

The Local Government Perspective

Siting Major Renewable Energy Facilities and Major Electric Transmission Facilities under the Renewable Action through Project Interconnection and Deployment Act

Comments submitted by the

New York State Association of Counties

New York Conference of Mayors

New York Association of Towns



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Comments on Proposed Regulations for Public Service Law Article 8

Counties, towns, cities, and villages are at the forefront of climate adaptation and mitigation and are critical partners in achieving the Climate Leadership and Community Protection Act goals. Local governments can provide key insights and assist the state in assessing energy needs, programs, and challenges, as well as help create the most effective and efficient way forward in the transition to clean energy.

While the transition to clean energy is essential for reducing greenhouse gas emissions and meeting New York's climate goals, the siting of renewable energy facilities must be done thoughtfully to protect valuable farmland, natural resources, and community interests. The New York Association of Towns (NYAOT) and New York State Association of Counties (NYSAC) opposed the creation of Public Service Law Article 8 through the Renewable Action through Project Interconnection and Development (RAPID) Act, as well as Executive Law section 94-c—not because we oppose renewable energy development—but because we are committed to thoughtful, sustainable, and long-term growth that balances clean energy goals with local needs. Unfortunately, the Article 8 process for siting major renewable energy facilities and major energy transmission facilities significantly undermines local authority in two critical ways:

1. **Lowering the Standard for Overriding Local Laws:** The law weakens the legal threshold for overturning local zoning and land-use regulations in siting major electric transmission facilities (METFs). It also recodifies the already lowered standard for major renewable energy facilities introduced in 2020, which NYAOT and NYSAC also opposed.
2. **Eliminating Automatic Adjudicatory Hearings:** The new process removes the automatic right to an adjudicatory hearing for major energy transmission facilities and maintains this exclusion for major renewable energy facilities (MREFs). This weakens municipalities' ability to present substantive concerns and challenge applications effectively.

Essentially, the RAPID Act consolidated state control over renewable energy and transmission siting while failing to establish local governments as full partners in planning and implementation. This creates an imbalanced process that prioritizes speed over thorough local review and meaningful community input.

Notwithstanding our objection to the underlying law, we appreciate the opportunity to participate in the development of regulations that will have a significant impact on our members. The sheer length of the proposed regulations indicates how significant of an undertaking it is to develop a large-scale renewable energy project or transmission facility, and we appreciate that applicants must obtain a significant amount of information and engage with several different stakeholders. However, developers may come and go, facilities are bought and sold, and, at the end of the day, it is the local community that bears the greatest impact. Therefore, it is critical to engage host communities as early and often as possible at every stage. This should be a guiding principle when developing the final regulations. NYAOT, NYSAC, and the New York Conference of Mayors (NYCOM) offer the following recommendations in support of this goal.

Pre-Application and Application Engagement

We believe the regulations present an opportunity to allow for more meaningful engagement with local governments in the pre-application and application process. Renewable energy development depends on accurate, location-specific data that developers must provide to the Office of Renewable Energy Siting and Electric Transmission (ORES) in their application exhibits. Much of this information is best sourced from local governments—yet there is no clear requirement for consultation on these key issues.

For example, applicants must include information about the following in their application exhibits:

- A map of existing and proposed zoning districts and comprehensive plans
- Public water supply sources, only to the extent locations are publicly available
- Water resources
- Emergency response and communication infrastructure
- Road and culvert capacity assessments

We acknowledge that there is a requirement to make a good faith effort to meet with a host municipality as part of the pre-application process during which an applicant must identify “any potential adverse impacts of the facility for which consultation with the municipality(ies) is required to inform the preparation of the exhibits to the application” (see 1100-1.3[a][6]); however, this apparently mandatory consultation to obtain exhibit information is not made clear elsewhere in the regulations. This is in contrast to other sections of the regulations that, for example, make it clear that developers must obtain information from the New York State Ornithological Association on endangered species.

