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New York May Finally Have a Renewable Energy Siting Process to Achieve Its Aggressive Climate Action Goals

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Introduction

In the past 20 years, New York has emerged as a nationwide leader in climate action based, in large part, on the significant role renewable energy development has played in both the State's economic development and its climate policy. In 2002, the New York State Energy Plan (SEP) set targets for increasing renewable energy and reducing greenhouse gas (GHG) emissions.[1] In 2004, the Public Service Commission (PSC) instituted the statewide renewable portfolio standard (RPS) to further encourage renewable energy penetration in the electricity market. The RPS set a target of 25% of retail energy consumption from renewable sources by 2014.[2] In 2008, New York became a charter member of a multi-state cooperative effort known as the Regional Greenhouse Gas Initiative (RGGI), which addresses carbon dioxide emissions in the electricity sector. RGGI was the first market-based regulatory program to limit GHG emissions in the United States and has been considered a market success.[3] In 2015, the new SEP[4] adopted the nation's highest targets at the time for renewable generation, calling for 50% of New York's electricity to be generated from renewable sources by 2030 and for a 40% reduction in statewide GHG emissions by 2030.

In order to transform the aspirational goals of the SEP into action, the governor and the PSC created a comprehensive energy strategy for New York called Reforming the Energy Vision (REV).[5] REV represents a broad effort by the governor, the PSC, the New York State Energy Research and Development Authority

[1] *2002 New York State Energy Plan and the 2005 Update Memorandum*, N.Y. State Energy Plan, https://energyplan.ny.gov/Plans/2002 (last visited May 8, 2020). The SEP established goals of increasing renewable energy use as a percentage of primary energy use to 15% by 2020 and reducing greenhouse gas emissions 5% below 1990 levels by 2010, and 10% below 1990 levels by 2020.

[2] *2002 New York State Energy Plan and the 2005 Update Memorandum*, N.Y. State Energy Plan, https://energyplan.ny.gov/Plans/2002 (last visited May 8, 2020). The RPS set a target of 25% of energy to be generated from renewable resources within 10 years.

[3] *Regional Greenhouse Gas Initiative*, NYSERDA, https://www.nyserda.ny.gov/Researchers-and-Policymakers/Regional-Greenhouse-Gas-Initiative (last visited May 8, 2020); Bruce Ho, *Key Takeaways from the Latest RGGI Investment Report*, NRDC Expert Blog (Oct. 9, 2019), https://www.nrdc.org/experts/bruce-ho/key-takeaways-latest-rggi-investment-report.

[4] Per the law, the SEP is required to be updated every four years. N.Y. Energy Law § 6-106(1).

[5] *About REV*, REV, https://rev.ny.gov/about (last visited May 8, 2020).

(NYSERDA), and others to identify regulatory, infrastructure, and market barriers to the SEP's goals. In August 2016, the PSC adopted the Clean Energy Standard (CES) to ensure that the SEP and REV goal of 50% renewable energy consumption in New York by 2030 is achieved.[6] The CES is designed to encourage development of large-scale economically viable renewable projects that can compete with all other generation sources in the electric market.

In the culmination of these efforts, last year New York enacted a historic climate law that sets statewide greenhouse gas emission limits of 60% of 1990 emissions by 2030 and 15% of 1990 emissions by 2050.[7] To reach these goals, the Climate Leadership and Community Protection Act (CLCPA) creates a Climate Action Council, which must propose a suite of strategies for attaining deep decarbonization across the economy. The CLCPA also codifies several ambitious electric sector targets, many of which were originally proposed by Governor Cuomo as enhancements to New York State's existing CES. The targets include a requirement that 70% of the state's electricity come from renewable energy by 2030, while 100% of the state's electricity supply must be emissions free by 2040. By enshrining these goals into law, the CLCPA has turned aggressive state energy planning and policy into mandates requiring specific action to achieve the combined environmental benefits from increasing electrification of the economy and developing renewable energy generation to meet the demand.

Although New York has established ambitious goals designed to encourage renewable energy development, the State's complicated, expensive, and time-consuming process for approving large-scale renewable energy projects has made achieving these goals difficult. Until recently, siting of renewable energy projects greater than 25 megawatts (MWs) fell under Public Service Law (PSL) Article 10 and the jurisdiction of the Board on Electric Generation Siting and the Environment (Siting Board).[8] Although Article 10 was enacted in 2011, the Siting Board has approved a limited number of projects to date, and only one project had begun construction as of April 2020.

