



**Board on Electric
Generation Siting
and the Environment**

Article 10 of the Public Service Law

Siting Major Electric Generating Facilities

September 2, 2020

Overview

Article 10 provides a unified review and approval process for major electric generating facilities in New York State.



Article 10 Applies to:

- **Electric generating facilities with a proposed generating capacity of 25 MW or more.**
- **Modifications to existing generating facilities repowered to add 25 MW of capacity or more.**
- **Includes renewable energy projects, such as wind and solar powered electric generating facilities.****

** Executive Law Section 94-c

- The Accelerated Renewable Energy Growth and Community Benefit Act amended the Executive Law to add a new Section 94-c.
- It creates an Office of Renewable Energy Siting (ORES) within the Department of State that will issue siting permits for major renewable energy facilities.
- Any developer that has filed a PIP with the Siting Board may pursue Article 10 review or may seek review of its proposed project through the ORES office.
- Any major renewable energy facility that has not commenced the Article 10 review process must seek siting review from ORES.

Board on Electric Generation Siting and the Environment

- **The Siting Board oversees the Article 10 process.**
- **The Board is headed by the Chair of the Department of Public Service.**
- **Other Board members include: Heads of Department of Environmental Conservation, Department of Health, NYSERDA, Economic Development, and two members of the public who are residents of a project area.**
- **In order to construct a major electric facility, an applicant must obtain a Certificate of Environmental Compatibility and Public Need from the Siting Board.**



Article 10 Process

There are three phase of the Article 10 process:

- 1. Pre-application Phase**
- 2. Application Phase**
- 3. Compliance Phase**

1. Pre-application Phase

- **There are two major milestones in the pre-application phase:**
 - **Public Involvement Program Plan**
 - **Preliminary Scoping Statement and Stipulations Process**

Pre-Application Phase: Public Involvement Program

- Applicants must file a Public Involvement Program (PIP) Plan summarizing activities to educate, inform and involve the public in the planning process at least 150 days *before* filing a Preliminary Scoping Statement.
- Department of Public Service (DPS) staff review draft PIP Plan within 30 days and determine its adequacy.
- Applicant must respond within 30 days to DPS staff's recommendations and file the final PIP Plan.

Pre-Application Phase: Preliminary Scoping Statement

At least 90 days before filing an application, the Applicant must file a Preliminary Scoping Statement (PSS) describing:

- **Proposed facility and its environmental setting**
- **Potential significant and adverse environmental or health impacts**
- **Proposed studies to evaluate potential impacts**
- **Measures to avoid or mitigate adverse impacts**
- **Reasonable alternatives**
- **State and Federal requirements**
- **Other required information**

Pre-Application Phase: PSS

- **Comments on the PSS must be filed within 21 days of its submittal.**
- **The Applicant must pay a fee to fund a pre-application intervenor account - \$350 per MW of proposed generating capacity, up to \$200,000.**
- **Funds are available to municipal and local parties to retain expert witnesses, consultants and lawyers.**
- **Funds encourage early and effective public involvement and may be used to for approved scopes of work that will make an effective contribution to the review of the PSS and the development of an adequate scope of the project sponsor's application.**

PSS: Consultations and Stipulations

- **Parties may enter into negotiations to attempt to reach agreements (“stipulations”) on the scope and methodology of studies that the project sponsor will submit with its application.**
- **Draft stipulations are publicly filed and made available for public comment.**
- **Following a comment period, parties may finalize agreements and file final stipulations.**

2. Application Phase

- **Notice of filing an Application is published in local newspapers. The notice summarizes the project and indicates how to get access to the Application.**
- **Notice of the Application is given to state legislators in affected districts and to individuals requesting it.**
- **The Application is filed with the Siting Board and parties.**
- **It is posted on-line, and made available for public inspection at libraries in the project vicinity.**



Application Filing Requirements

The Article 10 Application must include the following:

