

## Environmental Law: NYS Adopts Accelerated Renewable Energy Growth and Community Benefit Act



By **GEORGE S. VAN NEST**

The COVID-19 pandemic has disrupted most business and governmental matters in New York since early March, but in the midst of it, Gov. Cuomo succeeded in substantially changing the process for renewable energy siting. In conjunction with his proposed budget in January 2020, Cuomo pushed revisions to siting regulations for electric generation facilities under Article 10 of the Public Service Law (PSL). The governor signed the Climate Leadership and Community Protection Act (CLCPA) in July 2019 which requires the state to obtain 70% of its electric production from greenhouse gas-free sources by 2030 and ultimately 100% by 2040. Since then the governor has complained about the amount of time it takes to site new renewable energy projects, suggesting that it often takes five to 10 years to complete the process.

The state currently only gets about 28% of its electricity from renewable sources, and a large portion of it from hydropower sources. Ramping up to hit the 70% threshold mandated under the CLCPA in the next 10 years will be a challenge at best. However, that goal served as the basis to move forward with dramatic changes to the renewable energy siting procedures.

Despite the distractions, local health issues and resources dedicated to the COVID-19 response, the governor and the Legislature moved forward with adoption of the Accelerated Renewable Energy Growth and Community Benefit Act as part of the 2020-2021 state budget (the “Accelerated Energy Act”). While the governor, state agencies, develop-

ers and environmental groups are lauding the step, local governments and municipal associations have concerns about the act and implementation given the dramatic change from the Article 10 process and loss of local input.

The Accelerated Energy Act completely restructures the renewable energy process in the following key ways. First, the Office of Renewable Energy Siting is created within the Department of State to consolidate and administer the environmental review of major renewable energy facilities and siting decisions. Among other powers, the Energy Siting Office will: establish regulations and uniform standards to address environmental impacts from large, renewable energy projects and identify mitigation measures; mandate that uniform and site-specific standards and conditions achieve an overall net benefit to endangered or threatened species; authorize DEC to use funds from permitted projects to implement an endangered and threatened species mitigation bank fund; create draft permits, subject to public and local input, to ensure a stream-lined decision on permits, within one year for most projects and six months for former commercial, and brownfield sites.

The new Energy Siting Office will address all new construction or expansion for large-scale, renewable energy projects larger than 25 megawatts. Existing projects that are in the initial stages of the Article 10 process may either remain in that process or opt into the new process. In addition, new projects that fall between 20 and 25 megawatts will be able to opt in.

A second major component of the Accelerated Energy Act is the creation of a Clean Energy Resources Development and Incentives Program to be administered by the New York State Energy Research and Development Authority (NYSERDA). Under this new program

NYSERDA will work with State and local entities to quickly move “build-ready” projects, prioritizing the development of active or unused commercial sites, brownfields, landfills and former industrial locations. The program requires NYSERDA to coordinate with the Department of Public Service and NYS Urban Development Corporation to begin obtaining site control and pre-construction development activities such as siting, feasibility assessments, design, planning and related activities to create build-ready sites. Further, after the sites are completely permitted and developed NYSERDA will auction the renewable sites, along with contracts for renewable energy payments to private developers. This envisions that NYSERDA will be able to collaborate with state and local agency partners to quickly develop these sites and provide risk-free options for private developers.

In addition, NYSERDA is slated to develop a Host Community Benefit Program as a component of the build-ready program to offer property owners and local communities benefits and incentives for hosting renewable energy facilities. While host community agreements have been part of the Article 10 process as communities work with developers to advance projects, under the Accelerated Energy Act the loss of local input and control of siting is supposed to be offset by the benefit program. Aside from the host community benefits, the Public Service Commission is supposed to provide utility bill discounts and environmental benefits or compensation for residents of locations that host a facility. NYSERDA will also administer a local intervenor fund to address participation by local governments and community intervenors in the new process.

The third major element of the Accelerated Energy Act is the creation of a State Power Grid and Study Program to speed planning

and development of bulk and local transmission and distribution infrastructure to aid distribution of renewable energy. Among other components, the program will require the Department of Public Service to consult with State and local power agencies, utilities and grid operators to analyze and develop a cost-effective distribution upgrade for the bulk and local electric system. Additionally, the Public Service Commission is to develop a capital program for each utility that requires upgrades, while the NY Power Authority is supposed to use its resources to construct new bulk transmission resources. In keeping

with the streamlining of procedures under the Accelerated Energy Act, the siting process is supposed to take less than nine months for transmission infrastructure constructed within existing rights-of-way.

Although the state is still suffering under the COVID-19 shutdown of schools, governments and non-essential business, economic development on re-start will be critical to the financial and personal health of state residents. The Accelerated Energy Act clearly sets a focus on renewable energy development across the state and attaining the lofty

goals of the CLCPA. While the regulations and program details remain to be developed, hopefully the development of clean energy can be accomplished in a manner that creates financial and environmental benefits, while still providing meaningful input to local governments where the facilities are located.

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