)</td>
<td>• Public statement hearings and comment periods.&lt;br&gt;Adjudicatory hearings only if substantive and significant issues raised.</td>
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<tr>
<td><strong>Parties to development of scope of application and draft conditions of approval</strong></td>
<td>Approving boards and involved agencies.</td>
<td>ORES and relevant state agencies. Local agency consultations regarding certain exhibits.</td>
</tr>
<tr>
<td><strong>Compliance with local laws</strong></td>
<td>Required. Variances available.</td>
<td>• Local municipalities provide statement of whether project is in compliance with applicable local laws concerning the environment or public health and safety.&lt;br&gt;ORES may disregard a local law if it is unreasonably burdensome “in light of the CLCPA targets and the environmental benefits of the facility.”&lt;br&gt;Municipality will need to demonstrate the impact of the non-compliance is “substantive and significant” if ORES draft permit disregards local law.</td>
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Section 94-c Process (Muni Perspective)

- One consultation meeting (min.) with host municipalities
- Then one community meeting (14 to 30 day notice)
- Local agency consultations to inform application exhibits

Notice of Intent to File Application

>60 days

Applicant files Application

<60 days or deemed complete

Yes

Application Complete?

No

Revise

ORES Draft Permit Conditions published (consulting with state agencies)

Local agency funding Requests

<30 days

Local agency funds awarded

<30 days

At least 60 days

ORES and Applicant response to petitions, local law compliance statement. Applicant response to comments

<30 days

ALJ issues determination on party status, factual issues for adjudication, legal issues

Substantive and significant issue raised?

Yes

Disclosure Demands

<10 days

Pre-Filed Testimony

ALJ Recommended Decision and Assessment of Comments

<45 days from close of record

No

<15 days

<12 months

Final Decision

<60 days

ALJ issues determination on substantive and significant factual issues

Disclosure if FOILable

Municipal statement of local law compliance

<30 days

Public comments and public hearings

Party status petitions with request for adjudication

<90 days

Accelerated Judicial Review

<90 days

<60 days

Yes

No

No

12 months

No

Yes

Pre-Filed Testimony

Adjudicatory Hearing

<14 days

<45 days from close of record
Key Issues for Municipalities

- Single pre-application meeting is the only required consultation with host municipalities.
  - ORES strongly encourages applicants to conduct additional engagement.

- Consultation with other local agencies required to prepare certain exhibits:
  - Local planning officials to inform map of publicly known proposed land uses;
  - Local emergency response providers regarding contingency, site security, and safety response plans;
  - Local input to identify sensitive noise receptors;
  - Local input to identify important local viewpoints for the Visual Impact Assessment;
  - Local historic preservation groups to identify potentially eligible sites or structures for listing;
  - Highway Superintendent to provide input on transportation plan;
  - School districts to estimate incremental school operating and infrastructure costs;
  - Affected municipalities to estimate incremental municipal operating and infrastructure costs;
  - Identification of the agency to certify compliance with the Uniform Code.

- Focus is on compliance with local laws: ensure local laws are current, defensible, and address battery energy storage.

- Issues raised must be “substantive and significant”
  - Burden of persuasion is on the municipality to demonstrate a waived non-compliance with local law is substantive and significant
More information:


ORES Regulations: https://ores.ny.gov/regulations