

What is Section 94-c?

The 2020-21 New York state budget included the Accelerated Renewable Energy Growth and Community Benefit Act, which adds a new section to the Executive Law. The Act's objectives are to advance the siting and construction of large-scale renewable energy projects while being mindful of costs and environmental impact. Section 94-c is an expedited permitting process for large-scale (25 megawatts or larger) renewable energy projects that is designed to replace the Article 10 process of the New York Public Service Law and the State Environmental Quality Review Act (SEQRA) process in the Environmental Conservation Law. Focusing on efficiency, predictability, and community input, the 94-c permitting process works to consolidate the environmental review for renewable energy projects.

Please note that the information on this webpage is presented in summary form only. A complete copy of the application legislation can be found [here](#).

Office of Renewable Energy Siting

The Act created the Office of Renewable Energy Siting (ORES), which is tasked with reviewing and granting siting permits under the new 94-c permitting process to large-scale renewable energy projects.

94-c Permitting Process

OVERVIEW

- The 94-c process contains pre-application public engagement with the local community, pre-application consultations with state agencies and local municipalities, application review, draft permit, hearings and decision, and compliance.
- Projects must be designed to avoid or minimize, to the maximum extent practicable, potentially significant adverse environmental impacts.
- 94-c requires that the final decision on a project's permit be made within one year of the application being completed.
- Only projects with "substantive and significant" issues require evidentiary hearings, testimony and briefing.
- Projects are required to comply with substantive provisions of applicable local laws and regulations. ORES can elect not to apply a local law that is unreasonably burdensome in view of CLCPA targets and environmental benefits of the project.

SCHEDULE

Pre-Application

- Begin preparing draft reports and local agency consultations 18 months to 1 year before filing an application.
- Meet with agencies.
- At least 60 days before filing an application, meet with host municipalities and hold a community meeting.

Application Completeness Review

- 60-day application completeness review period - can be extended by 30 days on consent.
- If incomplete, applicant will submit a supplement.
- Another 60-day review period will follow after submission of the supplement.
- After all required information is provided, ORES deemed application "complete."

Draft Permit and Comment Period

- 60 days after an application is deemed complete, a draft permit will be issued, which will be a combination of the uniform standard conditions (USC) and site-specific conditions.
- 60 days after application deemed complete, ORES will issue a combined notice.
- The combined notice kicks off a 60-day public comment period on the draft permit conditions.
- No less than 60 days from the combined notice issuance, a public comment hearing will be held.
- 30 days after an application is deemed complete, intervenor funding requests are due (applicant provides \$1,000/MW upon application filing for intervenor funds)

Issues/Party Status

- The period for filing a petition for party status shall be a minimum of 60 days from the date of the combined notice issuance.
- The period for filing a statement of compliance with local laws shall be a minimum of 60 days from the date of the combined notice issuance.
- The administrative law judge (ALJ) will set the schedule for the filing of a statement of issues (may also set different dates for party requests and statement of compliance with local laws).
- The applicant has 15 days to respond to party status and statement of compliance with local laws.

Issue Determination

- 30 days after receipt of written submission of issues, the ALJ will decide party status, issues for adjudication - if any, rule on any issues of law that don't require hearings, and decide any pending motions.

Adjudicatory Hearings/Decision

- There is no set deadline for when hearings must occur after issues determination.
- Parties are required to submit pre-filed testimony in advance of an adjudicatory hearing.
- The ALJ shall issue a recommended decision within 45 days after the close of the record.
- Parties have 14 days to submit comments on the recommended decision.
- The final decision of the Executive Director shall be issued within 30 days after receipt of all comments on the recommended decision and hearing report (no later than one year after the Application has been deemed complete).
- Parties have 90 days to appeal the final decision to the Appellate Division.

PUBLIC ENGAGEMENT

- Prior to submitting a permit application, renewable energy projects are required to consult with the host municipalities and communities in which the proposed project will be located.
- ORES also requires that state agencies are consulted and subsequently review and approve decisions involving wetland and stream delineations, threatened and endangered species, and archeological and cultural resources, if appropriate. Agency consultations should take place at the earliest point possible in the applicant's process.
- Following consultations with impacted agencies, 94-c applicants must hold at least one meeting for community members. Notice of the meeting should be provided to community members no sooner than 21 days before the meeting takes place, and no later than 14 days before the meeting takes place. Included in a 94-c application are copies of meeting transcripts, materials, and discussions. Notice of intent to file an application should be published by the applicant at least 60 days before the application is filed.
- Municipalities are notified upon ORES issuance of draft permit conditions and are required to provide feedback on the draft permit conditions and compliance with local laws. In addition, there is a 60-day public comment period following the publishing of the draft permit.

