

# Office of Renewable Energy Siting

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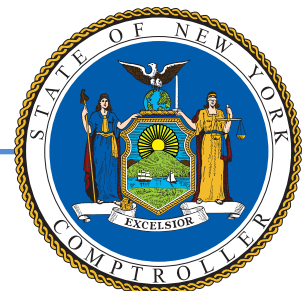
## Application Review and Site Permitting for Major Renewable Energy Projects

Report 2023-S-52 | April 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine whether the Office of Renewable Energy Siting is fulfilling its obligations under State law to issue siting permits for major renewable energy projects within the required time frames. This audit covered the period from April 2020 through July 2023.

## About the Program

The Climate Leadership and Community Protection Act (Climate Act), effective January 1, 2020, was designed to put the State on a path to zero emissions in all economic sectors, enact standards among the most aggressive in the United States, and require 100% carbon-free electricity by 2040, placing New York's program on par with leading programs nationally and internationally. The overarching goals of the Climate Act strive to improve quality of life for New Yorkers, protect the environment, and strengthen infrastructure; and seek to grow economic opportunities and ensure equity and inclusion so all may benefit from Climate Act investments. Under the Climate Act, the Public Service Commission (PSC) was required to establish a renewable energy program by the end of June 2021 to meet two requirements: by 2030, a minimum of 70% of statewide electric generation secured by load-serving entities (entities subject to PSC jurisdiction that secure energy to serve the end-use customers in the State) to meet their customers' demand must be generated by renewable energy systems; and by 2040, the statewide electrical demand system must be zero emissions.

The Office of Renewable Energy Siting (ORES) was created in April 2020 to "streamline and expedite the siting of major renewable energy projects and associated transmission facilities to help achieve the State's clean energy and climate goals, while maintaining the State's strong environmental and public participation standards." ORES was charged with the coordinated and timely review of proposed major renewable energy facilities to meet the State's renewable energy goals under the Climate Act while ensuring the protection of the environment and consideration of all pertinent social, economic, and environmental factors. In the decision to permit such facilities, ORES must review all proposed major renewable energy facilities that generate 25,000 kilowatts or more. Additionally, some projects originally filed prior to April 2020 were allowed to transfer their project applications to ORES for review. ORES has 60 days to determine whether a permit application is complete or missing required documentation and to notify the applicant. In addition, ORES must make a final decision and issue a final siting permit for any major renewable energy project within 1 year from the date the application was deemed complete.

## Key Findings

ORES was intended, in part, to reduce the time to site major renewable energy projects and bring them online faster in support of the Climate Act's ambitious goals and time line. However, while the overall time between application and final siting permit has improved since the creation of ORES, the process has taken significantly longer than originally envisioned because certain aspects of the process were not considered. For the 15 projects ORES reviewed, we found that neither the time to issue a notice of incomplete application and for the applicant to respond nor the time prior to an application's transfer to ORES was taken into consideration. For the 14 projects that received final siting permits, it took an average of 1,094 days (3 years) to deem the application complete – the longest part of ORES's process – and, overall, an average of 1,333 days (3.7 years) from the initial application date to the date the final siting permit was issued.

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While ORES cannot control the timing prior to an application transfer, or the application's quality and the applicant's responsiveness, for planning purposes and to understand the feasibility of meeting Climate Act goals, all site permit process time frames should be accounted for, as delays anywhere in the process can significantly increase the total time it can take to permit and construct major renewable energy projects and to make them operational. A realistic accounting of the total time it can take to site major renewable energy projects would provide important information needed to plan for the overall success for the Climate Act and its goals for New Yorkers.

## **Key Recommendation**

- Track the number of days from receipt of the initial application to final permit issuance to provide the actual number of days it can take to issue a final siting permit.



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## Office of the New York State Comptroller Division of State Government Accountability

April 24, 2024

Houtan Moaveni  
Executive Director  
Office of Renewable Energy Siting  
c/o: OGS Mailroom  
Empire State Plaza  
P-1 South, J Dock  
Albany, NY 12242

Dear Executive Director Moaveni:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Application Review and Site Permitting for Major Renewable Energy Projects*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendation are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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Term	Description	Identifier
ORES	Office of Renewable Energy Siting	<i>Auditee</i>
Article 10	Public Service Law, Article 10	<i>Law</i>
Climate Act	Climate Leadership and Community Protection Act	<i>Law</i>
DMM	Document and Matter Management System	<i>System</i>
kW	Kilowatt	<i>Key Term</i>
LSE	Load-serving entities	<i>Key Term</i>
PSC	Public Service Commission	<i>Agency</i>
Section 94-C	Executive Law, Article 6, Section 94-C	<i>Law</i>

# Background

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New York's State Energy Plan is a roadmap to build a clean, resilient, and affordable energy system for all New Yorkers. The plan coordinates State agencies and authorities to enable the integration of renewable energy generation and smart grid technologies on the electric grid.

