

# ***“The Updated Lens”***

An Update Report to *Embracing the New Paradigm*

***Ensuring Procedural Justice  
with Renewable Energy Development***

**Critical Perspectives and Recommendations on the New York State Article 10 Siting Process**

January 2020



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## Background

River Residents Against Turbines (River RATs) is an inclusive community voice assembled in 2016 to oppose a single, improperly-sited industrial wind project, the Horse Creek Wind Project (Horse Creek), which is proposed for the world-famous 1000 Islands region of Jefferson County, New York. Over the last four years, we have identified and communicated through direct community interaction and social media the many serious issues and concerns associated with Horse Creek.

This past March, River RATs published ***Embracing the New Paradigm, Ensuring Procedural Justice with Renewable Energy Development, Critical Perspectives and Recommendations on the New York State Article 10 Siting Process.*** *Embracing the New Paradigm* contains a series of comments and recommendations on Article 10, New York's required procedural process for 25 MW or larger energy projects.

This whitepaper, ***The Updated Lens***, supplements *Embracing the New Paradigm* and addresses key Article 10 events and developments from the second half of 2019 and beginning of 2020.

By late 2018, revamping Article 10 was identified by renewable advocates and policy proponents as a key advocacy issue for 2019. At various policy forums across the state, these advocates suggested that regulatory changes were needed and a revamped Article 10 should be "frictionless" for developers.<sup>1</sup>

*Embracing the New Paradigm* is based on firsthand community experience with Horse Creek and offers an authentic community voice in the ongoing policy debate about amending Article 10, including specific process and application content recommendations. River RATs stands by the comments and recommendations presented in March. Based on developments from the last six months of 2019 and discussed hereafter, our recommendations are more relevant than ever before.

At the core of our recommendations are three internationally-endorsed sustainability principles associated with renewable energy development and large-scale project siting: **Social License, Procedural Justice, and Resource Localism.**

Until these principles are incorporated into Article 10, the process will be criticized and project opposition and delays will continue across New York State.

**Social License or Social License to Operate (SLO)** - *“SLO can be defined as an ongoing and fluid level of acceptance by stakeholders, at multiple levels, which may be revoked at any stage of the project lifecycle based on changes in perceptions and reflective of the relationships between a company and its external stakeholders.”*<sup>2</sup>

The need for Social License is widely recognized across various natural resources industries, including industrial wind. The Article 10 process would be less contested if developers earned and maintained a Social License for their projects.

**Procedural Justice** - *“The ability of the people and communities whose environment and health stand to be affected by a siting decision (or other environmental policy action) to participate as equals in the decision-making process (Schlosberg, 2007).”*<sup>3</sup>

For New Yorkers, this also translates into a discussion about Home Rule, local self-determination, and concerns that Article 10 allows the PSC to waive local laws that are deemed ‘unreasonably burdensome.’ If local residents exercise Home Rule by electing town boards that are opposed to large-scale renewable development, and approve local regulations that are not compatible with large-scale renewable projects, then developers should respect the civic process and seek alternative project areas with supportive communities.

**Resource Localism** - *“The key to success is adopting a local view of resource development, and being prepared to invest time and effort up-front, arguably before the engineering and technical work starts (C. Wall, 2016).”*<sup>4</sup>

Communities involved with wind, solar, or other resources are now equipped with sophisticated communication tools and strategies to affect project outcomes, including the ability to often delay or stop projects. Local stakeholders are demanding participation in project development. Resource Localism is a shift away from traditional developer perspectives on simply moving (or forcing) projects forward, with a new appreciation of local stakeholder perspectives.

## **New Developments in 2019**

This update provides stakeholders with perspectives from a community that is actively involved in a controversial project (Horse Creek) which has been a constant threat to our community for more than a decade, despite near-unanimous local and regional opposition.<sup>5</sup> Such perspectives have not been included in policy papers generated by industry-backed organizations, which are often perceived by locals as illegitimate

representations of what is actually happening on the ground in communities across New York State.

In the ten months since the release of *Embracing the New Paradigm*, several events significantly impacting Article 10 have occurred:

1. **Governor Cuomo signed the New York State Climate Leadership and Community Protection Act (CLCPA) into law**, increasing renewable energy production targets to 100 percent clean energy by 2040, the highest in the country.
2. **Developers and the NY renewables lobby began promoting the CLCPA as a deciding factor in Article 10 legal filings** for Bluestone Wind (Bluestone) and Number Three Wind (NTW).
3. **The New York League of Conservation Voters Education Fund (NYLCVEF) published *Breaking Down the Barriers: Recommendations Report (Recommendations Report)*** which sets the stage for renewable advocates to lobby for Article 10 changes. This includes recommendations that the state provide various financial incentives to make reluctant communities more welcoming of industrial wind and for state agencies to become more active in promoting projects.
4. **Renewable industry advocates began a statewide campaign promoting the CLCPA and *Breaking Down the Barriers* recommendations.**

While no formal changes have yet been made to Article 10, the actions listed above will continue to shape industrial renewable siting across New York and set the stage for 2020.

