

Press Release: Towns of Somerset and Yates Oppose Governor Cuomo's Renewable Energy Power Grab

February 27, 2020

The Town of Somerset (Niagara County) and the Town of Yates (Orleans County) are adamantly opposed to Governor Cuomo's attempt - under the guise of a last-minute amendment to the state budget process referred to as Article 23 - to accelerate renewable energy development at the expense of our towns, our citizens and our environment.

Towns, citizens, environmental groups, developers and state agencies have operated for almost a decade under Article 10 (the current siting law), so one wonders what changed now that the existing process is hitting its stride. Lord Acton's quote comes to mind, "All power tends to corrupt and absolute power corrupts absolutely." This is a power grab, pure and simple.

Article 23, should lawmakers accept it, is sweeping in its scope and changes all aspects of how power plant siting (including industrial scale wind and solar projects) are permitted and approved. It eliminates the role of local zoning laws, allows for eminent domain takings of land, guts critical environmental review, and limits a town's taxation and assessment powers and ability to negotiate host community agreements.

The proposed changes are inconsistent with our NY State Constitution's Home Rule provisions and removes all local land-use control for power plants, transmission lines, and battery storage projects greater than 10 mega-watts in size. This is achieved through broadening the definition of an "unreasonably burdensome" local law to mean inconsistent with Cuomo's energy goals.

The proposed changes will result in financial benefits to out-of-state energy developers at the expense of local governments and citizens. The changes will authorize the state (rather than the counties, towns and school districts) to cap PILOTs (payments in-lieu of taxes), to standardize the methodology for assessing property values with wind and solar energy facilities, and to create generic permitting conditions that could eliminate a municipality's ability to identify and study the local conditions and problems that may require mitigation.

The proposed changes will alienate local constituents by excluding them from the siting process entirely. Individuals and public interest groups would be excluded from the Article 23 Siting Proceeding. This is a complete reversal of one of Article 10's primary goals, which is to facilitate meaningful public participation in the siting process.

The proposed changes will exempt developers from a rigorous review of local environmental impacts through reliance on state-wide, yet-to-be-determined conditions and automatic approval provisions.

The most egregious proposed change? Once the application is deemed complete by the newly established Office of Renewable Energy Siting (ORES), the ORES will have one year to issue a final decision. If the ORES fails to make a decision in one year, then the siting permit will be "deemed to have been granted." That's right, this means that if the ORES (read: the state) doesn't do its job then the project is automatically approved.

Ultimately, state lawmakers should realize that voting to jettison Article 10 and to force Article 23 into law is an unconscionable power grab and will result in numerous obstacles by picking winners and losers among developers and creating new agencies, staffing, rulemaking and, inevitably, litigation.