To address problems in the Article 10 siting process, in April 2020, the legislature passed, and the governor signed, annual budget legislation that included the Accelerated Renewable Energy Growth and Community Benefit Act (the Act).[9] The Act replaces the existing siting process for new major renewable energy facilities and establishes a framework for achieving the mandates of the CLCPA with "three tiers": (1) establishing an expedited process for reviewing renewable energy projects that includes developing uniform permit standards and conditions applicable to classes and categories of renewable energy projects; (2) identifying build-ready sites for constructing renewable energy facilities; and (3) studying the State's existing distribution and transmission infrastructure and identifying necessary upgrades and bulk transmission investments to ensure that the benefits of adding renewable energy generation to the grid system are fully realized. The law also establishes new community benefit incentives for affected landowners and communities; incentivizes reuse of abandoned commercial and industrial sites; and creates a fund to provide mitigation for endangered or threatened species.

This article will explore the Act and how its terms can be implemented in a manner to address the problems in Article 10 and achieve the large-scale renewable build-out required to meet the ambitious goals of the CLCPA. The new law provides New York with an opportunity to finally mirror the State's aggressive climate action mandates with a siting process that can deliver renewable energy projects in a timely and cost-effective manner.

Replacing Public Service Law Article 10

The power plant siting process under PSL Article 10 was not intended to address the climate crisis and need for the rapid development of renewable energy projects that exists today. The current Article 10 was built on a version of a State siting law for power plants born out of the 1970s energy crisis—originally in Article VIII of the PSL and later known as "Article X." These early laws focused on the need to increase electricity generation through the construction and operation of traditional power plant projects.[10] Those projects were largely sponsored by State-run or private utility companies in a regulated market with costs backed by rates that were approved by the PSC. The New York energy market was eventually "deregulated," which, among other things, separated transmission-owning entities from generation, resulting in the transition of the energy market to wholesale electric generators.[11]

In 2003, the Article X siting law expired and was not renewed because of the market dynamics at that time. The expiration of Article X was followed by the increasing development of renewable energy projects, which were approved through local zoning and State Environmental Quality Review Act (SEQRA) processes.[12] From 2003 to 2011, over 1200 MWs of large-scale

[6] *Clean Energy Standard*, NYSERDA, https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard (last visited May 8, 2020).

[7] Climate Leadership and Community Protection Act, 2019 N.Y. Laws 106 (Senate Bill S6599).

[8] 16 N.Y.C.R.R. §§ 1000.1, 1000.2.

[9] The Act was included in the governor's 2021 budget bill as Part JJJ. *See* 2020 N.Y. Laws 58.

[10] *See* N.Y. AFFORDABLE RELIABLE ELEC. ALL. (AREA), ARTICLE X, NEW YORK'S POWER PLANT SITING LAW: A PRIMER ON ITS HISTORY, STATUS, AND IMPORTANCE (Feb. 7, 2008), http://nyarea.org/wp-content/uploads/ISSUE-BRIEF.Article-X-Siting-Law.02.07.08.pdf.

[11] *See* Robert Panasci, *The Amended Article X and New York's Competitive Market: An Overview*, N.Y. ENVTL. LAW., Summer 2001, at 20, https://nysba.org/NYSBA/Publications/Section%20Publications/Environmental/PastIssues/Summer2001Vol21No3/Summer2001Vol21No3Assets/NYEnvLawSum01.pdf.

[12] N.Y. ENVTL. CONSERV. LAW art. 8; 6 N.Y.C.R.R. part 617.

wind projects were constructed in New York,[13] together with some small and community-scale solar projects. Despite these development successes, the SEQRA process was cumbersome, particularly for projects located in multiple jurisdictions that were required to comply with multiple and occasionally inconsistent standards and disparate timeframes.[14] Moreover, in some instances developers faced increasing resistance at the local level, further complicating the review and approval process.