## **The New York Climate Act**

In June, the New York State Legislature passed the **Climate Leadership and Community Protection Act (CLCPA)** which became law in July with Governor Cuomo's signature. The CLCPA is comprehensive legislation that outlines New York's commitment to climate change leadership, which in many ways sets the standard for states across the country. The CLCPA covers all aspects of energy generation, storage, building efficiency, and Environmental Justice.<sup>6</sup>

Most notably, the CLCPA calls for a massive increase of non-carbon electricity generation (primarily wind and solar) with a goal that 70% of the State's electricity be generated by renewable sources by 2030, increasing to 100% clean electricity by 2040. Passage of the CLCPA was immediately identified by many industry-supportive groups as positive step in the push for the wind and solar renewable energy projects across New York State.

**On June 21, a River RATs' social media post described the implications of the CLCPA on Article 10:**

*"Looking at Albany, what is unknown are the bureaucratic and lobbying tactics the renewable energy industry will now employ to implement the CLCPA in their favor. Perhaps most revealing will be the new 23-member intergovernmental commission. A commission that includes most NYS agency leaders along with additional statewide political appointees, and given the regulatory authority and freedom to design a plan to achieve the legislative goals.*

*River RATs raises the concern that the CLCPA could be unfairly used as*

*1) another level of pressure on the PSC,*

*2) further encouragement of poorly-sited renewable projects under Article 10, and*

*3) political justification to make the approval process "frictionless" for renewable developers who are interested in "Breaking Down the Barriers" in their ongoing attempts to amend Article 10."<sup>7</sup>*

Then and now, River RATs believes that industrial wind (and solar) developers and their supporters will attempt to use the CLCPA to influence Article 10 projects. Going forward, this is likely to include attempts to modify key language in Article 10 to include specific guidelines favorable to the CLCPA.

## **"Updated Lens" – Article 10 Meets the CLCPA**

As expected, soon after passage, the wind industry attempted to use the CLCPA to their benefit during Article 10 reviews. Since passage, developers, the renewables lobby, and lately the Siting Board itself have referenced the CLCPA in their public comments and legal filings.

**One of the first specific references by wind developers to the CLCPA was with Bluestone on August 9.** In their *Initial Brief of Bluestone Wind, LLC*, attorneys for the developer, Calpine Corporation, stated:

*“The Bluestone Wind Project presents a unique opportunity for the New York State Board on Electric Generation Siting and the Environment (“Siting Board”) to certify a clean energy project in the Southern Tier of New York that will significantly contribute to New York State’s aggressive clean energy goals, while avoiding and minimizing potential significant impacts to the environment. **Just recently, Governor Cuomo signed the Climate Leadership and Community Protection Act (“CLCPA”),** which adopts the most ambitious and comprehensive climate and clean energy legislation in the country. **The CLCPA requires** the State to achieve a carbon free electricity system by 2040 and reduce greenhouse gas emissions 85% below 1990 levels by 2050, setting a new standard for states and the nation to expedite the transition to a clean energy economy. Projects like Bluestone Wind are crucial to help New York achieve its ambitious clean energy goals.”<sup>8</sup> (River RATs emphasis).*

**On September 12, the day after attorneys for Number Three Wind filed their opposition brief, New York renewables lobby ACE NY** submitted a letter, *Public Comments on Recommended Decision*, to the PSC. The ACE NY comments, addressing both technical project criteria as well as the agency’s broader decision framework, attempted to tie the CLCPA to Article 10.

Addressing technical issues of sound levels, bats, and grassland birds ACE NY made the following comments about DPS and DEC staff analysis and recommendations:

*“ACE NY is not insisting that each of these three examples of decisions are unequivocally wrong. Instead, these three examples are put forward to demonstrate that a differing opinion could have been put forward that would have been equally or more correct, and would have had a significant outcome on the conditions in the RD. This illustrates that the task of the Siting Board to balance and assess divergent experts’ views is both complex and subjective. **It also illustrates the importance of the Siting Board considering the issue from all perspectives, particularly the critical perspective of the State’s ambitious climate and clean energy goals,** as articulated by the Public Service Commission, in the State Energy Plan, and in the **Climate Leadership and Community Protection Act.**”*

*In other words, **if there is a close judgement call to be made on conditions in the operation of a renewable energy facility, the decision should be made that will facilitate New York's achievement of its very clear legislative and administrative mandates**, mandates that have been enacted to tackle climate change, the most important environmental challenge of our time.*"<sup>9</sup> (River RATs emphasis).

