

NEW YORK STATE FINALIZES REGULATIONS IMPLEMENTING THE NEW LARGE-SCALE RENEWABLES SITING PROCESS

Hodgson Russ Renewable Energy Alert
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On March 3, 2021, the Office of Renewable Energy Siting (“ORES”) issued the much-anticipated final regulations implementing New York State’s new large-scale renewables siting and permitting process (“the Section 94-c process”). The final regulations are substantially similar to the draft regulations that ORES issued on September 16, 2020, but add a few key requirements to the pre-application consultation period, scope of studies, and the contents of a complete application. Below, we outline a few of the key changes from the draft regulations. For an overview of the draft regulations and how the new large-scale renewable project siting process deviates from the Article 10 siting process, read our alert [here](#).

New Terms

The final regulations include a definition of a “Host Community Benefit” that was not included in the draft regulations. In an Order issued February 11, 2021, the New York State Public Service Commission (“PSC”) established a Host Community Benefit Program through which owners of major renewable energy facilities must pay an annual fee of \$500/megawatt (MW) for solar projects or \$1,000/MW for wind projects for each of the first ten years of project operation. The fee will be distributed equally among residential utility customers in the municipality where the proposed facility is to be located. All Section 94-c permits will require the owner of the facility to provide a “Host Community Benefit.” The final regulations define “Host Community Benefit” as the Host Community Benefit established by the PSC under the Host Community Benefit Program, other payment or incentive determined by ORES, or other payment or incentive agreed to between the applicant and the host community.

The final regulations also include a new definition of “Project Impact Area,” which defines the area for which the applicant must assess the impacts of the proposed project on cultural, archaeological, or historic resources.

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New Pre-Application Requirement

While the overall process for local and community engagement remains unchanged, the final regulations include a few additional procedural requirements:

1. Applicants must provide the local agency with the substantive provisions of local law applicable to the decommissioning of the facility. The draft regulations required that applicants provide to the local agency only those provisions applicable to the construction and operation of the facility.
2. The notice requirement for community meetings has been extended. The draft regulations required that applicants provide notice of the community meeting no sooner than 21 days and no later than 14 days prior to the meeting. Now, applicants may provide notice no sooner than 30 days and no later than 14 days prior to the meeting.
3. Applicants are now required to provide local agencies with a copy of the Notice of Intent to file a Section 94-c application, in addition to the designated State entities and stakeholders.

New Requirements for Addressing Impacts to Threatened and Endangered Species

Among the relatively few substantive changes to the draft regulations, perhaps the most significant are those pertaining to the evaluation of impacts on threatened and endangered species. To meet the requirements for a complete application, applicants must now identify the migratory routes of birds and bats through the project site in their assessment of the species likely to occur based on the ecological communities present at the site. If the project will require a Net Conservation Benefit Plan to mitigate impacts to grassland bird species, the final regulations describe how mitigation requirements shall be calculated. Additionally, the final regulations specify when during pre-construction site preparation and construction activities the discovery of an active nest may require the applicant to adjust the limits of disturbance of the project and/or the construction schedule to avoid adverse impacts to the nest or grassland habitats.

New Procedural Requirements

Applicants that seek to transfer from the Article 10 process to the Section 94-c process will now be subject to an application fee of \$1,000/1,000 kilowatts of capacity. Transfer applicants and those that seek to opt-in from another permitting regime, such as the State Environmental Quality Review Act siting process, must now provide notice to ORES that the applicant intends to submit a transfer or opt-in application at least 14 days prior to the filing.

The final regulations give ORES the right to terminate a Section 94-c permit in certain circumstances – a right which was limited in the draft regulations to the ability to modify a Section 94-c permit after ORES approval.

These are only a few of the most significant changes to the draft Section 94-c regulations that were issued in September. Further analyses of the process and requirements of the Section 94-c regulations will be forthcoming from Hodgson Russ. If you have questions about the new regulations or renewable energy projects generally, please contact [Daniel Spitzer](#) (716.848.1420), [John Dax](#) (518.433.2414), [Charles Malcomb](#) (716.848.1261) or a member of our [Renewable Energy Practice](#).