



**Government Transparency Initiative
Section 94-c of the New York State Executive Law and 19 NYCRR Part 900
October 20, 2021**

The New York State Office of Renewable Energy Siting hereby provides this summary in response to the September 20, 2021 Memorandum regarding the Government Transparency Initiative, from Secretary Karen Persichilli Keogh, Secretary to the Governor, and Elizabeth Fine, Esq., Counsel to the Governor.

Background

On April 3, 2020, New York enacted the Accelerated Renewable Energy Growth and Community Benefit Act (2020 Renewables Act), landmark environmental legislation which included a new Executive Law §94-c. Executive Law §94-c created the Office of Renewable Energy Siting (ORES or the Office), the nation's first state office specifically devoted to the siting of large-scale renewable energy generation facilities.

The 2020 Renewables Act builds upon the Climate Leadership and Community Protection Act (CLCPA), groundbreaking legislation enacted by New York State in 2019 to fight climate change and establish nation-leading requirements for achieving 70% of statewide electrical generation from renewable energy sources by 2030, and reducing the statewide electrical demand system to zero emission by 2040.

Executive Law §94-c established the Office as a new state agency within the Department of State. Since its formation, the Office has been focused on creating, within one year as required by Executive Law §94-c, a regulatory framework for the siting of major renewable energy facilities, and protocols for the receipt and processing of siting permit applications received pursuant to Executive Law §94-c. ORES met its regulatory obligations when, after a rulemaking process and environmental review that included detailed responses to over 5,000 public comments, ORES promulgated its new regulations at 19 NYCRR Part 900 (effective March 3, 2021).

Agency officials are building upon these accomplishments to establish the new Office's capacity to manage the increasing application workflow, while also creating additional tools making application information and materials publicly accessible in a manner consistent with applicable law, rules and regulations.

This document provides information concerning requirements for transparency of siting permit applications, including public notice and opportunities for public participation in the process for the siting of major renewable energy facilities in New York State. This document also summaries efforts by the new Office to increase transparency of application information and materials, primarily through publicly-accessible electronic means. Further information is available at the ORES website at www.ores.ny.gov under Resources, including standard templates and general guidance.



Public Notice and Opportunities to Participate in 94-c Application Process

The siting permit review process is conducted by the Office pursuant to Executive Law §94-c and the Office's regulations at 19 NYCRR Part 900. Executive Law §94-c and Office's regulations contain a number of features requiring public notice of applications, public access to application materials, and opportunities to participate in the 94-c review process; these laws also provide significant funding for Local Agencies and eligible Potential Community Intervenors to retain qualified expertise to represent their interests and participate in the 94-c application review process:

Local Agency Consultation Procedures

The Office's regulations require that for all new applications received pursuant to Executive Law §94-c, the applicant consult with Local Agencies at the earliest stages of the applicant's preliminary project planning. No less than sixty (60) days before the date on which an applicant files an application, or files a transfer application other than for a pending Article 10 facility for which the Article 10 application has been deemed complete,¹ the applicant is required to conduct pre-application meetings with any Municipality in which the proposed facility will be located (19 NYCRR §900-1.3(a)).

The pre-application meetings must be held with the chief executive officer of any municipality in which the proposed facility will be located and any local agencies of such municipalities identified by the chief executive officer (19 NYCRR §900-1.3(a)). During such pre-application meeting(s), the applicant shall provide:

- A brief description of the proposed facility and its environmental setting;
- A map of the proposed facility showing project components and regulatory boundaries as it pertains to substantive law relevant to the proposed facility;
- A summary of the substantive provisions of local laws applicable to the construction, operation and maintenance of the proposed facility;
- An identification of such substantive local law provisions for which the applicant will request that the Office make a finding that compliance therewith would be unreasonably burdensome;

¹ Executive Law §94-c provides an exception for Transfer Applications received by the Office with a completeness determination from the Article 10 Board on Electric Generation Siting and the Environment (Siting Board). Such applications are deemed complete by operation of law and are subject to expedited review (Executive Law §94-c(4)(f)(i)). Transfer Applications which do not have a completeness determination from the Siting Board are treated the same as an entirely new 94-c application, and are subject to completeness review by the Office in compliance with Executive Law §§ 94-c(4)(f)(ii) and (5)(b).