The ACE NY comments continued in a broader procedural context:

*"In contrast, the testimony from agency staff tends to be narrowly focused on specific individual issues (e.g. sound, bats, grassland birds) without any balancing consideration of the relevant environmental benefits of the proposed project. Similarly, the RD does not appear to consider whether the agency staffs' positions considered either the State's clean energy goals or the impacts of unmitigated climate change. While this is **the traditional approach that has been followed in environmental review**, whether under the State Environmental Quality Review Act or Article 10, it **falls short of what is needed in today's world**.*

*The DEC has a Commissioner's Policy directing all agency decisions to consider climate change issues, including the climate benefits of actions undergoing environmental review. The **Climate Leadership and Community Protection Act** includes provisions directing that all state agency actions and decisions be consistent with the greenhouse gas emissions goals in the Act. **This updated lens needs to be applied in Article 10 cases.**"<sup>10</sup> (River RATs emphasis).*

River RATs expects to see the arguments for this **"updated lens"** in 2020, including possible attempts at modifying Article 10 criteria and internal agency review procedures with specific references favoring the CLCPA.

Also important is the specific reference by ACE NY to the **DEC Commissioner's Policy directing all agency staff to consider climate change issues** and that "decisions be consistent with the greenhouse gas emissions goals in the Act."<sup>11</sup> In essence, this declares that the CLCPA should be a deciding factor in future Article 10 decisions, especially, as ACE NY says, *"if there is a close judgement call to be made."*<sup>12</sup>

On **November 12**, the CLCPA theme was picked up by the Siting Board in the press release announcing approval of Number Three Wind:

***"The Siting Board's decision demonstrates how New York is working to achieve Governor Cuomo's Green New Deal — the most aggressive climate and clean energy initiative in the nation, putting the state on a path to being entirely***



*carbon-neutral across all sectors of the economy and establishing a goal to achieve a zero-carbon emissions electricity sector by 2040, faster than any other state. Additionally, the recently passed **Climate Leadership and Community Protection Act mandates the Green New Deal’s national leading clean energy targets: nine gigawatts of offshore wind by 2035, six gigawatts of distributed solar by 2025, and three gigawatts of energy storage by 2030, while calling for an orderly and just transition to clean energy that creates jobs and continues fostering a green economy.***<sup>13</sup> (River RATs emphasis).

This theme was repeated by the Siting Board on December 16, in the subheading of their press release on the Bluestone Wind Project:

***“Project Supports New York’s Nation Leading Renewable Energy Targets Under the Climate Leadership and Community Protect Act”***<sup>14</sup>

And in the copy:

***“Bluestone Wind and other wind and solar projects currently under development are vital to meet the Climate Leadership and Community Protection Act’s (CLCPA) aggressive carbon reduction and clean energy targets.”***<sup>15</sup>

The CLCPA - while not a codified element of Article 10 at this time - certainly has advocates in the wind and solar industries and, more importantly, is a factor with the Siting Board. **The CLCPA, if improperly used by developers and their allies as a replacement for traditional project evaluation, would fail to assess and respond to important environment and community concerns, resulting in increased environmental degradation and community unrest.**

## ***The Next Step – Developers Will Attempt to Overcome Opposition Using State Agency Intervention and Financial Incentives***

### ***Breaking Down the Barriers: Recommendations Report***

In *Embracing the New Paradigm*, River RATs commented on the NYLCVEF’s then-recently released whitepaper, *Breaking Down the Barriers*. As we discussed, from the opening definition and labeling of “breaking down” community barriers to their specific

policy steps, the NYLCVEF dismisses the importance of true developer and community relations and the importance of siting a project with the support of all parties involved.

In September, the NYLCVEF released a supplemental document entitled *Breaking Down the Barriers to Renewable Energy Siting: Recommendations Report*.<sup>16</sup> Since its release, the report has been a point of discussion in renewable industry policy forums and advocacy efforts. River RATs expects that the NYLCVEF recommendations will be front and center throughout 2020. River RATs offers the following comments on the report.

## Introduction and Process

As described in the introduction, the paper is based on four statewide stakeholder meetings:

*“These meetings focused heavily on group discussion between a range of local and regionally appropriate stakeholders, including representatives from the state, local governments, utility companies, renewable energy developers, environmental organizations, energy advocates, regional planning groups, the legal field, and more.”<sup>17</sup>*

**River RATs Response:** While the listed intent of the process was to improve community outreach, given the participants listed in the report, these meetings appear to be just another repetitive round of government, industry and third-party advocate meetings designed to push development forward. In this way, it is similar to previous advocacy-backed efforts such as the 2017 whitepaper *Accelerating Large-Scale Wind and Solar Energy in New York Principles and Recommendations: A Report from the Renewables on the Ground Roundtable*.<sup>18</sup>

If there was a real concern about outreach and understanding local concerns, why did the report exclude representatives from affected project communities? Why were “stakeholder roundtables” held in large cities and not more accessible regional centers near communities with contentious projects?