- **Project description**
- **Pre-Application public involvement report**
- **Details of 41 required exhibits**
- **Evaluation of expected environmental and health impacts, environmental justice issues, and any reasonable and available alternative locations**
- **Application phase intervenor funding fee.**

Intervenor Fund

- **An Application must be accompanied by an intervenor funding fee of \$1,000 per MW of capacity, up to \$400,000.**
- **The fund is available to municipal and local parties to retain expert witnesses, consultants, and lawyers.**
- **Funds are established to enable municipal and local parties to participate in the review of the application and hearing process. Funds must be used to contribute to an informed decision by the Siting Board about the appropriateness of the site and facility.**
- **If an Application is later substantially amended, additional funding may be required.**

Application Phase

- **Within 60 days of receiving the application, the Siting Board Chair determines if it complies with filing requirements and any scoping stipulations.**
- **When complete, a date for the public hearing is set.**
- **Examiners hold a pre-hearing conference to identify parties, award intervenor funds, identify issues for hearing, and establish a case schedule.**

Application Phase

- **Evidentiary Process**
 - Applicant direct case presented
 - Other parties' direct cases
 - Rebuttal cases
 - Proposed settlements may occur
- **Briefing**
 - Parties summarize evidence and arguments in legal briefs

Application Phase (cont.)

- **Decision**
 - **Examiners make a Recommended Decision (R.D.)**
 - **Parties reply to the R.D. – Briefs on Exception**
 - **The Siting Board will consider the whole record, including the Examiners' R.D. and replies and will issue a decision**

Siting Board Decision

The Siting Board must make certain findings in deciding whether to grant an Article 10 Certificate.

Findings must address:

- **Environmental Impacts (including public health and safety)**
- **Electric system benefits and consistency with energy plans**
- **Compatibility with State and local laws and other requirements.**



Siting Board Decision

Environmental Impacts:

- **The nature of the environmental impacts related to construction and operation of the facility on:**
 - **Ecology, air, ground and surface water, wildlife and habitat**
 - **Public health and safety**
 - **Cultural, historical and recreational resources**
 - **Transportation, communication & utilities systems**
 - **Cumulative impacts on the local community including environmental justice regulations.**
- **Adverse environmental effects must be minimized or avoided.**

Siting Board Decision

Electric System Benefits:

- **The facility must be a “beneficial addition to or substitute for” generation capacity, and be consistent with energy plans and policies.**
- **Construction and operation are in the public interest.**

State & Local Laws:

- **The facility must comply with state/local laws and regulations, except the Board can override local provisions it finds are “unreasonably burdensome” in view of costs, technology, or the needs of electric ratepayers.**



3. Compliance Phase

There are three elements of post-certification compliance:

1. ***Pre-construction*** – includes the filing, review and approval of engineering and design documents, permits or other approvals generally before construction begins.
2. ***DPS On-site Compliance*** – Staff inspectors on hand to ensure compliance requirements are met at the facility during construction.
3. ***Long-Term Compliance*** – after construction, a facility's certificate may require long-term compliance regarding the operation of the facility over its lifetime.

How You Can Get Involved:

- **Attend public meetings provided by the applicant.**
- **Participate in Siting Board public meetings and hearings.**
- **Provide comments on a case:**
 - **Write to the Secretary of the Siting Board: Hon. Michelle L. Phillips, Siting Board, 3 Empire State Plaza, Albany NY 12223-1350**
 - **Email: secretary@dps.ny.gov**
- **Submit comments directly into the case via the Department's website.**
- **Call the toll-free Opinion Line: (800) 335-2120 to leave a comment.**

How You Can Get Involved cont.:

- **Other ways to participate in Article 10:**
- **Become a party in the case**
- **Subscribe to the case Service List**
- **Monitor the case on the Siting Board's website**
- **Register with the PSC's Document and Matter Management (DMM) system**



For More Information:

- **Contact the Article 10 Public Information Coordinator, James Denn**
 - **(518) 474-7080**
 - **James.Denn@dps.ny.gov**

