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Houtan Moaveni
Executive Deputy Director
New York State Office of Renewable Energy Siting
99 Washington Ave.
Albany, New York 12231-0001

Subject: Comments on ORES Draft Regulations and Uniform Standards regarding intervenor funding allocation

Dear Mr. Moaveni:

Please accept the following comments regarding the proposed allocation of intervenor funds within the Draft Regulations and Uniform Standards from your Office.

Comment on the following Draft Regulations:

900-1.4 (a)(8) General Requirements for Application

> *Be accompanied by a fee to be deposited in the local agency account in an amount equal to one thousand (1,000) dollars for each one thousand (1,000) kilowatts of capacity, which may be adjusted from time to time by the Office to account for inflation;*

900-1.5 (a) Office of Renewable Energy Siting Review Fee

> *The Office shall charge a fee to the applicant in order to recover the costs of reviewing an application in an amount equal to one thousand (1,000) dollars for each one thousand (1,000) kilowatts of capacity, which shall be due at the time of application filing.*

Subpart 900-5.1 (g)(2) Local Agency Account

> *The Office shall reserve at least seventy-five (75) percent of the local agency account funds for each project for potential awards to local agencies.*

Intervenor Funding under Article 10 was to solve problems that existed in pre-Article 10 Siting

The purpose of intervenor funds is to "facilitate[ ] broad public participation." PSL § 164(6)(b). See also PSL § 163(4)(b) (the purpose of intervenor funds during the pre-application stage is "to assure early and meaningful public involvement"). Accordingly, the absence of intervenor funds is an obstacle to meaningful public participation for appropriate intervenors.

Under Article 10 there were two intervenor funding opportunities. The first was for $350 per 1000 kw during the pre-application phase. A pre-application intervenor fund could be increased by up to $25,000 if the preliminary scoping statement was substantially modified or revised after its filing. In the application phase of the process the amount was $1,000 per 1000 kw. These amounts are made available to municipalities or local parties. 50% is reserved for municipalities.

Funding to both municipalities and local parties was needed due to the history of abuses by developers in renewable energy siting in New York. Prior to Article 10, renewable energy projects were approved by town boards or planning boards. Developers offered lucrative leases to board members and projects were easily approved. Citizens who raised concerns had little opportunity to influence the decision. To mitigate the effect of developer leases to town board members, Article 10 gave citizen groups and other local parties the same funding opportunity as municipalities.

Article 10 regulations give citizens and citizen groups who lived in or near the project area notices and multiple opportunities to comment on the process. Documents are made available on a public website. There is an opportunity to submit public comments during the process. But in order to provide an effective opportunity for municipalities and town residents to participate in the process, they must be given funding to defray the cost of attorneys, experts and other costs.

When a developer has leases with board members or their families, then the intervenor funding that goes to the town is essentially giving the money back to the applicant. It will generally not be used to raise issues and concerns of citizens.

Funding to both municipalities and citizen groups is important due to the location of where these renewable projects are proposed – in the lowest income counties in the state. Franklin, Allegany, Wyoming, Orleans, Cattaraugus, Lewis, and Chautauqua are all locations with industrial projects built or proposed or both and they are seven of the ten lowest income counties of New York's 65 counties. Funding is crucial to meaningful participation in these poor counties.

26% Decrease in Funding to Local Parties and 270% Decrease in Citizen Stakeholder Funding contradicts Justice aspects of CLCPA

The Draft Regulations change the Article 10 funding process by eliminating the first round of funding. Since Article 10 provides $350 per MW in the first round of funding and $1,000 per MW in the second round, reducing funding to defray the costs of participating in the proceeding by $350 is a 26% cut in funding to local parties.

Funding for citizens and citizen group parties under Article 10 was half of the amount available to municipalities at $675 per 1000 kw. Under the draft regulations this amount is reduced to $250 per 1000 kw. That is a 270% decrease! For a 200 MW project that is the difference between $135,000 under Article 10 and $50,000 under the 94-c regulations. The effect on municipalities is quite different. Under Article 10 they would be able to receive a minimum of $675 per 1000 kw. Under the draft regulations they will be eligible for a minimum of $750 per 1000 kw.

Developers continue to locate projects in poor counties. In light of the CLCPA commitment to funding low income urban communities it is unacceptable to decrease funding to poor rural communities. Given the pace at which these projects are being pushed and the proliferation of projects in some of these counties, the funding should be increased, not decreased.

This decrease in funding is indefensible in that the Draft Regulations have added a fee of $1,000 per kw to be paid to the ORES office for the cost of the review. Instead of requiring developers to provide a total of $1,350 per MW, funding is effectively being taken from local parties and being given to the State.

This transfer of funds from local stakeholders to the State to cover the added costs of ORES is contrary to good government practices. ORES duplicates (but weakens) the now mature development of siting standards under Article 10. Employees, infrastructure and procedures are already in place. If speed was the issue then the processes and procedures can be modified and new employees can be hired. But ORES should still utilize DPS employees with experience and the Article 10 Siting Board's history of decisions. ORES is the opposite of governmental consolidation. In creating a new office to do the same thing that DPS is doing, ORES is also the opposite of "smart growth", a principle that the State urges for municipalities in an effort to utilize existing infrastructure before creating new.

The regulations should be revised so that local parties have the opportunity to request up to $1,500 per 1000 kw and the ORES office fee shall be $500 per 1000 kw. This does not increase the cost on the developer, compared to ORES's proposal.

Draft Regulations Promote the same Abuses that Article 10 Tried to Solve

Directing funding to Municipalities at the expense of citizens and citizen group intervenors will encourage more of the same conflict of interests that currently plagues large-scale renewables siting in New York. Based on that experience, ORES's proposal will encourage developers to target board members for lease contracts, thus increasing conflicts of interest.

Under Article 10, ALJs have granted more than 50% of participation funding to municipalities, particularly if there is more than one municipality involved in a project. ALJs should continue to have the discretion, in light of the purposes of the funds, to direct up to 50% of the funding to local citizens or citizen groups.

Citizens and citizen groups have raised substantial issues, discovered relevant information from applicant experts and added relevant evidence to the record in Article 10 proceedings. In some cases, municipalities awarded funding have not contributed at all to the record. In most of those cases, local officials with conflicts of interest decided to support the project before any project review. Citizen groups have retained experienced attorneys who facilitate their participation in a manner that does not slow down the process. It is in the best interests of New York State, and in the interest of the ORES goal of increasing the pace of decision making on these projects, to substantially fund local groups.

Under the~~se~~ draft regulations, developers already in the Article 10 process can move to the Section 94-c permitting process under ORES and in so doing cut the funding anticipated for the citizen stakeholders in half. For stakeholders, this would be an abuse of process.

In short, the entire impact of the decrease in overall funding, plus a little more, has been shifted to the citizen group in the poorest counties in the state, very often where town boards and town employees have signed leases with developers.

This change in funding for municipalities and citizen group does not speed the siting process. It does not save the developer funding. This aspect of the draft regulations highlights the main thrust of these regulations. It is to silence local communities.

The draft regulations should be revised to maintain the Article 10 intervenor regulation that reserved 50% of the intervenor funding for municipalities and gave discretion to ALJs to determine further allocations.

Thank you for your consideration of these comments.

Sincerely,

Pamela Atwater, President

Kate Kremer, Vice President