The State enacted Article 10 in 2011 to streamline the permitting process for energy projects. Article 10 was largely based on the original Article X that expired in 2003 and included enhanced environmental justice and public participation provisions.[15] Detailed regulations were promulgated requiring a nearly one-year "pre-application" timeframe and a 12-month review following a determination that the application was compliant with the requirements of the PSL.[16]

However, the timelines for Article 10 proceedings have stretched out far longer than anticipated. In some cases, the pre-application process has taken two years or more to complete. Further delays have resulted from extensions of the 12-month statutory clock for issuing certificates once the application is deemed compliant.[17] For the six projects approved since Article 10 was enacted in 2011, the average length of time from start to finish for issuance of a certificate is 3.7 years. Even though Article 10 was passed in 2011, the first wind project did not obtain a certificate until 2019.[18] In the nine years of its existence, only six projects totaling approximately 700 MW have been certified and only one project, Cassadaga Wind, is in construction.

In our experience, there are three primary issues with Article 10. The first is the length of time required in the pre-application phase. Under Article 10, projects are required to wait five months from the date of filing the Public Involvement Program Plan to submit the Scoping Statement. From then, another three months are required, at a minimum, prior to filing an application. Stipulations can be reached on the scope and content of the application, but without regulatory timeframes, the process frequently drags on for months or, in a few cases, years. A second problem is the amount of information required to be provided at each stage of the process, much of which is frequently repetitive and/or irrelevant and thus not needed to address the Siting Board's required findings to issue a certificate. The Article 10 application requirements and agency expectations have resulted in applications that are at least five or more large volumes that are rarely referred to after the initial "completeness" determination. Often the same information appears in filings for different projects for impacts that rarely differ from project to project. Finally, the standard for determining which issues should be adjudicated is easily met, resulting in litigation over issues that are either minor or lack any evidentiary foundations. The result of this process is a certificate that contains or references hundreds of conditions, coupled with requirements to prepare dozens of post-compliance filings.

The New and Improved Siting Process for Renewables

In response to the issues plaguing renewable siting under Article 10, and in recognition of the need to facilitate siting to achieve the CLCPA mandates, the governor proposed a fresh approach to the siting process. The result is the Accelerated Renewable Energy Growth and Community Benefit Act, which adds a new Section 94-c to the Executive Law, titled "Major Renewable Energy Development" (Section 94-c). Section 94-c establishes an expedited review process, the hallmarks of which are new "uniform standards and conditions" for wind and solar energy projects and a focus on addressing only significant adverse environmental impacts. The uniform standards and conditions will be supplemented by tailored conditions needed to address site-specific impacts. The law explicitly recognizes that renewable energy projects must be sited in a timely, balanced, and cost-effective manner. Under the new law, all major renewable energy facilities—which includes renewable energy systems with a nameplate generating capacity of 25 MW[19] or more, co-located energy storage systems, and electric transmission facilities less than 10 miles in length[20] —are subject to Section 94-c.

Section 94-c will be implemented by the newly established Office of Renewable Energy Siting (ORES) within the New York State Department of State. The Executive Director of ORES is

[13] *See* N.Y. INDEP. SYS. OPERATOR, GROWING WIND: FINAL REPORT OF THE NYISO 2010 WIND GENERATION STUDY (Sept. 2010), https://offshorewindhub.org/sites/default/files/resources/nyiso_9-30-2010_growingwind_0.pdf. Between 2011 and 2012, over 500 MWs of wind projects were constructed. Additionally, after 2012, another approximately 300 MWs of wind projects were exempt from Article 10 and constructed pursuant to permits obtained under local zoning and SEQRA.

[14] Ben Brazell & James Muscato, New York's Article 10 Regulations: Potential Implications on New York State Wind Power Development and a Comparison to the Ohio Siting Process (not dated), http://www.youngsommer.com/wordpress/wp-content/uploads/2012/05/2012-AWEA-Poster-Handout.pdf.

[15] In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities, Case No. 12-F-0036, Memorandum and Resolution Adopting Article 10 Regulations (Issued and Effective July 17, 2012).

[16] 16 N.Y.C.R.R. §§ 1000.4, 1000.5.

[17] *See, e.g.*, Application of Cassadaga Wind (Case No. 14-F-0490); Application of Baron Winds (Case No. 15-F-0122).

[18] Application of Cassadaga Wind (Case No. 14-F-0490).

[19] Projects between 20 MW and 25 MW may apply to become subject to the provisions of the Section 94-c process by filing an application for a siting permit. Upon submission of such application, the subject renewable energy facility will be treated as a "major renewable energy facility." Projects below the applicability threshold must obtain all required State and local permits outside the Article 10 process, including complying with all local zoning laws and SEQRA.