Furthermore, like the *Renewables on the Ground Report*, not a single official from a town with an active wind project is listed as a speaker or participant.<sup>19</sup>

## Community Engagement

*“Renewable developers interested in establishing a relationship with a potential host community must engage as early as possible. **Developers** are not the only*

*parties responsible for engaging early with local communities, and they **may not always be the best messenger** as they have a profit motive to advance a project. For this reason, state representatives, environmental groups, utility companies, and local leaders and spokes-people should be engaged early-on in the siting process.”<sup>20</sup> (River RATs emphasis).*

**River RATs Response:** Early engagement is critical. In fact, as presented in *Embracing the New Paradigm*, River RATs believes that all issues arising from project siting should be worked out prior to project submission to avoid forcing a contentious and litigious Article 10 application process. Contrary to the view expressed in the *Recommendations Report*, renewable developers in fact must be the responsible party to interact with local communities and earn a **Social License**. It is not appropriate for the state and other outside groups to step in and become the public face in place of developers. Nor will it produce successful outcomes. Education and advocacy is one thing; project ownership and responsibility is another.

*“Lastly, **creativity in local benefits**, such as host benefit agreements that **provide funds** or energy to local fire departments, parks, or schools, could also help gain support from sectors of a community that might otherwise remain neutral.”<sup>21</sup> (River RATs emphasis).*

**River RATs Response:** Local acceptance of projects should not simply be targeted financial handouts to mitigate project opposition. This is especially true in the face of routine local tax avoidance mechanisms such as PILOT agreements.

River RATs asks: are we headed toward a state-sponsored Article 10 regulatory process where the commonplace distribution of funds replaces critical evaluation of the adverse impact of poorly-sited projects and overshadows a local community’s environmental, cultural, and economic concerns?

The *Recommendations Report* continues with repeated attacks on the internal administrative process, with a reference to the CLCPA.

*“With respect to Article 10, stakeholders frequently brought up frustrations with the overall slowness of the process, the lack of coordination and communication between the different state agencies... the lack of early engagement between the Siting Board and the developer on project specifics, the perception that local communities are excluded from the process, and the fact that all relevant agencies are understaffed to handle the significant increase in applications that*

*have already come in and will continue to be submitted due to the mandates of the CLCPA.”<sup>22</sup>*

**River RATs Response:** *As presented in **Embracing the New Paradigm**, Article 10 has numerous **Procedural Justice** flaws that are harmful to local communities that need improvement. As a solution, **Embracing the New Paradigm** offers 22 specific recommendations to improve application content and process steps.*

What is clearly missing in the NYLCVEF report is industry acknowledgement - and critical self-examination - of industry development practices and tactics that are often the source of community conflict when attempting to propose and implement Article 10 projects.

Furthermore, it is not a perception that local communities are being excluded from the process – it is a fact – and especially true when developers hold the minimum number of required public workshops, often at time and locations that appear intentionally selected to limit stakeholder participation.<sup>23</sup> Instead of addressing this issue, once again we read about of the slowness of the process and the failures of the dedicated DPS, DEC, and other state agency staff - not poorly-sited and mismanaged projects.

### **13 Recommendations**

Below are the 13 legislative, regulatory, budgetary, and program recommendations contained in the NYLCVEF *Recommendations Report*:

***1) Exclude payments in lieu of taxes (PILOTs) or other funds received from renewable energy projects from the 2% property tax cap.***

**River RATs Response:** *River RATs disagrees. While the 2% tax cap is a factor school systems must deal with in their budget process (compared to previous years when wind payments were simply ‘gravy’ to the budget) it avoids and misdirects the underlying tax benefits developers already employ. While the NYLCVEF argues this would provide local communities with greater flexibility and freedom to negotiate “creative” community benefit agreements, River RATs believes communities would be much better off with full taxation rather than PILOT agreements and/or other financial benefits.*

***2) Establish a mitigation fund or bank to address impacts on the environment, including threatened and endangered species, and sensitive habitats.***

River RATs Response: River RATS strongly disagrees. This is an attempt to diminish local environmental concerns under the guise of establishing a third party mitigation fund that develops “conservation projects in a comprehensive and thoughtful way as opposed to on a project by project basis.”<sup>24</sup> In other words, it is a recommendation to ignore local environmental concerns and establish a nonspecific, out-of-area mitigation project or unused monetary fund. **This is not Environmental Justice** and is an attempt to discount the meaningful participation of dedicated DEC staff that safeguard shared natural resources.

