

Research & Policy Brief Series

Challenges of Large-scale Solar Electric Siting in New York State: Part II, The Evolving Permitting Process*

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What is the Issue?

As a part of the Fiscal Year 2021 state budget, New York State (NYS) passed the Accelerated Renewable Energy Growth and Community Benefit Act (the Act). The State already had ambitious clean energy goals under the Climate Leadership and Community Protection Act (CLCPA). The Act specifies new strategies for meeting these goals, including power grid adaptation planning and encouraging renewable energy development on underutilized industrial sites or brownfields.¹ The Act also redesigns the siting review and permitting process for large-scale renewable facilities to better integrate CLCPA goals into siting practice.² In this brief, we describe existing large-scale solar (LSS) siting procedures and discuss the shift to the new process.

Review of Proposed Solar Electricity Generation

In NYS the current process for environmental and siting review for LSS (and other electricity generation) depends on the facility's megawatt (MW) capacity rating. For reference, approximately 5-10 acres are required per MW of ground-mounted photovoltaic solar panels.

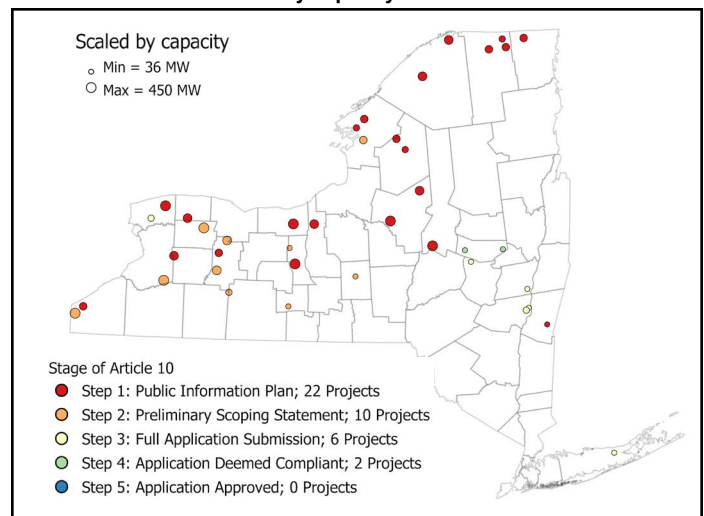
Facilities under 25 MW: Smaller facility permit applications are issued and reviewed at the local government level subject to existing local land use laws and permitting requirements. These applications trigger NYS's Environmental Quality Review Act (SEQRA), which requires the permitting authority (city, town or village government) to identify environmental impacts and ensure mitigation of those determined to be "significant."³

Facilities 25 MW and above: Larger facilities follow a state-level review outlined under the Article 10 Law, a component of State Public Service Law re-enacted in 2011.⁴ This process is overseen by the Board on Electric Siting and the Environment, of the Department of Public Service, comprised of five permanent members representing state agencies⁵ and up to two State-appointed local members who reside in the proposed site community. The Siting Board reviews facility applications for compliance with applicable laws and issues or denies the certificates needed for project approval. While Article 10 includes provisions for stakeholder outreach and local public participation, the Siting Board has full procedural and decision-making powers, privileging State authority over larger facilities.

New Siting Procedure under the Act

After the new Act is implemented, facilities smaller than 20 MW will continue through local permit review, while authority for larger projects will transition to a new Office of Renewable Energy Permitting within the Department of State. Developers of projects currently in or about to undergo Article 10 review may continue in the current process or transition to review by this new Office.