[20] Transmission facilities of less than 10 miles that are regulated together with the generating facility would not need a separate Article VII Certificate.

responsible for permitting decisions. No other State agency, department, or authority or municipality or political subdivision may require approvals for the "development, design, construction, operation or decommissioning" of a major renewable energy facility (including under SEQRA or PSL Article VII, which regulates transmission lines).[21] The New York State Department of Environmental Conservation (DEC) remains the permitting agency for permits issued pursuant to federally delegated or approved programs. The preemption provision is broader than the existing language in Section 172 of PSL Article 10.

Within one year of the Act's effective date, ORES must promulgate regulations to implement the siting permit program as well as the uniform standards and conditions (USC) for wind and solar projects. The regulations must include provisions requiring the service of applications on affected municipalities and political subdivisions simultaneously with submission to ORES. Until ORES adopts regulations specifying application content, permit applications under Section 94-c must conform substantially to the application requirements established under Article 10. Thus, applicants can immediately file applications with ORES; there is no need to wait for ORES to promulgate the new regulations. In fact, as discussed below, the law is drafted to allow applications under Section 94-c regardless of their status under Article 10.

Like Article 10, Section 94-c requires the applicant to make funds available to facilitate public input. Each permit application must be accompanied by a fee of $1,000 per MW (the same as Article 10); however, Section 94-c authorizes ORES to update the fee periodically to account for inflation. The proceeds will be deposited in a "local agency account" to be established by NYSERDA and will be distributed by ORES in accordance with to-be-established rules to facilitate the participation of local agencies and community intervenors during public comment periods or in hearings. Fees must be dispersed to municipalities and political subdivisions to determine whether a proposed facility is designed to be sited, constructed, and operated in compliance with applicable laws and regulations.[22] Intervenor funds already deposited for Article 10 or Article VII proceedings are to be applied to the intervenor account under Section 94-c if a project currently subject to Article 10 switches to the Section 94-c process. In addition, ORES may adopt regulations authorizing assessment of fees for purposes of recovering the costs ORES incurs to review and process siting permit applications.[23]

ORES must determine whether siting permit applications are complete within 60 days of receipt and set forth in writing the reasons why the application is incomplete. If ORES fails to make a determination within 60 days, the application is deemed complete, although the applicant may consent to an extension. No application can be deemed complete "without proof of consultation with the municipality or political subdivision where the project is proposed to be located … related to procedural and substantive requirements of local law."[24] Any Article 10 applications that have received a completeness determination will be deemed complete under Section 94-c and will not have to undergo a new completeness review. Projects in the pre-application phase of Article 10 or Article 10 applications that were not deemed complete at the time of election into Section 94-c are subject to the 60-day application review period.

Within 60 days after an application is deemed complete, ORES must publish notice of draft permit conditions, provide written notice to the municipalities in which the facility will be located, and allow at least a 60-day public comment period on the draft conditions.[25] If the comments raise a substantive and significant issue, ORES will set a date for an adjudicatory hearing to hear arguments and consider evidence.[26] If ORES adopts DEC's definition of "substantive and significant," this will be a considerable change from Article 10, which triggers adjudicatory hearings if an issue is "relevant and material.[27] The stricter standard for adjudication means that not every issue raised by agencies and intervenors necessarily is subject to review at hearing. Instead, ORES must first find that the issue is "substantive and significant."

The municipalities that receive notice of the application[28] must submit a statement to ORES indicating whether the facility complies with local laws concerning the environment or public health and safety. Although the law does not specify a deadline for the municipal statement, it is presumably due at the same time as public comments on the draft permit conditions. If the municipality submits a statement indicating that the facility is not designed to be sited, constructed, or operated in compliance with local laws, ORES will hold a non-adjudicatory (public statement) hearing in the municipality, unless ORES decides "substantive

[21] N.Y. EXEC. LAW § 94-c(6).

[22] N.Y. EXEC. LAW § 94-c(7).

[23] This is a new fee that did not exist under Article 10 but may be modeled on similar SEQRA provisions.

[24] N.Y. EXEC. LAW § 94-c(5)(b).

[25] N.Y. EXEC. LAW § 94- c(5)(c)(i).

[26] N.Y. EXEC. LAW § 94-c(5)(d).