### ***3) Audit regulations to streamline the process.***

River RATS Response: As presented in our *Embracing the New Paradigm* recommendations, we support the standardization of the review process and application content. Currently, developers are afforded too much flexibility to modify project design throughout Article 10. As a result, many developers are not up front or transparent with communities, creating mistrust in the siting process and distrust of renewable developers in general. River RATs supports greater interaction between developers and local communities prior to formally beginning the process to determine if a project is properly sited. With early agreement of all stakeholders, Article 10 becomes a simple review and certification process, not a lengthy, costly, and contested legal proceeding.

While developers and industry lobbyists complain that Article 10 is too long and uncertain, the reality is that in many cases, such as with Horse Creek, it is developers who: 1) fail to advance their projects after the minimum review timelines have passed, and 2) fail to provide concrete details about the locations, numbers and models of turbines to be deployed.

What should become standardized are time limits before a project must be withdrawn or restart the Article 10 process. At present, Article 10 projects are not subject to sunset provisions; projects exist indefinitely until withdrawn by the developer, a clear disadvantage for small, rural communities who have to budget and plan as if a project could restart at any moment. **This is not Procedural Justice.**

### ***4) Amend the wetland delineation range from 500 feet to 100 feet.***

River RATs Response: River RATs disagrees. Given the large geographic, geologic, and ecosystem impact from industrial scale wind (and other renewable) projects, and resulting environmental, wetland, and other local concerns retaining the 500 foot range is appropriate.

**5) Ensure local appointments are made to the Siting Board.**

River RATs Response: River RATs certainly agrees, and as River RATs has commented on social media, the state legislature not appointing local representatives<sup>25</sup> is clearly a tactic to suppress local voices. However, River RATs would suggest that the current appointment of **only two local representatives to a board of seven** (with five state political appointees) **is insufficient**. Watching recent Siting Board hearings it is clear that, as many communities predicted, opposing local voices are simply there for **window dressing**.<sup>26</sup> **River RATs suggests increasing the number of local representatives on the Siting Board to at least five** (a 50/50 mix) to more adequately represent the local communities.

**6) Provide \$1 million for a neutral party to provide support and planning to local municipalities.**

River RATs Response: River RATs disagrees. Reviewing wind projects across the state, it is evident that communities are increasingly aware of technical planning methods to address renewable energy development. Industrial wind (and solar) is a local and county issue. Adding another layer of state-sponsored “neutral” regional technical “support and planning”<sup>27</sup> would not improve the process. **Wind projects are a local issue and New York is a Home Rule state - this is the reality of Resource Localism – even if it is an inconvenient truth many developers do not want to acknowledge**. If additional funding is made available, it should be utilized to directly support local communities and groups as they see fit.

**7) Develop local Community Climate Action Plans or climate change task forces to help lay groundwork early on in communities.**

River RATs Response: River RATs disagrees. The intent of this recommendation is to have NYSERDA and/or other state entities “incentivize local communities to be proactive” about renewable energy planning and to “provide incentives for developers to advance projects in communities that already support renewable energy.”<sup>28</sup> Again, local communities are increasingly aware of planning methods to address renewable energy. The concept of **Social License** means the project developer, not NYSERDA or other state entity, should speak and act for the project in the local community.

**8) Establish creative incentives. The state should offer incentives to host communities through existing state programs, such as the Regional Economic Development Council grants, to encourage communities to welcome renewable energy projects.**

River RATs Response: River RATs strongly disagrees. Once again the message being promoted by the NYLCVEF is simply that monetary payments and grants is how you break down the barriers and develop community encouragement. River RATs believes proper community interaction, site selection, and project development should not be displaced by financial incentives to ‘welcome’ and ‘encourage’ renewable energy projects. The appearance of ‘buying off’ communities is usually both unsuccessful and insulting to community members, and may lead to feelings of resentment in the community at large.

### **9) Increase agencies staffing.**

River RATs Response: River RATs suggests that addressing basic procedural fixes to the current system would be a more effective first step than simply adding additional staff. First, as detailed in *Embracing the New Paradigm*, there is an obvious need for changes to the Article 10 process and application content. Second, developers should interact with local communities and determine proper project siting with community support prior to entering Article 10. These two steps, supporting **Procedural Justice** and **Resource Localism**, will result in viable projects that move through the process on a quicker pace, and avoid the lengthy contested process experienced today.

Additionally, as additional projects move through Article 10, case law will be established and precedence rulings will form go/no go reference points for developers, reducing the number of frivolous and poorly-sited projects that will not meet evolving state standards.

Finally, it is disappointing – and insulting to local stakeholders who have invested themselves in the process - to see topics such as additional staffing being raised when permanent members of the Siting Board, with the exception of the Chairman, have yet to appear in person for wind energy Siting Board decisions. The appearance that high-ranking state officials cannot be bothered to attend a brief hearing in the state capital, and rather send surrogates to vote on contentious decisions that affect communities and landscapes for decades only worsens a common perception in many communities that the entire Article 10 process is a show trial with a pre-determined outcome.