- An explanation of all efforts by the applicant to comply with such substantive local law provisions through the consideration of design changes to the proposed facility, or otherwise;
- Any potential impacts of the facility for which consultation with the municipality is required to inform the preparation of the exhibits to the application (including, but not necessarily limited to, transportation and visual resources);
- A designated contact person, with telephone number, email address and mailing address, from whom information will be available on a going-forward basis, as well as a proposed project website to disseminate information to the public; and
- An anticipated application date and information regarding the future availability of local agency account funds, citing to the requirements set forth in the Regulations, including, but not limited to, the requirement that any Local Agency or Potential Community Intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

Meeting with Community Members

No less than sixty (60) days before the date on which an applicant files a new 94-c application, and following the Local Agency meeting(s) held pursuant 19 NYCRR §900-1.3(a) above, the applicant shall conduct at least one meeting for community members who may be adversely impacted by the siting of a proposed major renewable energy facility (19 NYCRR §900-1.3(b)). The purpose of the meeting is to educate the public about the proposed project, including the anticipated application date and information regarding the future availability of local agency account funds to assist in participation in the 94-c application process, citing to the requirements set forth in 19 NYCRR Subpart 900-5. The applicant shall provide notice of the meeting no sooner than thirty (30) days and no later than fourteen (14) days prior to the meeting in accordance with the publication requirements of 19 NYCRR §900-1.6(c).

Submission of Pre-application Meeting Materials

All materials related to pre-application meetings must be submitted by the applicant with the public application filing. In the event the applicant is unable to secure a meeting with a municipality, the application shall contain a detailed explanation of all of the applicant's best efforts and reasonable attempts to secure a meeting, including, but not limited to, all written communications between the applicant and the municipality (19 NYCRR §900-1.3(c)).



Additional Notice Requirements

Applicants are required to provide additional notice to Local Agencies and the public beyond pre-application consultation. Notice of an intent to file an application is required in accordance with the publication requirements in 19 NYCRR §900-1.6(c), and the applicant must provide a copy of such notice to the Office and all Local Agencies in attendance at the pre-application meetings (19 NYCRR §900-1.3(d)). At the time of filing its application for a Siting Permit, the applicant must also provide additional notice complying with the application filing, service and publication requirements in the regulations (19 NYCRR §900-1.6), which include online posting of all public application materials, filing of a copy (or copies) of the application with a library serving the district of each member of the State Legislature in whose district any portion of the proposed facility is to be located (or could be adversely impacted by the proposed facility), written notice to all persons residing within one mile of a proposed solar facility (or within five miles of a proposed wind facility), and written notice to each member of the State Legislature in whose district any portion of the proposed facility is to be located.

Notice of Local Agency Account Funds

Executive Law §94-c(7) and 19 NYCRR §§ 900-1.4(a)(8) and 900-5.1 require the applicant to fund the Local Agency Account, in an amount equal to \$1,000 per megawatt of generating capacity, from which funding will be distributed to Local Agencies and Potential Community Intervenors to participate in public comment periods or hearings. Such funding is required to be made available to Local Agencies to defray the costs of preparing the required statement of compliance with local laws and regulations.

Such funds may be distributed to Local Agencies and Potential Community Intervenors that meet the requirements of 19 NYCRR §900-5.1, and shall be used to defray certain qualified expenses associated with participation in the application process and in any hearings before ORES, including fees for expert witnesses or consultants, administrative costs (such as document preparation and duplication) and legal fees. Awards for Local Agency Account funding are made in the discretion of the assigned Administrative Law Judges (ALJs), upon submission of a request complying with the requirements of 19 NYCRR §900-5.1(h) and a determination that funds will to be used to contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility, and for Local Agencies, shall include the use of funds to determine whether a proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations. 19 NYCRR §900-5.1(b). The Office must reserve at least 75% of the funds for potential awards to Local Agencies, including funding for the preparation of the required statement of compliance with local laws and regulations (19 NYCRR §900-5.1(b) and (g)(2)).



Notice of Complete Application

All new 94-c applications are subject to thorough application completeness review by the Office in compliance with Executive Law §94-c(5)(b) and 19 NYCRR §900-4.1(a), and the one year time period for review of a permit application shall not commence until a complete application is received by the Office (Executive Law §94-c(5)(f)). Additionally, no application may be deemed complete without proof of consultation with Local Agencies related to requirements of local laws (Executive Law §94-c(5)(b)).

Once ORES determines an application is complete, a written notice is prepared by the Office and published on the ORES website; the written notice is also sent via regular mail to the applicant, Local Agencies where any portion of the project is located, and any person who previously expressed in writing an interest in receiving such notification (19 NYCRR §900-4.1(g)).

Notice of Draft Permit or Intent to Deny

Following the completeness determination, ORES Permitting Staff will begin the development of either a Draft Permit or Statement of Intent to Deny, with publication of the Office's determination required within 60 days of the date upon which an application is deemed complete (Executive Law §94-c(5)(c)(i); 19 NYCRR §900-8.1(a)).