[27] See Application of Astoria Energy, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct and Operate an Approximately 1000 Megawatt Facility in Astoria, Queens, New York, Case No. 99-F-1191, Article X and DEC Part 624 Issues Rulings (Issued May 24, 2001); In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities, Case No. 12-F-0036, Memorandum and Resolution Adopting Article 10 Regulations (Issued and Effective July 17, 2012).

[28] Note the law states "notice" will be set forth in the regulations, which have not yet been promulgated. Therefore, until regulations are adopted prescribing the process and requirements, applicants should ensure municipalities receive notice of the application filing. In any event, the law requires applicants to "consult" with municipalities on applicable local laws prior to filing an application.

and significant" issues have been raised that require an adjudicatory hearing.[29] Put differently, ORES will not hold both non-adjudicatory and adjudicatory hearings. This differs from the Article 10 process, which includes both public statement hearings and adjudicatory hearings.

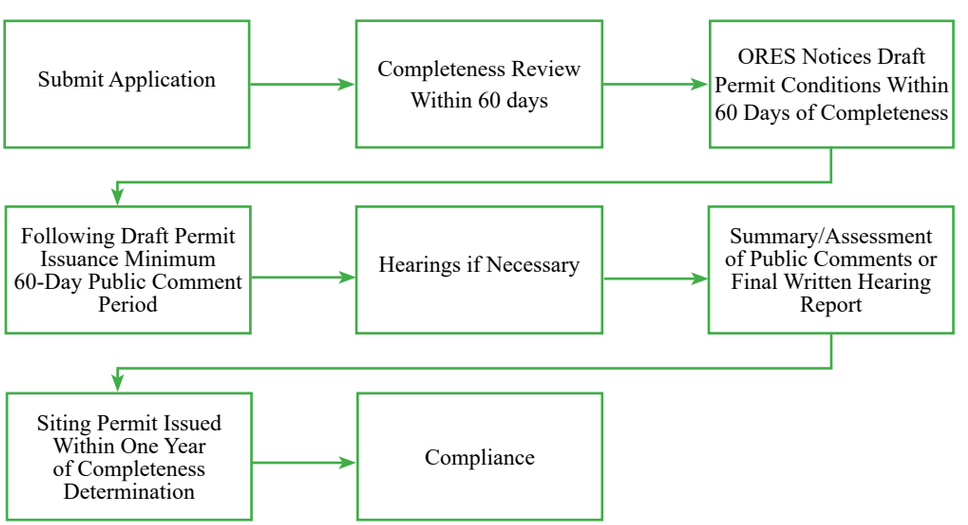
Following the close of the public comment period or adjudicatory hearing, ORES will issue a summary/assessment of public comments or final written hearing report, as appropriate. The Act provides:

> A final siting permit may only be issued if the office makes a finding that the proposed project, together with any applicable uniform and site-specific standards and conditions would comply with applicable laws and regulations. In making this determination, the office may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed major renewable energy facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed major renewable energy facility. [30]

This new language relating to waiver of local laws is one of the most significant changes from Article 10, which requires the applicant to show a local law is "unreasonably burdensome" in view of technology and the costs to and needs of rate payers in order to obtain a waiver. Article 10's unreasonably burdensome standard was borrowed from previous versions of the law and is difficult to apply to renewable energy projects since the burdens of compliance often are not driven by the interests of rate payers or issues of cost or technology. The new standard requires ORES to assess the burdens of local laws in relation to the State's ability to meet the goals of the CLCPA and the environmental benefits of the project before deciding to grant a waiver. This standard seems better suited for renewable energy projects.

ORES must issue a final decision on the siting permit within one year of the date the application is deemed complete (six months if the facility is proposed to be located on brownfield, commercial, landfill, former power plant, and "abandoned or under-utilized" sites), with the possibility of one 30-day extension. If no decision is made within that period, the siting permit will be issued by default containing all uniform and site-specific conditions found in the permit made available for public comment. The final permit must include a provision requiring a host community benefit as determined by the Public Service Commission,[31] or another project as determined by ORES, or as subsequently agreed to between the applicant and host community.[32] Following issuance of the permit, the Department of Public Service (DPS) is responsible for compliance and enforcement of permit conditions. Once the permit is issued, the facility must be constructed in accordance with that permit. The law does not exempt facilities from complying with federal laws and regulations.[33]

Overview of Section 94-c Approval Process



[29] N.Y. EXEC. LAW § 94-c(5)(c)(ii).