APPLICATION

Exhibits required as part of a 94-c Application include summaries, third party reports and information on the following topics:

- General Requirements
- Overview and Public Involvement
- Location of Facilities and Surrounding Land Use
- Real Property
- Design Drawings
- Public Health, Safety and Security
- Noise and Vibration
- Visual Impacts
- Cultural Resources
- Geology, Seismology, and Soils
- Terrestrial Ecology
- NYS Threatened and Endangered Species
- Water Resources and Aquatic Ecology
- Wetlands
- Agricultural Resources
- Effect on Transportation
- Consistency with Energy Planning Objectives
- Socioeconomic Effects
- Environmental Justice
- Effect on Communications
- Electric System Effects and Interconnection
- Electric and Magnetic Fields
- Site Restoration and Decommissioning
- Local Laws and Other Ordinances
- Other Permits and Approvals

COMPLIANCE

Once the project is as received its final siting permit, there is a three-part compliance phase:

Pre-Construction - filing of engineering and design documents, permits, and approvals prior to construction.

On-Site Compliance - on-site inspections by state agency personnel after construction begins to ensure the project is complying with the certificate.

Long-Term Compliance - on-site inspections regarding the operation of the facility over its lifetime.

How to request party status for a Section 94-c proceeding

In order to formally file papers related to issues of fact and have them considered as part of the evidentiary record, you must be granted full party or amicus status pursuant to Section 900-8.4 of the 94-c regulations. The period for filing a petition for party status shall be at least 60 days from the Office of Hearing's issuance of notice of the public comment hearing. Nonparties who wish to have their comments recorded are permitted to submit oral or written comments during the public comment portion of the proceedings, or as otherwise provided by the ALJ. Such public

statements will not constitute evidence in the adjudicatory hearing but may be used by the ALJ as a basis for further inquiries.

To request full party or amicus status, an interested party should file a written petition and complete one of the following two options:

For **full party** status, interested parties should file a petition that includes:

- Identification of the proposed party together with the name(s), address, telephone number and email address of the person or persons who will act as representative of the party;
- Statement of the petitioner's interest related to the standards and conditions established by the ORES for the siting, design, operation, and construction of the project;
- Identification of any interest relating to statutes administered by other State agencies or the ORES relevant to the project;
- Statement that the petition is for full party status;
- Identification of the precise grounds for opposition or support;
- Identification of an adjudicable issue(s) that meets the criteria set forth in section 900-8.3(c); and
- An offer of proof specifying the witness(es), the nature of the evidence the person expects to present and the grounds upon which the assertion is made with respect each issue identified.

For **amicus party** status, interested parties should file a petition that includes:

- Identification of the proposed party together with the name(s), address, telephone number and email address of the person or persons who will act as representative of the party;
- Statement of the petitioner's interest related to the standards and conditions established by the ORES for the siting, design, operation, and construction of the project;
- Identification of any interest relating to statutes administered by other State agencies or the ORES relevant to the project;
- Statement that the petition is for amicus status;
- Identification of the precise grounds for opposition or support;
- Identification of the nature of the legal or policy issue(s) to be briefed which meets the criteria of section 900-8.3(c); and
- A statement explaining why the proposed party is in a special position with respect to that issue.

Public documents and information

Stakeholder involvement and consultation are part of an ongoing, evolving process throughout all phases of the 94-c review process. The Flat Creek Project's goal is to provide information to stakeholders, understand stakeholder interests, identify any additional stakeholders potentially affected by the Flat Creek Project, solicit information from stakeholders during public outreach events and generally foster public participation in the 94-c review process.

You may access all documents electronically on the New York State Department of Public Service's **Document Matter Manager (DMM)** system, or you may access hard copies of the documents at one of the following locations:

Root Town Clerk's Office
1048 Carlisle Road
Sprakers, NY 12166

Canajoharie Town Clerk's Office
12 Mitchell Street
Canajoharie, NY 13317
Hours: Mon-Thu, 9 am-2 pm

Canajoharie Library
2 Erie Blvd
Canajoharie, NY 13317
Hours: Tue, 10 am-5 pm; Wed, 10 am-6 pm; Thu-Fri, 10 am-5 pm; Sat-Sun , 12 pm-5 pm
**Please note: as additional documents are filed, this section will be updated*

Public Comment

Any party wishing to remain a party under the 94-c process is encouraged to review the **94-c regulations** and to contact the ORES office with any questions at:

Office of Renewable Energy Siting
Empire State Plaza
P-1 South, J Dock
Albany, NY 12242
(518) 473-4590
general@ores.ny.gov

To stay up to date on the Flat Creek Project, please join our stakeholder mailing list by emailing us at **flatcreekinfo@cordeliopower.com**.