Once the draft Siting Permit (or Statement of Intent to Deny) is published, the ALJ will provide a combined notice of: (a) the availability of the Draft Permit (or Statement of Intent to Deny); (b) the dates for the public comment period and hearing; (c) the commencement of the issues determination procedure; (d) instructions for filing a petition for party status; and (e) the deadline for municipalities to submit a statement of compliance with local laws and regulations (see 19 NYCRR §§ 900-8.2 through 900-8.4). In compliance with Executive Law §94-c(5)(c)(i), the combined notice shall be provided to Local Agencies where the facility is proposed to be located, published in a newspaper or in electronic form having general circulation in the municipality or subdivision thereof, and posted on the Office's website.

Mandatory 60 Day Public Comment Period

Executive Law §94-c(5)(c)(i) and 19 NYCRR §900-8.2(d)(1) require that the Office provide a mandatory public comment period on any Draft Permit (or Statement of Intent to Deny), which shall be a minimum of 60 days from the date of issuance of the combined notice.



Mandatory Public Comment Hearing

While not an express requirement of Executive Law §94-c, the Office's regulations require a mandatory public comment hearing on any Draft Permit (or Statement of Intent to Deny) prepared by the Office, to be held not less than 60 days from the date of issuance of the combined notice (19 NYCRR §900-8.3(a)).

Local Agency Statement of Compliance

Executive Law §94-c and 19 NYCRR §900-8.4(d) provide any municipality, political subdivision or an agency thereof that has received notice of the filing of an application with the opportunity to file and serve on ORES Staff and the applicant a statement indicating whether the proposed major renewable energy facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations, if any, concerning the environment, or public health and safety. Funding from the Local Agency Account established pursuant to 19 NYCRR §900-5.1 is required to be made available to Local Agencies for this purpose. Local Agencies will also have the opportunity to submit comments on the draft Siting Permit, propose significant and substantive issues for adjudication and seek party status at the hearing stage.

Adjudicatory Hearings and Party Status

Executive Law §94-c(5)(d) and the Office's regulations at 19 NYCRR Subpart 900-8 include an adjudicatory hearing process modeled after NYSDEC's adjudicatory hearing process for the resolution of substantive and significant issues (see 6 NYCRR Part 624). Participation in any adjudicatory hearing is limited to parties with full party or amicus party status. Full parties include ORES Staff, the applicant, and any petitioner granted full party status by the ALJ in compliance with 19 NYCRR §900-8.4. Amicus parties include petitioners granted amicus party status by the ALJ. A party with amicus status has the right to file a brief and, at the discretion of the ALJ, present oral argument on the issues identified in the ALJ's ruling on its party status (19 NYCRR §900-8.4(g)(2)).

As noted, Local Agencies must submit a statement indicating whether the proposed facility is designed to be sited, constructed, and operated in compliance with applicable local laws and regulations, if any, concerning the environment, or public health and safety. Any Local Agency that proposes to adjudicate any issues related to a facility's compliance with local laws and regulations shall also file a petition for party status. 19 NYCRR §900-8.4(d). Local Agencies that do not seek to adjudicate issues may also be deemed full parties to the proceeding if they were consulted by ORES Staff during the pre-application or application process, or if issues related to the jurisdiction or authority of those agencies are joined for adjudication in the ALJ's rulings on issues. 19 NYCRR §900-8.4(b).



Public Access to Application Materials

The applicant is required to post all publicly-available application materials on the Department of Public Service's Document Matter Management (DMM) system, and on its project website. Noting that the Office is a new agency, the Office is also undertaking a project with the Office of Information Technology Services (ITS) to construct a new ORES-controlled electronic filing system to expand transparency and access to publicly-available application materials. The Office intends to complete testing of this system during the fourth calendar quarter of 2021, and bring the new system online during the second calendar quarter of 2022.

All application materials are publicly-accessible on the Office's website unless excluded from disclosure pursuant to the New York Freedom of Information Law (FOIL) or other applicable law. Without limitation, applicants are required to identify any information it asserts is critical infrastructure information or trade secrets pursuant to Article 7 of the New York State Public Officers Law, or other applicable state or federal laws (e.g., information pertaining to threatened or endangered species or cultural resources is protected from disclosure under state and/or federal law), which the applicant requests the Office not to disclose and the reasons why such information should be excepted from disclosure. See 19 NYCRR §§ 900-1.4(a)(5) and (6).

Upon receipt of an application, the assigned ALJs will issue a Ruling Adopting Protective Order which will provide eligible parties with a means of obtaining access to protected information for purposes of participating in the application review process.

As a new agency, the Office of Renewable Energy Siting is committed to advancing the State's renewable energy goals by completing "a coordinated and timely review of proposed major renewable energy facilities . . . while ensuring the protection of the environment and consideration of a pertinent social, economic and environmental factors" (Executive Law §94-c(1)), including public transparency.

Date: October 20, 2021
Albany, New York