[30] N.Y. EXEC. LAW § 94-c(5)(e).

[31] The Act requires the PSC to commence a proceeding to establish a program under which renewable owners will fund programs to provide a discount or credit on utility bills to customers in a renewable host community or a compensatory or environmental benefit to such customers. This is intended to be applicable to projects that obtain siting permits pursuant to Section 94-c and may have significant implications depending on whether this replaces existing Host Community Agreements or other community benefits.

[32] N.Y. EXEC. LAW § 94-c(5)(f).

[33] N.Y. EXEC. LAW § 94-c(4)(a).

Challenges to the final decision must be brought in the appellate division of the county where the facility is proposed to be located by filing a petition within 90 days of permit issuance. The law continues Article 10's requirement that appeals be heard "expeditiously" and spells out the procedural requirements and scope of review of the court, including whether ORES made an arbitrary and capricious decision.

Uniform Standards and Conditions

One of the key obstacles to navigating the current Article 10 process quickly is the need to negotiate standards and conditions for each project even though often the impacts are similar. Under Article 10, several agencies have input, and each agency has its own interests and concerns. In addition, most projects receive comments from third parties, such as the public, municipalities, or environmental groups. The competing interests and concerns of each of these entities must be addressed first when establishing the scope of the application and later when drafting the final certificate conditions. Attempting to reconcile these interests requires significant time and effort. To address this problem, Section 94-c requires uniform standards and conditions. Within one year of the effective date of the statute, ORES must establish a set of USCs for siting, design, construction, and operation of each type of major renewable energy facility in consultation with NYSERDA, DEC, DPS, the New York State Department of Agriculture and Markets (DAM), and other relevant state agencies and authorities with subject matter expertise. ORES must hold four public hearings throughout the state on the proposed standards. The standards must be "designed to avoid or minimize, to the maximum extent practicable, any significant adverse environmental impacts related to the design, construction and operation of a major renewable energy facility" and "shall apply to those environmental impacts the office determines are common to each type of … facility."[34]

The Act further provides that ORES, in reviewing permit applications, will consult with DEC and identify site-specific environmental impacts that cannot be addressed by the uniform standards and conditions.[35] The agencies will then draft site-specific conditions, including provisions for avoidance or mitigation of site-specific impacts, taking into account the CLCPA targets and environmental benefits of the project. The conditions must achieve a net conservation benefit for impacts to endangered or threatened species.[36]

Where the uniform and site-specific conditions do not completely address the environmental impacts, and ORES determines that impact mitigation may be achieved off-site, ORES may require payment of a fee in an amount set forth in the final siting permit, including payment into an endangered and threatened species mitigation fund established pursuant to new Public Finance Law 99-hh.[37] The amount for endangered species mitigation is to be established in consultation with DEC.

Overall, the Section 94-c siting process is a marked improvement over Article 10. The addition of the USC holds the most promise for expediting the siting process by providing developers with certainty regarding permit conditions and focusing the siting review on site-specific environmental impacts. By comparison, the current Article 10 process often involves relitigating generally applicable permit conditions in every proceeding, significantly complicating the review and approval process. The success of the USC process will likely depend on whether ORES can successfully develop standards and conditions that apply uniformly across projects and whether the site-specific provisions are limited solely to impacts that truly require tailored conditions. If ORES permits numerous site-specific conditions at each project, the streamlining contemplated by the USC provisions will be sacrificed.

Next Steps to Implement Section 94-c

Over the next few months, the ORES will be established, the office set up, and draft regulations published for comment to implement the requirements of Section 94-c. The law requires four public hearings across the state prior to the promulgation of the regulations. Among the items to be addressed by the regulations are the content of the application and uniform standards and conditions, the standards for raising "substantive and significant" issues requiring adjudication, the requirements for seeking intervenor funds, and clarification of the standards for identifying unreasonably burdensome laws. It will also be interesting to see how projects transition from Article 10 to Section 94-c and whether the implementation of the regulations avoids some of the issues that hampered the success of Article 10. Additionally, the substantive provisions of the uniform permit have the opportunity to more reasonably address potential impacts than the certificate conditions advocated for by the agencies in Article 10.

