

Article 10 Public Service Law

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

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 Board oversees the Article 10 process and the Chairman of the Department of Public Service heads it.
- Other members include: Heads of NYS DEC, Health Department, NYSERDA, Economic Development, and two members of the public.
- The Board issues Certificates of Environmental Compatibility and Public Need.

Article 10 Highlights

- It applies to electric generating facilities with generating capacity of 25 MW or more; a lower threshold than the previous 80 MW required.
- It also applies to renewable energy projects, like wind powered electric generating facilities.
- It also includes facilities repowered to add 25 MW of capacity or more.

Article 10 Highlights *(cont.)*

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

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 Plan

- Applicants must file a Public Involvement Program (PIP) Plan summarizing activities to educate, inform and involve the public in the process 150 days *before* filing Preliminary Scoping Statement.
- DPS staff must review PIP plan within 30 days and determine its adequacy.
- Applicant must respond within 30 days to DPS staff's recommendations.

Pre-Application Phase *(cont.)*:

Preliminary Scoping Statement

Ninety days before filing an application, the applicant files a Preliminary Scoping Statement with the Board describing:

- Proposed facility and environmental setting
- Potential significant and adverse environmental and 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 Scoping Statement must be provided to state and municipal agencies, state and local officials, and local libraries.
- A notice, containing a plain language summary of the Scoping Statement, must be placed in newspapers and provided in English and any other language required by the Siting Board.

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.

Pre-Application Phase *(cont.)*:

Intervenor Fund

- The intervenor fee must accompany the Preliminary Scoping Statement.
- The fee is \$350 per MW of generating capacity for the facility, up to \$200,000.
- The Presiding Examiner or Secretary issues a notice on the availability of the funds and how to apply, and then awards the funds.
- Half of the funds must be available for municipal parties and half to local parties to hire expert witnesses, consultants or lawyers. The fund is available to assist intervenor efforts that will contribute to a complete record.

Pre-Application Phase *(cont.)*:

Consultation

- **After** the preliminary scoping document is submitted, circulated, publicly noticed, **and** at least half of the intervenor funds have been awarded, consultation begins with interested parties on the methodology and scope of impact studies.
- The public has an opportunity to comment on the preliminary scoping statement and the applicant is required to respond to the written public comments.

2. Application Phase

The application must include the following:

- Project description
- Public involvement activity
- Back-up fuel storage and supply plans
- Facility and community security and safety plans
- Evaluation of expected environmental and health impacts, environmental justice issues, and reasonable and available alternative locations

Application Phase *(cont.)*:

Filing and Notice

- The application is filed with the Siting Board.
- It is made available for public inspection at libraries.
- Copies are provided to interested parties.
- A notice, summarizing the application and indicating how to get access to the application, published in local newspapers.
- Notice is given to state legislators in impacted districts and to individuals requesting it.

Application Phase *(cont.)*:

Intervenor Fund

- Each application must be accompanied by a fee of \$1,000 per MW of capacity, up to \$400,000.
- An additional fee of \$500 per MW of capacity, up to \$50,000, must be provided for facilities requiring storage or disposal of fuel waste byproduct.
- Half of the funds must be available for municipal parties and half for local parties to hire expert witnesses, consultants, and lawyers.
- The fund is available to assist intervenor efforts that will contribute to a complete record.

3. Administrative Hearing Phase

- Within **60 days** of receiving the application, the Chair of the Siting Board determines if it complies with all filing requirements.
- If so, a date for the public hearing is set.
- Hearing examiner holds a prehearing conference to identify intervenors, award intervenor funds, identify issues for hearing, and establish a case schedule.

4. Siting Board Decision Phase

The Siting Board must make explicit findings about the nature of the environmental impacts related to construction and operation of the facility and related facilities (electric and gas lines, water supply lines, waste disposal, communications and transportation) on:

- ✓ Statewide electrical capacity
- ✓ Ecology, air, ground and surface water, wildlife, and habitat
- ✓ Public health and safety
- ✓ Cultural, historical and recreational resources
- ✓ Transportation, communication, utilities, etc.
- ✓ Cumulative impact of emissions on the local community according environmental justice regulations

Siting Board Decision Phase *(cont.)*:

- ✓ The facility is a “beneficial addition to or substitute for” generation capacity.
- ✓ Construction and operation are in the public interest.
- ✓ Adverse environmental effects will be minimized or avoided.
- ✓ Impacts on Environmental Justice communities will be avoided, offset or minimized “using verifiable measures.”
- ✓ It is in compliance with state laws and regulations and compliance with, or override of unreasonably restrictive, local laws and regulations.

5. Compliance Phase

There are three elements of post-certification compliance:

1. *Pre-construction* – includes the filing of engineering and design documents, permits or approvals generally before construction begins.
2. *DPS On-site Compliance* – Staff on hand to ensure compliance requirements are met at the facility after construction begins.
3. *Long Term Compliance* – after construction a facility's certificate may require long term compliance regarding the operation of the facility over its lifetime.

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. Jaclyn A. Brillling, Siting Board, 3 Empire State Plaza,
Albany NY 12223-1350
 - Email Secretary of the Siting Board: secretary@dps.ny.gov
 - Call **toll-free** Opinion Line: (800) 355-2120 to leave a comment

Get Involved *(cont.)*:

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 Web site
- Register with the PSC's Document and Matter Management (DMM) System –
 - http://www.dps.ny.gov/DMM_Registration.html

For More Information

For more information on Article 10:

- Contact James Denn, Public Information Coordinator, at: (518) 474-7080 or james.denn@dps.ny.gov
- Find information online at the Siting Board's Web site: www.dps.ny.gov/SitingBoard
- Review applications or cases online at the PSC's Web site: www.dps.ny.gov
- Visit **AskPSC.com**.

Article 10

Any questions?