Application exhibits are often based on “publicly available” information, which may not guarantee the use of the most recent and reliable data. In some cases, applications may rely on nothing more than an internet search rather than a thorough, site-specific analysis. At a minimum, the regulations should require applicants to make a **good-faith effort to obtain information directly from municipalities** when preparing application exhibits on matters that fall squarely within local jurisdiction.

Additionally, the pre-application consultation process could be improved further in the following ways:

- **Town supervisors, as well as mayors of cities and villages, do not have unilateral authority to act on behalf of a town, city, or village.** A municipality’s governing body, not just its chief executive officer, must be consulted to provide official input.
- **Developers retain full discretion over what they define as an “adverse impact” to bring to a supervisor’s attention.** Quite simply, there is no mechanism to ensure these determinations are based on sufficient data.
- **Information about how to apply for intervenor funding should be provided at this meeting.** While we understand that an application is not even filed at this point,

providing information to municipalities at the earliest point possible is critical. Developers should be required to submit documentation to a potential host municipality informing them that funding may be available and general information about the application process and its timing. This acknowledges that **municipalities are at a severe disadvantage due to strict timelines**. While a municipality may raise a “substantive and significant issue” later in the process, developers have ample time to curate and present information in a way that minimizes or obfuscates negative impacts. Meanwhile, municipalities are left with only a few months to react.

To ensure responsible and informed decision-making, local governments must have a formal role in the siting process—not as an afterthought, but as active partners shaping the future of renewable energy development.

Intervenor Funding and Technical Assistance

In addition to providing information about potential intervenor funding at the pre-application meeting, the regulations should ensure that municipalities have adequate time and resources to assess the potential impacts of proposed facilities and prepare comprehensive compliance statements. Beyond the intervenor funding, municipalities need technical assistance to effectively engage in the complex regulatory process. We strongly recommend that ORES establish a dedicated technical assistance program to provide direct support to local leaders when navigating the permitting process. This program should include technical experts available to municipalities at no cost, covering specialties such as noise assessment, visual impact analysis, agricultural land management, and stormwater management. Additionally, ORES should develop standardized templates and guidance documents specifically designed for municipalities to evaluate project impacts and prepare effective comments.

ORES should also conduct regional training sessions for municipal officials at least semi-annually, focusing on understanding the regulatory process, identifying significant issues, and effectively participating in proceedings. These sessions should be recorded and made available online for officials unable to attend in person.

Agricultural and Environmental Protections

While we recognize the importance of renewable energy development, the regulations must balance clean energy goals with strong protections for agricultural land and environmental resources. We recommend:

- **Requiring all applicants for major renewable energy facility siting permits to submit a completed smart solar siting scorecard** as part of their application to ensure consideration of agricultural, environmental, and community impacts;
- **Broadening the definition of agrivoltaics** so it is not limited to grazing but includes a wider range of agricultural activities, such as crop production and other forms of dual land use;

- **Requiring the integration of pollinator-friendly vegetation varieties into project designs**, rather than only traditional lawn cover, to enhance biodiversity and ecosystem services;
- **Ensuring that mitigation payments for unavoidable impacts to agricultural land are disbursed expeditiously** to provide timely assistance for local agricultural and farmland protection efforts;
- **Appointing an independent and qualified agricultural monitor** with an understanding of agricultural practices to oversee construction, restoration, and follow-up monitoring for projects impacting agricultural land; and
- **Reinstating and reinforcing the role of the Department of Agriculture and Markets (AGM)** in overseeing the development of renewable energy and transmission projects, as was the case under Article 10.

By implementing these agricultural and environmental protections, New York can ensure that renewable energy development is advanced in a way that maintains agricultural viability, protects valuable farmland and natural resources, and builds public support for clean energy projects. Striking this balance is essential for achieving our climate goals while preserving the state's agricultural economy and environmental assets for future generations.

Formalize a Complaint Process and Ensure Accountability

Counties, cities, towns, and villages serve as the level of government closest to the people, acting as the boots on the ground when it comes to identifying noncompliance and project-related issues. Yet, the regulations do not include a clear mechanism for local governments to report developer violations or ensure that complaints are taken seriously.