Clean Energy Resources Development and Incentives Program

In addition to Section 94-c, which governs the siting of developer-initiated projects, the Act also adds a new Title 9-B

[34] N.Y. EXEC. LAW § 94-c(3)(c).
[35] N.Y. EXEC. LAW § 94-c(3)(d).
[36] N.Y. EXEC. LAW § 94-c(3)(d).
[37] Accelerated Renewable Energy Growth and Community Benefit Act §§ 12 and 13, 2020 N.Y. Laws 58 part JJJ, §§ 12, 13.

to Article 8 of the Public Authorities Law to establish a Clean Energy Resources Development and Incentives Program (the Build-Ready Program), which empowers NYSERDA to establish programs to "foster and encourage the orderly and expedient siting and development of renewable energy facilities," particularly at difficult-to-develop sites; "incentivize the re-use of previously developed sites"; support provision of benefits to host communities; and "protect environmental justice areas from adverse environmental impacts."[38]

NYSERDA's powers and duties under this new program include: locating, identifying, and assessing sites that appear suitable for development of build-ready sites with priority to previously developed sites and specifying criteria for such assessment; negotiating and entering into agreements with site owners outside the competitive procurement process; establishing procedures and protocols for establishing and transferring build-ready sites (including written notice to municipalities at the earliest practicable time and preliminary environmental justice screening in consultation with DEC); undertaking all work and securing necessary permits to establish build-ready sites and transfer sites to developers selected via a publicly noticed competitive bidding process; establishing the Build-Ready Program's framework, including eligibility and other criteria; establishing an incentive program to encourage property owners and communities to host major renewable energy facilities; assessing the potential need for a workforce training program; and potentially offering financing or other incentives to developers through a competitive process.[39]

Essentially, the Build-Ready Program authorizes NYSERDA to locate, identify, and assess sites in New York that appear suitable for the development of renewable energy projects. In making such an assessment, NYSERDA will give priority to "previously developed sites, existing or abandoned commercial sites, including without limitation brownfields, landfills, former commercial or industrial sites, dormant electric generating sites, or otherwise underutilized sites."[40] NYSERDA may then secure permits, property interests, agreements, and other authorizations necessary to offer build-ready sites for further development, construction, and operation. Once a site is determined to be build-ready, NYSERDA may auction the site to private investors in accordance with a competitive and transparent bidding process.[41]

The Build-Ready Program complements the Section 94-c process and establishes a two-prong approach to developing and siting renewable energy projects, one initiated by private developers and the other initiated by NYSERDA. In particular, the Build-Ready Program may alleviate some hurdles associated with developing renewable energy projects on sites that have not been particularly attractive to most developers. For example, the Build-Ready Program may reduce the costs of developing at locations that otherwise are not cost-comparable to "greenfield" sites. There are many questions about how NYSERDA will act as a market participant while operating its other renewable energy-focused programs. We expect that new business models may be needed to achieve the benefits of this program.

State Power Grid Study and Program

To further support the projects permitted under Section 94-c and the Build-Ready Program, and to ensure those projects can safely tie into New York's energy infrastructure, Section 7 of the Act requires DPS, in consultation with NYSERDA, the New York Power Authority (NYPA), the Long Island Power Authority (LIPA), the state grid operator (New York Independent System Operator (NYISO)) and the utilities, to undertake a comprehensive power grid study for the purpose of identifying distribution upgrades, local transmission upgrades, and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of the CLCPA targets. In carrying out the study, DPS is required to gather input from owners and developers of competitive transmission projects, NYISO, and providers of transmission technology and smart grid solutions and utilize information available to DPS from other pertinent studies or research relating to modernization of the state's power grid.[42] The power grid study must identify needed distribution upgrades and local transmission upgrades for each utility service territory and separately address needed bulk transmission system investments.

To enable the State to meet the CLCPA targets in an orderly and cost-effective manner, DPS may issue findings and recommendations as part of the power grid study at reasonable intervals but must make its initial report of findings and recommendations within 270 days of the effective date of the Act.[43]

Within 60 days of the initial findings and recommendations,[44] the PSC will commence two proceedings. One proceeding will establish a distribution and local transmission capital plan for each utility in whose service territory the power grid study identified distribution upgrades and local transmission upgrades that DPS determines are necessary or appropriate to achieve the CLCPA