### **10) Increase support for local government intervenors.**

River RATs Response: River RATs disagrees. Again, under the guise of providing increased “technical support” to municipalities the result of this recommendation would be to diminish other local groups (often in project opposition) a voice in the process.



River RATs believes all local voices are important and that the current 50/50 intervenor split encourages all community voices, resulting in a comprehensive review process.

**11) Be proactive with community engagement.**

River RATs Response: River RATs agrees - however, it is the responsibility of the project developer to earn a **Social License, not state or other governmental entities.** River RATs has always advocated for community engagement, including public education campaigns about renewable energy that bring local community leaders into the process as early as possible. However, requiring only a few community outreach opportunities, often at inconvenient and strategically-chosen times and places that benefit developer, may earn a checkmark from the PSC, but will only increase project opposition, regardless of the project's merits.

**12) Establish guidance for what constitutes unreasonably burdensome.**

River RATs Response: River RATs agrees - but local community voices are critical and must be respected.

**13) Improve communication between developers and siting board agencies.**

River RATs Response: River RATs disagrees. The intent of this recommendation is that “the Siting Board should engage with developers on the substance of a project earlier in the process so that concerns are raised and addressed sooner.”<sup>29</sup> In other words, develop new ways to **further shortcut the process of working with local communities and stakeholders.**

Greater community interaction between developers and local communities that results in a properly sited project with local support prior to entering Article 10 is the most effective way to advance New York's renewable energy goals. Early interaction, combined with a growing record of Article 10 case law and established approval conditions, should greatly improve and simplify communications between all parties.

**Takeaways - Recommendations Report**

The NYLCVEF recommendations discussed above are consistent with the original theme of the *Breaking Down the Barriers* whitepaper. **Just as in the previous NYCLVEF whitepaper, what is missing in the Recommendations Report is any mention of the need for industry self-evaluation related to project development methods and tactics.** A review of the many stalled, delayed, or withdrawn Article 10 projects reveals that



developer issues, not state agency process or regulations, are a contributing factor in what is presented by the industry as a slow pace.

A properly-sited project with local support will move through Article 10 more quickly than a contentious, legally contested project. **The importance of developers and local communities discussing and working out issues ahead of the Article 10 process cannot be overstated.** This is an essential part of *Embracing the New Paradigm*.

**River RATs is concerned about two overriding themes presented in the NYLCVEF recommendations:**

- The recommendations encourage **increasing financial incentives to sway reluctant communities to “welcome”<sup>30</sup> or support industrial wind projects.** Whether in the form of tax incentives, local grants, direct grants or other mechanisms, approval for a wind or solar project should be based on widespread local acceptance of a properly-sited project.
- The recommendations encourage **an increased and inappropriate state agency presence in the development process**, from community education, to adding layers of “technical assistance”<sup>31</sup> on local municipalities and stakeholders (who understand project pros and cons quite well), to even arguing that another party and not the applicant, may be the best representative of the project.

Overall, the *Recommendations Report* falls short due to the lack of addressing the basic international development principles of **Social License, Procedural Justice, and Resource Localism.** **The NYLCVEF - and supporters - are still mistakenly attempting to break down barriers rather than work constructively with communities and local stakeholders to move properly-sited and community supported projects through Article 10.**

## **The Public Campaign Begins**

In a December 2019 *Energy & Environment News* story, when commenting on the recent CBC report *Getting Greener: Cost-Effective Options for Achieving New York State’s Greenhouse Gas Goals*, **renewable lobby ACE NY** indicates that future community support for project approval is likely to be based - not on proper project siting, **Social License**, and a concern for the local environment and community - but rather paying communities financial incentives:

[ACE NY] *“has asked budget authorities to create new grants and incentives for communities that host large-scale renewable projects.” “If you merge the two missions” of economic development and climate goals, “you could make some of these communities more welcoming of wind and solar projects.”*<sup>32</sup>

On December 13, as identified in an ACE NY retweet, from the final panel at the **Solar and Energy Storage Conference in Albany**:

*“Ideas: PiLOTS [sic] be exempt from 2% property tax cap; state dedicate \$ to regional planning councils; community outreach.”*<sup>33</sup>

On December 20, a joint press release from **New Yorkers for Clean Power (NYCP)** and **ACE NY** announces that a state-wide petition with over 400 signatures has been sent to Governor Cuomo and Budget Director Robert Mujica urging them to *“...create incentives for towns to welcome grid-scale renewable projects.”*<sup>34</sup>

The press release includes comments by Julie Tighe, President of the **New York League of Conservation Voters Education Fund**:

*“New York must take the lead on clean energy by incentivizing towns to host large-scale solar and wind facilities. We join Alliance for Clean Energy NY and New Yorkers for Clean Power in urging the State to implement incentives, which were also outlined in our recommendations report, Breaking Down the Barriers to Siting Renewable Energy, released in September of this year.”*<sup>35</sup>