Figure 1. Map of proposed LSS in active Article 10 Queue with current status and scaled by capacity.⁶



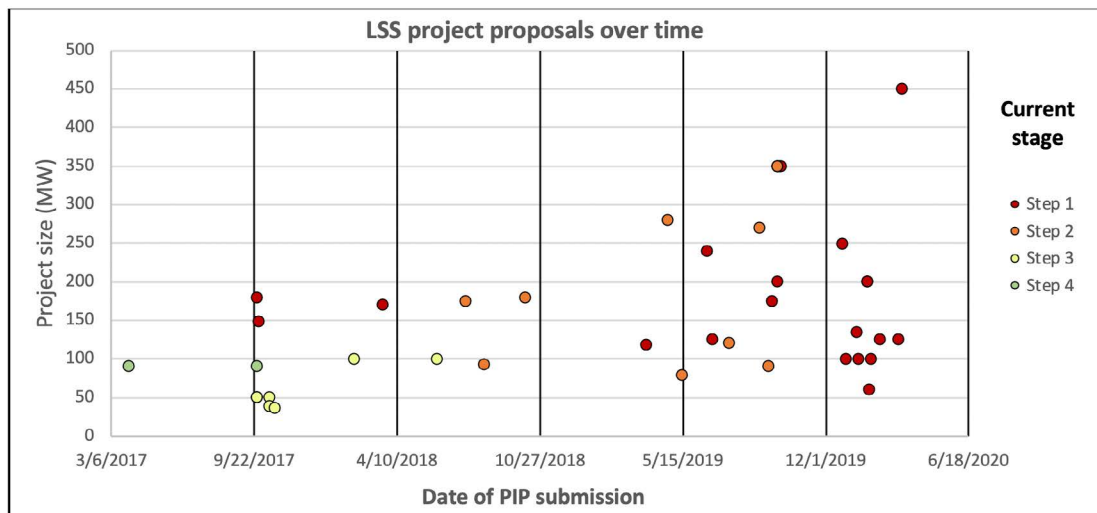
Moreover, developers of projects ranging between 20 MW to less than 25 MW may elect to undergo review by the Office instead of locally. Similar to existing guidelines, the new standards require avoiding or minimizing adverse environmental impacts.

Status of pending LSS projects

The State's first solar project eligible for Article 10 review submitted a Public Involvement Program (PIP) in March 2017. This is the first of six steps; there are now 40 LSS proposals currently in Article 10 review at various steps (Figure 1). Reviewing the status and timelines of LSS proposals reveals how the complexity of the application process and lack of clear evaluative standards likely contributes to project delays (Figure 2). Application preparation is a time-consuming process, complicated by the lack of clear state guidelines or approved LSS applications for reference. Of the 40 projects in the queue, 32 have not yet submitted a full application.

*This work is supported by funding from a joint research and extension program funded by the Cornell University Agricultural Experiment Station (Hatch funds) and Cornell Cooperative Extension (Smith Lever funds) received from the National Institutes for Food and Agriculture (NIFA) US Department of Agriculture. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the authors and do not necessarily reflect the view of NIFA or the USDA. 1. "Governor Cuomo Announces Highlights of FY 2021 Budget." Governor Andrew M. Cuomo, April 2, 2020; and "New York State Announces Passage of Accelerated Renewable Energy Growth and Community Benefit Act as Part of 2020-2021 Enacted State Budget." New York State Energy Research and Development Authority, April 3, 2020. 2. Russo, Steven, and Zackary Knaub. "New York State Legislature Passes Renewable Energy Siting Law In Step Toward Meeting Ambitious Renewable Energy Mandates." The National Law Review, April 3, 2020. 3. For more on local review, see David L. Kay and Djahane Salehabadi, "Economic Development in New York State: An Overview of the Project Development Process" (Cornell University: Community and Regional Development Institute, June 2009). 4. A former version of the law expired in 2003. For more on Article 10, see, "Article 10 Law Text: Chapter 388 of the Laws of 2011." Department of Public Service, 2011. 5. The five permanent members of the siting board include: "the Chairman of the Department of Public Service who serves as chairperson of the Siting Board; the Commissioner of the Department of Environmental Conservation; the Commissioner of the Department of Health; the Chairperson of the New York State Energy Research and Development Authority; and the Commissioner of Economic Development," or a designated alternative specified by these individuals. See "Siting Board – Frequently Asked Questions." 6. Data from: NYS Department of Public Service. "Projects Under Review." Board on Electric Generation Siting and the Environment. Accessed July 1, 2020.

Figure 2. Solar proposals in the Article 10 Queue by initial PIP submission date and current status.