[38] Accelerated Renewable Energy Growth and Community Benefit Act §§ 5 and 6, 2020 N.Y. Laws 58 part JJJ, §§ 5, 6.
[39] N.Y. PUB. AUTH. LAW § 1902.
[40] N.Y. PUB. AUTH. LAW § 1902(1)(b).
[41] N.Y. PUB. AUTH. LAW § 1902(4).
[42] Accelerated Renewable Energy Growth and Community Benefit Act § 7(2), 2020 N.Y. Laws 58 part JJJ, § 7(2).
[43] Accelerated Renewable Energy Growth and Community Benefit Act § 7(4), 2020 N.Y. Laws 58 part JJJ, § 7(4).
[44] The PSC has noticed the commencement of a new proceeding in Case No. 20-E-0197, which was discussed at the May session.

targets (the "state distribution and local transmission upgrade programs"). The state distribution and local transmission upgrade programs will establish a prioritized schedule for accomplishing the necessary upgrades.[45] The PSC will address implementation of such upgrades pursuant to the existing processes under the PSL.

Second, the PSC will commence a proceeding to establish a bulk transmission system investment program—consistent with its siting authority in PSL Article 7—that identifies bulk transmission investments the PSC determines are necessary or appropriate to achieve the CLCPA targets (the "state bulk transmission investment plan").[46] The PSC will establish a prioritized schedule for implementation of the state bulk transmission investment plan and identify projects that will be completed expeditiously to meet the CLCPA targets. The PSC will submit the state bulk transmission investment plan to NYISO for appropriate incorporation into NYISO's studies and plans. In general, the PSC will utilize NYISO's public policy transmission planning process to select a project necessary for implementation of the state bulk transmission investment plan, and will identify such projects no later than eight months following a notice of the state grid operator's public policy transmission planning process cycle. However, where the PSC determines that specific projects are needed expeditiously to promote the State's public policy goals, it will proceed under the NYPA process described below. The PSC will periodically review and update the state bulk transmission investment plan, including its designation of projects that must be completed expeditiously.

Section 7 of the Act encourages NYPA to develop priority transmission projects since NYPA has rights-of-way that can support investment projects and "has the financial stability, access to capital, technical expertise and experience to effectuate expeditious development of bulk transmission investments needed to help the state meet the CLCPA targets."[47] Thus, the Act encourages NYPA to develop those bulk transmission investments found by the PSC to be needed expeditiously to achieve CLCPA targets. If NYPA determines such development is appropriate, it may undertake the development of the project on its own or jointly with one or more other parties, including private sector participants, through a competitive bidding process, and take such other actions NYPA determines to be necessary in order to undertake and complete timely development of the project.

Every four years the PSC will issue a comprehensive review of the actions taken pursuant to Section 7 and their impacts on grid congestion and achievement of the CLCPA targets, and will institute new proceedings as the PSC determines to be necessary to address any deficiencies identified in the review.

Together the state distribution and local transmission upgrade programs and the state bulk transmission investment plan will help the State achieve CLCPA targets by ensuring the state's transmission infrastructure is timely and efficiently upgraded by identifying priority projects and providing NYPA with the authority to develop them.

Conclusion

The enactment of the Accelerated Renewable Energy Growth and Community Benefit Act provides New York with a significant opportunity to improve the process of siting large-scale renewable energy projects and ensure the process is implemented in a timely and cost-effective manner. Section 94-c, together with the Build-Ready Program and commitments to upgrade existing transmission infrastructure, represent a huge step forward in siting large-scale renewable energy generation projects and new and upgraded transmission in New York. For the first time, the State's renewable energy siting process places climate change front and center in the assessment of the benefits of new projects. Section 94-c, if implemented reasonably, will streamline projects by limiting the permit review and drafting process to site-specific environmental impacts. The Build-Ready Program will identify priority development sites and remove permitting obstacles associated with existing commercial and industrial sites, while the power grid study and program will identify and prioritize needed transmission system upgrades. If properly implemented, these measures will facilitate renewable energy development and help New York State meet its ambitious climate change goals.

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[45] Concurrently, LIPA will establish a capital program to address identified distribution and local transmission upgrades in its service territory. Accelerated Renewable Energy Growth and Community Benefit Act § 7(3), 2020 N.Y. Laws 58 part JJJ, § 7(3).

[46] Accelerated Renewable Energy Growth and Community Benefit Act § 7(4), 2020 N.Y. Laws 58 part JJJ, § 7(4).

[47] Accelerated Renewable Energy Growth and Community Benefit Act § 7(5), 2020 N.Y. Laws 58 part JJJ, § 7(5).