



New York Wind Development At A Crossroads

If it is to realize its potential, the state must first address delays and inconsistencies in the siting of wind projects.

BY MARK SWEENEY & JAVID AFZALI

Over the past decade, wind energy development in New York has thrived, thanks, in part, to the state's renewable energy initiatives and efforts to meet the standards established under its renewable portfolio standard. As of this spring, 18 wind energy projects with a cumulative capacity of about 1.4 GW are operating in New York state.

New York developed a solid regulatory body of policies, laws, regulations, procedures and knowledge pertaining to energy and environmental issues in wind power development. This experience and expertise has given investors confidence in wind project development and some certainty as to their ability to attain a suitable return on their investment.

Despite the progress made to date, the current market atmosphere is marked by uncertainty. Concerns include the possible expiration of the federal production tax credit (PTC) for wind power and the unknown status of the New York State Energy Research and Development Authority's (NYSERDA) request for proposals (RFP) for renewable energy.

Furthermore, the wind industry awaits the financial and regulatory impact of the recently enacted Article X of the N.Y. Public Service Law that regulates the siting of all electric generating facilities with a capacity of at least 25 MW. The outcomes of these issues will determine whether New York remains a viable place to develop wind energy.

The future of the PTC is highly uncertain. The incentive is set to expire at the end of this year, and whether it is extended – and for how long – remains to be seen. While the industry has been fortunate to gain short-term extensions in the past, failure to extend the incentive for a longer period of time means investors and wind developers can only plan for the short term.

Without a long-term policy, investors and developers are discouraged from investing in and undertaking

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Wind farms, such as Iberdrola Renewables' 74 MW Hardscrabble Wind Farm, located in Herkimer County, N.Y., (pictured at left) include several areas for potential occupational hazards, such as working at heights and in confined spaces. Therefore, it is no surprise that the Occupational Health & Safety Administration is stepping up its oversight on wind farms. What does the agency's renewed focus on wind energy mean for your wind farm?

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new wind projects, and financial partners cease providing capital for wind projects. The potential loss of this fundamental component of a financeable wind project has chilled – and could even completely foil – wind development across the country.

In an attempt to make up for some of this uncertainty at the federal level, NYSERDA has launched its own incentive to encourage wind energy development in New York: The agency is preparing to issue an RFP. Originally scheduled to be released in July, the RFP remains a work in progress. At press time, NYSERDA had not yet released the RFP.

Creating a financeable model has been challenging and is widely believed to be a significant factor delaying the RFP's release. Another issue being discussed is whether to address the practice of issuing RFPs on an ad hoc basis. Wind industry representatives and investors have lobbied for the creation of a longer-term solicitation policy that would give greater certainty, and thus attract greater in-

vestment. The creation of such energy and tax policies, applied consistently for an extended period, would provide the necessary stability to attract and sustain investment in New York wind project development.



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from municipalities and empowers the siting board with decisions related to the siting, construction, licensing and operation of major electric generating facilities.

Article X states that “no state agency, municipality or any agency thereof may require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility” when an Article X

compliance with applicable state and local laws and regulations, the siting board may elect not to apply any local ordinance, resolution, regulation or any local standards – including those relating to the use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way – if the siting board determines that it would be “unreasonably burdensome” for the proposed facility.

The ability of the siting board to overrule such unreasonably burdensome regulations may be the key to wind projects overcoming local opposition and to the fulfillment of the state's energy policies. Notably, this important element of Article X addresses many of the concerns wind developers have in committing to long-term projects in the state.

For example, wind projects often face opposition by local residents. Regardless of whether the local governing body favors the project, the local opponents may have undue influence by threatening to vote against the county, town or village official who supports the project.

By creating a siting board that is

Article X

Finalized in July, Article X authorizes the New York State Board on Electric Generation Siting and the

The new law shifts authority away from municipalities and empowers the siting board with decisions related to the construction, licensing and operation of electric generating facilities.

Environment to hear all applications for major electric generating facilities. However, it remains uncertain whether the policy will stimulate wind energy development in New York.


