

GETTING INVOLVED



Permitting Solar Energy in New York

New York has a very rigorous state permitting system for major electric generating facilities called Article 10. The Article 10 process will offer members of the public many opportunities to share their opinions and suggestions about Alder Creek Solar with both Apex and the NY State Board of Electric Generation Siting and the Environment (www.dps.ny.gov/SitingBoard).

What is Article 10?

Article 10 defines a clear process for public engagement in permitting large electric generating facilities.

- Applies to electric generating facilities with 25 MW generating capacity or more, including renewable energy projects.
- Includes environmental justice and environmental and health requirements.
- Ensures broad public involvement opportunities throughout the process.
- Makes funds available to local parties and municipalities through an Intervenor Fund so they can make an effective contribution to the proceedings.

There are five stages of the Article 10 process:

1. Pre-Application: Applicants must file a Public Involvement Program Plan summarizing activities to educate, inform and involve the public in the process 150 days before filing Preliminary Scoping Statement. Ninety days before filing an application, the applicant files a Preliminary Scoping Statement. This statement must also be provided to state and municipal agencies, state and local officials, and local libraries. A notice summarizing the Scoping Statement must also be placed in newspapers. The Scoping Statement must include:

- Proposed facility and environmental setting
- Potential significant, adverse environmental/health impacts
- Proposed studies to evaluate potential impacts
- Measures to avoid or mitigate adverse impacts
- Reasonable alternatives
- State and Federal requirements

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 (Apex, in this case) is required to respond to the written public comments.

2. Application: The project application will be filed with the Siting Board and made available for public inspection at libraries. Copies of the application will also be provided to interested parties, and a notice summarizing the application will be published in local newspapers. State legislators in impacted districts will also be notified. The application must include:

- Project description
- Public involvement activity
- Facility and community security and safety plans
- Evaluation of expected environmental/health impacts, environmental justice issues, and reasonable alternative locations

3. Administrative Hearings: Within 60 days of receiving a project 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. The hearing examiner also holds a pre-hearing conference to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule.

4. Siting Board Decision: 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. Specifically, the Board will consider impacts to:

- 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 emissions on the local community according to environmental justice regulations

The Board must also determine that the facility is a “beneficial addition or substitute for” generation capacity, that construction and operation are in the public interest, that adverse environmental effects will be minimized or avoided, and that the project is in compliance with state laws and regulations.

5. Compliance: Once the project is certified, there are three elements of post-certification compliance:

- **Pre-Construction:** Includes the filing of engineering and design documents, permits or approvals.
- **DPS On-Site Compliance:** Staff from the Department of Public Service will be on-hand to ensure that compliance requirements are met at the facility after construction begins.
- **Long-Term Compliance:** After construction, a facility’s certificate may require long-term compliance regarding the operation of the facility over its lifetime.

The Intervenor Fund

The Intervenor Fund exists to ensure that it is possible for any interested local parties or municipalities to contribute to the proceedings. All projects must pay \$350 per MW of generating capacity into the fund, up to \$200,000, during the Pre-Application Stage.

In addition, each project application must be accompanied by a fee of \$1,000 per MW of capacity into the fund, up to \$400,000, during the Application Stage. The Presiding Examiner or Secretary will issue a notice when funds are available, informing the public on how they may apply for a portion of these funds. Requests for funds must be submitted to the Presiding Examiner no later than 30 days after the issuance of the notice of availability. Eligible municipal and local parties may request funds by filing the requests with the Secretary of the Siting Board and submitting a copy to the Presiding Examiner and to the other parties to the proceeding.

Funds will be awarded to municipalities and local parties on an equitable basis, when it is determined that the funds will be used to contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility, and will facilitate broad participation in the proceeding.

Half of the Intervenor Funds must be available for municipal parties and half to local parties to hire expert witnesses, consultants, or lawyers.

For More Information About the Article 10 Process...

The State of New York has an office within the Department of Public Service, called the “Public Information Coordinator” to assist and advise interested parties and members of the public on participation in the siting and certification of major electric generating facilities. To learn more about the Public Information Coordinator or to find their contact information, visit <http://tinyurl.com/NYDPS>.

To provide comments on a case, contact the Secretary of the Siting Board:

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Phone the Opinion Line to leave a comment: (800) 355-2120