And from **NYCP**:

*“In order for this to happen the state must take action now to partner with the local governments that will host these renewable energy projects, giving towns incentives and assistance to get them to be YIMBYs -- yes in my backyard.”*<sup>36</sup>

Moving into 2020, on January 8, **Governor Cuomo in his State of the State** said at the top of his speech:

*“NYSERDA and NYPA will provide additional incentives to get more renewable projects built, and they will build them faster.”*<sup>37</sup>

And, about the same time, the **Laborers’ International Union of North America (LIUNA)** released a public relations campaign that states *“Article 10 is far too slow to meet New York’s ambitious climate goals”, that “renewable developments are currently stuck in red*

*tape across the state”, and “today’s Article 10 process makes streamlining project development almost impossible.”<sup>38</sup>*

**Clearly, the public (and political) campaign to “streamline” the Article 10 process, and when faced with non-supportive local communities to “create incentives for towns to welcome grid-scale renewable projects” is underway.**

## **What To Expect in 2020**

The Siting Board will continue to support increasing the number industrial scale renewable energy projects in New York State. Additional approvals of Article 10 projects are to be expected. Based on 2019, River RATs expects to see future activity along the following lines:

### **1. Article 10 applications will be influenced by the growing case law with environmental and health conditions based on previous project decisions.**

Article 10 projects will be subject to a building case law based on previous project decisions and conditions for approval. This will be especially true in communities without renewable-specific local regulations, or communities whose regulations are less restrictive than case law. However, we still trust that the Siting Board, and if necessary the court system, will honor longstanding New York traditions of Home Rule and local decision-making in the event local regulations are more restrictive than a developer would like.

### **2. There will be attempts to change the procedural and internal administrative aspects of Article 10, disadvantaging local communities.**

As documented in the NTW case filings, developers have and will likely continue to dismiss DPS, DEC, and other state agency staff on procedure issues, technical analysis, and recommendations. As ACE NY said:

*“While this is the traditional approach that has been followed in environmental review, whether under the State Environmental Quality Review Act or Article 10, it falls short of what is needed in today’s world.”<sup>39</sup>*

### **3. Attempts will be made to change state funding mechanisms and priorities using grants and other financial incentives as a way to influence local communities.**

Perhaps most concerning is the clearly-stated desire, as included in the NYLCVEF *Recommendations Report*, and recent ACE NY comments, to influence local community support and encouragement for renewal projects with financial incentives through the use of various state grant making and other funding mechanisms. **Social License must be earned; attempts to ‘buy off’ communities instead of improving local community engagement will increase project opposition, not reduce it.**

**4. State agencies will have a more prominent role in attempts to directly influence local communities that do not welcome industrial wind.**

The concept of **Social License** means the project developer, not NYSERDA or another state entity, should speak and act for the project.

**5. There will be a legislative and regulatory push to leverage the CLCPA as the trump card in Article 10 decisions.**

Based on the legal briefs filed by the applicant in NTW and the comments submitted in support by ACE NY, River RATs expects to see a greater push – including legislative and regulatory changes – to leverage the CLCPA in favor of the industrial renewables industry.

**This is the “updated lens” that all Article 10 projects will face in 2020.**

**Unfortunately, this developer and industry advocate-led perspective does not incorporate Social License, Procedural Justice and Resource Localism. Until these principles are embraced, Article 10 and renewable energy development will be criticized and project opposition and delays will continue across New York State.**

## Endnotes

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<sup>1</sup> State shifts on Article 10. (2018, October 11). <https://www.politico.com/states/new-york/newsletters/politico-new-york-energy/2018/10/11/state-shifts-on-article-10-121067>

<sup>2</sup> Mercer-Mapstone, L., Rifkin, W., Louis, W., & Moffat, K. (2017). Meaningful dialogue outcomes contribute to laying a foundation for social license to operate. *Resources Policy*, 53, 347-355. <https://www.sciencedirect.com/science/article/pii/S0301420717302453>

<sup>3</sup> Ottinger, G., et al., Procedural justice in wind facility siting: Recommendations for state-led siting processes. *Energy Policy* (2013), <http://dx.doi.org/10.1016/j.enpol.2013.09.066>

<sup>4</sup> Wall, C. (2016). Resource Localism How Globalisation is Driving Resource Companies to Deliver Sustainable Benefits and Manage Risks Locally. <https://www.erm.com/globalassets/documents/articles/resource-localism.pdf>

<sup>5</sup> In addition to more than 500 public comments opposing Horse Creek registered with the PSC – and not a single comment in favor of the project - Horse Creek and/or industrial wind development in the 1000 Islands is formally opposed the Town of Clayton, the Village of Clayton, the Town of Orleans, the Jefferson County Board of Legislators, the Watertown City Council, Fort Drum Regional Liaison Organization (FDRLO), as well as numerous other local, state, national, and international organizations.

