



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

# **Article 10 of the Public Service Law**

## **What You Should Know About the Siting of Major Electric Generating Facilities**

**May 8, 2018**

# Overview

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



# 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 NYS DEC, Health Department, NYSERDA, Economic Development, and two members of the public who are residents of a project area.
- The Board can issue a Certificate of Environmental Compatibility and Public Need for a generating project.



## Article 10 Highlights

### Article 10 applies to:

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



## Article 10 Highlights (cont.)

### Article 10:

- Includes environmental justice and environmental and health requirements.
- Ensures that public involvement opportunities occur throughout the planning & review process.
- Makes funds available to local parties and municipalities so they can make an effective contribution to the proceedings.



# Article 10 Process



# Article 10 Process

There are five phases of the Article 10 process:

1. Pre-application
2. Application
3. Administrative Hearings
4. Siting Board Decision
5. Compliance

# 1. 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 (cont.): Preliminary Scoping Statement

- The PSS must be provided to state and municipal agencies, state and local officials, and libraries in the project area.
- The PSS is made available on-line.
- A notice, containing a plain language summary of the PSS, must be published in area newspapers and provided in English and any other language required by the Siting Board.
- **Comments on the PSS must be filed within 21 days of its submittal.**



# Pre-Application Phase (cont.): Public Involvement

To facilitate communication between the applicant and interested or affected persons, and to foster their active participation...

- DPS staff and the Applicant must provide opportunities for continued public involvement throughout the process.
- The Applicant must pay a fee to fund a pre-application intervenor account for the participation of municipalities and public interest groups in the process.



## Pre-Application Phase (cont.): **Intervenor Fund**

- The applicant submits the initial intervenor fee when it files the PSS.
- The funding fee is \$350 per MW of proposed generating capacity, up to \$200,000.
- The Presiding Examiner or Secretary issues a notice on the availability of the funds and explains how to apply.
- Half of the funds are available for municipal parties and half for local parties. Funds are made available to hire expert witnesses, consultants or lawyers, to assist intervenor groups in efforts that will contribute to a complete record.



## Pre-Application Phase (cont.): Intervenor Fund

- After the PSS is submitted, and review has started, initial requests for intervenor funds may be submitted. Forms for funding requests are posted at the NYS Siting Board webpage.
- After the 21 day comment period for the PSS, the Hearing Examiners will consider funding requests. A conference will be held to discuss funding requests and to hear any objections.

## Pre-Application Phase (cont.): **Consultation**

- When at least half of the intervenor funds have been awarded, the consultation process starts where interested parties discuss methodology and studies that should be performed to develop an application.
- The public has an opportunity to comment on the PSS and the Applicant is required to respond to all written comments.
- Parties attempt to reach agreements (“stipulations”) on the scope and methodology of studies. Hearing examiners may be asked to mediate disagreements.



## 2. Application Phase Notice and Filing

- 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 Phase (cont.)

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 fund fee.**



## Application Phase (cont.) 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 hire expert witnesses, consultants, and lawyers. At least half of the fund is available for municipal parties and the remainder is for local parties.
- Funds are administered by Hearing Examiners. Reports on use of funds is required.
- If an Application is later substantially amended, additional funding may be required.

### 3. Administrative Hearing 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.
- Hearing examiner holds a **pre-hearing conference** to identify intervenors, award intervenor funds, identify issues for hearing, and establish a case schedule.
- Parties review application and develop cases for **administrative hearings and briefing**.

## 4. Siting Board Decision Phase: Findings

The Siting Board must make 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 Phase: Findings (cont.)

## 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 Phase: Findings (cont.)

## 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.



## 5. 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.

# Article 10 and Public Participation



# Article 10 Public Participation Summary

- **Public participation and input process is required:**
  - Public Involvement Program plan – attend local info meetings
  - Scoping – comment on proposed studies and stipulations
  - Public statement hearings – comment on application
  - Party status - with applicant-sponsored funds available

# Article 10 Public Participation Summary

- **Municipality involvement** - includes Towns, Villages & Counties
  - **Host municipalities nominate two ad hoc Siting Board members**
  - **Municipalities are parties upon filing of notice of intent**
  - **Municipality seeking to enforce local laws must participate or is barred from enforcement authority.**
  
- **Funds for Party experts & legal representation**
  - Scoping phase: \$350/MW up to \$200,000 (50% for municipal parties)
  - Application phase: \$1000/MW up to \$400,00 (50% for municipal parties)
  - Additional funds: fuel or waste storage & application amendments



# Article 10: 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. Kathleen Burgess  
NYS Siting Board  
3 Empire State Plaza, Albany NY 12223-1350
  - Email Secretary of the Siting Board: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)
  - Call toll-free Opinion Line: **(800) 355-2120** to leave a comment



# Article 10: How You Can Get Involved

## 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 –
  - [http://www.dps.ny.gov/DMM\\_Registration.html](http://www.dps.ny.gov/DMM_Registration.html)