Only two LSS projects in the state have been deemed compliant, while none have been fully approved. Six projects that have applied have remained in Step 3 between one and fifteen months.

The average size of proposals has increased over time and may extend the time of completion. Larger projects can be more controversial and require more time for preparation by developers, and for review by the Siting Board. No projects of 200+ MW have submitted a full application. The three projects that remain in Step 1 on the left side of Figure 2 (red points) are clear outliers and are proposed in the North Country region of the state. Multiple developers and local elected officials indicated that transmission upgrades to improve the flow of electricity between the generation sites and major energy demand centers would increase the projects' viability, but those upgrades follow a separate review⁷, distinct from the Article 10 process.

Rationale for new procedures

The new Act is intended to “dramatically speed up the permitting and construction of new renewable energy projects”⁸ by establishing decision making timelines, including granting automatic permit approval if final decision deadlines are exceeded. The Act also orders the new Office to establish, within the year, standardized and uniform conditions for siting design, construction, and operation of facilities. Until these conditions are established, it remains unclear exactly how the revised siting strategy will shape LSS development in NYS. In addition, other factors (related to the electric system, the economic downturn and financing risks, or the emergence of the COVID-19 crisis) can impact project timelines in ways not likely to be alleviated by the transition from Article 10 to the new procedure.

Local community considerations

The role and authority of local government officials and residents in LSS siting procedures has raised concern in several NYS communities, particularly with the passage of the new law.⁹ Several critical matters for local communities to consider include:

Relevance of local laws and zoning. Both the existing Article 10 and the new Act grant state authority to override “unreasonably burdensome” local laws and regulations (a term that will require clarification from the Office). The new law’s wording closely aligns with the carbon-reduction goals of the CLCPA, suggesting that local laws discouraging LSS may be considered unreasonable, potentially setting up a clash with Municipal

Home Rule. The Act authorizes local governments who identify project nonconformance with local laws and regulation to compel the Office to hold a local public hearing, but specifically how the office will assess whether these laws are unreasonable remains ambiguous.

Local participation. Participation by local governments or residents in the siting process will shift under the Act. For example, the practice of having two local ad-hoc members appointed to the siting board, which provided a minority opportunity for local voices, will not be continued. More generally, the Act specifies requirements for public participation and requires the board to formally weigh evidence for any “substantive and significant issue” raised by the public, but offers few specific decision-making criteria. Intervenor funds for local governments or community groups will continue to be available, but will be managed differently.

Taxation and local economic benefit. New York’s Real Property Tax Law § 487 provides property tax exemption for the added value of renewable energy systems for fifteen years. Local taxing jurisdictions, including school districts, county and municipal governments, can choose to opt-out of this exemption or negotiate a payment-in-lieu-of-taxes (PILOT) to benefit financially from LSS.¹⁰ The Act does not include standardized protocols for tax assessment nor PILOT agreements. It does however establish a program for host community benefits for electric distribution utility customers in the host municipalities. The details of this program are currently under design.

Conclusion

The fate of New York State’s aggressive permitting and implementation agenda for LSS projects is uncertain. As the specific standards and protocols for siting review under the new Act have yet to be fully developed or implemented, it will be important for local governments and other stakeholders to continue to monitor these decisions. Additional research to assess how these decisions will impact participation and outcomes for all stakeholders is needed.

7. See “2019 Load and Capacity Data,” Gold Book. Rensselaer, NY: New York Independent System Operator, April 2019 and “Governor Cuomo Announces \$341 Million in Funding to Rebuild Critical Power Transmission Link in the North Country,” Governor Andrew M. Cuomo, February 3, 2020. 8. “Governor Cuomo Announces Highlights of FY 2021 Budget,” Governor Andrew M. Cuomo, April 2, 2020. 9. Joe, Benjamin. “Town and State Officials Prepare for Article 23.” Lockport Union-Sun & Journal, March 12, 2020. 10. NY-Sun. “Understanding New York State’s Real Property Tax Law § 487.” Fact Sheet. New York State Energy Research and Development Authority, August 2016.