While we acknowledge that developers must comply with a range of regulations, the absence of a defined complaint process weakens enforcement. Municipalities must have a clear point of contact to report issues, an established procedure for filing complaints, and an assurance that violations will be investigated and addressed. This should include mandatory response timeframes for ORES when violations are reported, as there currently is no guarantee that reported violations will receive timely investigation or remedy. Additionally, we recommend establishing a public violation database where all enforcement actions, penalties, and remediation requirements are published. This transparency is essential for accountability and allows communities to track compliance history of developers operating multiple projects. Given the trust-based nature of the process, this safeguard is essential.

Clarify Public Comment, Public Hearings, and Adjudicatory Proceedings

Respectfully, the regulations must better delineate the distinctions between a public comment period, a public comment hearing, an issues conference, an adjudicatory hearing, and the process for obtaining party status. Most municipalities engaged in the Article 8 siting process are rural communities with limited resources. If the goal is to provide communities with a meaningful opportunity to participate in the siting process, the procedures must be clear and easily navigable. For example, it is not evident who presides over a public comment hearing, if an Administrative Law Judge (ALJ) presides over the public comment hearing, and what notice requirements are

present. At a minimum, municipalities should receive the combined notice referenced in the regulations with a full 60 days to provide comments. Right now, it appears that a municipality is only entitled to specifically receive a notice 21 days prior to a public comment hearing. Three weeks is insufficient to complete a review and then provide appropriate and robust feedback. Local governments must have adequate time to prepare substantive comments, and early engagement should be **required** to ensure municipalities can effectively represent their communities' interests and residents.

Require Notification of Ownership Changes

One of the greatest concerns municipalities face regarding renewable energy projects is **decommissioning and long-term responsibility for legacy infrastructure**. While the regulations require applicants to submit a decommissioning plan and notification to ORES when ownership changes, many of our members have expressed frustration over the lack of transparency when project ownership transfers to a new entity. Without formal notification requirements, municipalities may struggle to determine:

- Who is responsible for ongoing maintenance and compliance;
- Who to contact regarding violations or operational issues; and
- Who will ultimately be responsible for decommissioning obligations

We strongly recommend including a mandatory notification requirement to municipalities when project ownership changes. This ensures local officials are informed and prepared to hold the appropriate party accountable for compliance, safety, and decommissioning obligations.

Additional Assurances on Decommissioning

In addition to ownership notification requirements, we recommend requiring detailed decommissioning and site restoration plans that provide sufficient financial security for all decommissioning costs and ensure impacted agricultural land can return to its original state prior to construction. The current decommissioning provisions lack specific requirements for soil restoration and remediation standards, particularly for agricultural lands. While the regulations require decommissioning to a depth of four feet below grade in agricultural lands, the requirements should also include detailed soil testing and restoration protocols to ensure soil quality, drainage, and productivity are fully restored to pre-construction conditions.

Furthermore, the regulations should more thoroughly address the timing of decommissioning. We recommend more specific language that prevents prolonged periods of abandonment, including financial penalties for delays in decommissioning after these triggers are met. Additionally, the net decommissioning cost estimate currently requires a fifteen percent contingency, which is inadequate given the long timeframes (20-30 years) involved and potential for significant shifts in labor, transportation, and disposal costs. This contingency should be increased to twenty-five percent to better account for these uncertainties.

Conclusion

We appreciate the opportunity to comment on these proposed regulations. The clean energy transition presents both opportunities and challenges for our communities. While we support renewable energy development as a critical component to addressing climate change, we believe the final regulations must better balance state climate goals with local input, agricultural preservation, and environmental protection.

We urge ORES to incorporate our recommendations to create a more collaborative approach that respects the expertise of local governments, ensures accountability throughout project lifecycles, and provides clear, accessible processes for participation by all stakeholders. We look forward to continuing to work with the state as partners in creating a more sustainable future for all New Yorkers.