<sup>6</sup> <https://www.nysenate.gov/legislation/bills/2019/s6599>

<sup>7</sup> River Residents Against Turbines – River RATs. (2018, June 21). *Will the real Environmental Justice in New York please stand up?* [Facebook Post]. Retrieved from <https://www.facebook.com/RiverResidentsAgainstTurbines/>

<sup>8</sup> Muscato, J. A., Jr. (n.d.) Initial Brief on Bluestone Wind, LLC. [Letter written August 9, 2019 to Public Service Commission]. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2A229B6D-43D2-4B46-AFB2-59FBCDBAA770}>

<sup>9</sup> Reynolds, A. (n.d.) Public Comments on Recommended Decision. [Letter written September 12, 2019 to Public Service Commission]. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b01A2E375-894F-4A07-88B0-4DE5FAD08E27%7d>

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Board on Electric Generation Siting and the Environment. (2019, November 12). *Siting Board Approves Lewis County Wind Farm* [Press release]. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F8836B6C-DAFE-43FD-B7B1-8B589EF3C199}>

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<sup>14</sup> Board on Electric Generation Siting and the Environment. (2019, December 16). *Siting Board Approves Broome County Wind Farm* [Press release].

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A5CEF520-7341-4BCC-AB39-22257C0022C8}>

<sup>15</sup> Ibid.

<sup>16</sup> [https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper\\_WEB.pdf](https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper_WEB.pdf)

<sup>17</sup> Ibid.

<sup>18</sup> <https://www.nature.org/content/dam/tnc/nature/en/documents/accelerating-large-scale-wind-and-solar-energy-in-new-york.pdf>

<sup>19</sup> Jim Simon, Supervisor for the Town of Yates, Orleans County, NY, proposed site of the controversial Lighthouse Wind Project, was a Renewables on the Ground Roundtable participant, but resigned in protest due to “...*the false narrative of a broad consensus in the final report.*”

<https://buffalonews.com/2017/11/10/letter-wind-turbine-companies-should-not-have-final-say/>

<sup>20</sup> [https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper\\_WEB.pdf](https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper_WEB.pdf)

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={22B467B5-5393-4E41-BA8A-83F544057439}>

<sup>24</sup> [https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper\\_WEB.pdf](https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper_WEB.pdf)

<sup>25</sup> Voices Missing For Article 10 Board. <https://www.politico.com/states/new-york/newsletters/politico-new-york-energy/2019/09/13/voices-missing-for-article-10-board-307758>

<sup>26</sup> <https://www.youtube.com/watch?v=EEg53jRTLy4&feature=youtu.be>

<sup>27</sup> [https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper\\_WEB.pdf](https://nylcvef.org/wp-content/uploads/2019/09/SitingPaper_WEB.pdf)

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

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<sup>32</sup> [https://www.eenews.net/energywire/2019/12/10/stories/1061770297?fbclid=IwAR3YlFm-vghE\\_eA6glB9l33W4q2iZiLDSXuoCH0vMXxZbMe9R2lr\\_8uWeVs](https://www.eenews.net/energywire/2019/12/10/stories/1061770297?fbclid=IwAR3YlFm-vghE_eA6glB9l33W4q2iZiLDSXuoCH0vMXxZbMe9R2lr_8uWeVs)

<sup>33</sup> ACE\_newyork. (2019, December 13). "Final panel #SolarStorageNY @ACE\_newyork moderating, w/ @ncshaw, Angela Hotaling @nylcv, Emilie Flanagan @Borrego\_Solar "Permits, Taxes, Interconnection:" Ideas: PILOTs be exempt from 2% property tax cap; state dedicate \$ to regional planning councils; community outreach" [Twitter Post]. Retrieved from [https://twitter.com/ACE\\_newyork/status/1205535542051573762](https://twitter.com/ACE_newyork/status/1205535542051573762)

<sup>34</sup> [https://docs.google.com/document/d/1eF5lWVkkLu3GTy4mwlR1XCWk5WtZFWt7\\_mY1qC9xmf8/edit](https://docs.google.com/document/d/1eF5lWVkkLu3GTy4mwlR1XCWk5WtZFWt7_mY1qC9xmf8/edit)

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> <https://www.aceny.org/blog/2020/1/9/2oa8qyi1uvvxs1gy0t3eipw21b88vh>

<sup>38</sup> <https://goodwindjobsny.org/article10>

<sup>39</sup> Reynolds, A. (n.d.) Public Comments on Recommended Decision. [Letter written September 12, 2019 to Public Service Commission]. <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b01A2E375-894F-4A07-88B0-4DE5FAD08E27%7d>



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[\*Link to Embracing the New Paradigm\*](#)