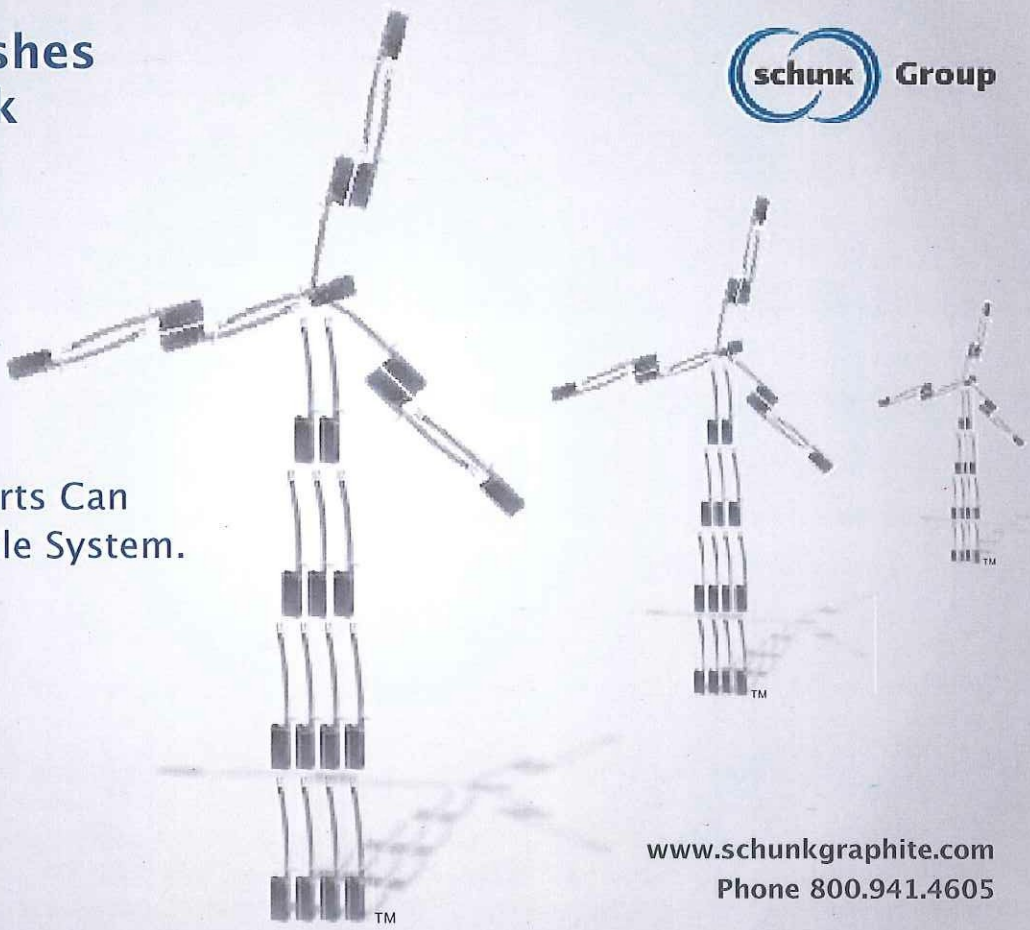
The new law shifts authority away

application for a certificate has been filed.

Although the siting board may not issue a certificate for the construction or operation of a major electric generating facility unless it is in com-

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not directly elected by the residents of the municipality where a wind project is proposed, the new governing body can make reasoned decisions and better balance the state policy, as well as work with local interests to preserve environmental and cultural resources during the development of renewable energy projects.

However, local interests will still have a forum to voice their concerns and will have input in the permitting and approval process. Article X merely shifts the governing body responsible for site approvals from local town and planning boards to the siting board; all local interests are still given an opportunity to be heard.

Because Article X was enacted recently and is thus far untested, there is still some uncertainty as to the degree to which the siting board will utilize its ability to overrule local regulations relative to wind power projects and the extent to which such efforts will be upheld by the courts.

Moreover, even if state courts were to uphold the law in its entirety, there would still be no way to know to what extent, if at all, the siting board would exercise its power to disregard "unreasonably burdensome" local laws and regulations affecting proposed wind projects.

Recently, Beacon Harbor LLC, a developer of a proposed waste-to-energy facility in the town of Bethlehem in Albany County, petitioned the siting board for a declaratory ruling on whether it would overrule the town's local zoning and flow control regulations.

Beacon Harbor withdrew its petition on Oct. 29, after the siting board indicated it would not make any such determination absent further project information and public participation regarding the petition.

In addition, petitions for siting-board review were submitted for two wind projects in western New York. These projects faced substantial opposition from local residents and politicians. In fact, obstacles included a ban on wind project development in the town of Cape Vincent.

In these cases, the actions of the siting board and the ability of the applicants to overcome strong local opposition will likely have a significant impact on future wind energy development in New York. *SP*

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Cuban Projects Survive Sandy

Two wind farms hit by Hurricane Sandy in Cuba survived the storm and did not sustain any damage, according to the World Wind Energy Association (WWEA).

The affected area, in the Cuban

province of Holguin, accommodates two wind farms: the 5.1 MW Gibara I, which consists of six 850 kW wind turbines installed in 2008, and the 4.5 MW Gibara II, which consists of six 750 kW machines installed in 2010. Both wind farms were hit by wind speeds of up to 110 miles per hour during the storm.

Recently, the Cuban government

announced that the hurricane caused no damage at either of the wind farms and that the projects are still providing electricity for the local grid.

"Cuba installed the two wind farms close [to] Gibara in the years 2008 and 2010, being aware that they may be hit by a hurricane," explains Conrado Moreno, a professor at the Cuban Center for Renewable Energy Technol-



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