The Climate Leadership and Community Protection Act (Climate Act), effective January 1, 2020, was designed to put the State on a path to zero emissions in all economic sectors, enact standards among the most aggressive in the United States, and require 100% carbon-free electricity by 2040, placing New York's program on par with leading programs nationally and internationally. The overarching goals of the Climate Act strive to improve quality of life for New Yorkers, protect the environment, and strengthen infrastructure; and seek to grow economic opportunities and ensure equity and inclusion so all may benefit from Climate Act investments. In support of these goals, the Climate Act tasked the Public Service Commission (PSC) with establishing a renewable energy program by June 30, 2021, to meet two requirements:

- By 2030, a minimum of 70% of statewide electric generation secured by load-serving entities (LSEs) (entities subject to PSC jurisdiction that secure energy to serve the electrical energy requirements of end-use customers in the State) to meet their customers' demand must be generated by renewable energy systems.
- By 2040, the statewide electrical demand system must be zero emissions.

To consolidate the environmental review and permitting of major renewable energy facilities in the State, Section 94-C of Executive Law, Article 6 (Section 94-C) was passed in April 2020. Section 94-C created the Office of Renewable Energy Siting (ORES) under the Department of State to undertake the coordinated and timely review of proposed major renewable energy facilities to meet the State's renewable energy goals under the Climate Act while ensuring the protection of the environment and consideration of all pertinent social, economic, and environmental factors in the decision to permit such facilities. Further, ORES seeks to "streamline and expedite the siting of major renewable energy projects and associated transmission facilities to help achieve the State's clean energy and climate goals, while maintaining the State's strong environmental and public participation standards." Under Section 94-C, ORES must review all proposed major renewable energy facilities that generate 25,000 kilowatts (kW) or more and any co-located energy storage systems. In addition, ORES reviews proposed renewable energy projects that generate over 20,000 kW but under 25,000 kW if the facility files an ORES application.

ORES is not involved in renewable projects covered by federal jurisdiction (i.e., offshore wind) or those previously approved under Article 10 of Public Service Law (Article 10). Projects in the Article 10 siting process prior to April 2020 were allowed to continue under Article 10 or opt to transfer into the new siting process under Section 94-C. A transfer application with a completeness determination previously issued under Article 10 is deemed complete upon filing under Section 94-C. Transferred Article 10 applications without a completeness determination are subject to the Section 94-C completeness review process by ORES.

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New York Codes, Rules and Regulations, Title 19, Chapter 18, Part 900 established ORES permit application requirements. Each application must contain a brief, clear, and concise written overall analysis of the major facility components and any other factors ORES should consider before granting the final permit. There are also 25 required exhibits.

ORES has 60 days to determine whether a permit application is complete or missing required documentation and to notify the applicant. All applicants must be informed in writing if their applications are incomplete, along with the reasons why. The burden is on the applicant to respond in a timely manner, although ORES may send a follow-up notice about the incomplete application after 3 months or may deem the application withdrawn. Each time a notice of incomplete application is filed, the clock resets for ORES. ORES has another 60 days to review the application after the missing documentation is submitted. If ORES fails to make a determination within the 60-day time period, the application shall be deemed complete, provided there is proof of consultation with the municipality or political subdivision of the proposed project location related to procedural and substantive requirements of local laws, prior to submission of the application.

Once an application is deemed complete, and relevant State agencies or authorities have been consulted, ORES has 60 days to prepare and publish the draft permit conditions for public comment or issue a notice of intent to deny the application. This comment period must last a minimum of 60 days. Public notice must include, at a minimum, written notice to the municipality or political subdivision in which the proposed major renewable energy facility is to be located; publication in a newspaper or in electronic form with general circulation in such municipality or political subdivision; and posting on ORES's website. The municipality or political subdivision must submit a statement to ORES indicating the facility is designed to be sited, constructed, and operated in compliance with applicable local laws and regulations. If the municipality or political subdivision declares the facility isn't in compliance, ORES can decide whether to hold an adjudicatory hearing on the matter. If they don't hold an adjudicatory hearing, they must hold a non-adjudicatory hearing in the affected municipality or political subdivision.

If public comment raises a substantive and significant issue that requires adjudication, ORES must promptly set a hearing date. After the public comment period ends, ORES must issue a written summary of public comments and their assessment. If a hearing is needed, after it concludes, ORES must issue a formal written hearing report. The final siting permit may be issued only if ORES finds the proposed facility, along with applicable uniform and site-specific standards and conditions, complies with all applicable laws and regulations. However, in making this determination, ORES may elect not to apply any local law or ordinance that would otherwise be applicable if it finds that it is unreasonably burdensome in view of Climate Act goals and the environmental benefits of the proposed renewable energy facility.

ORES must make a final decision and issue a final siting permit for any major renewable energy project within 1 year from the date the application was deemed



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complete. However, ORES has only 6 months to issue the final siting permit if the facility is proposed for an existing or abandoned commercial use location. Lastly, the siting permit is deemed to be automatically granted if ORES fails to meet these deadlines unless ORES and the applicant agree to a 30-day extension.

# Audit Findings and Recommendations

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For planning and to better understand the potential contribution of a project toward meeting Climate Act goals, all time frames need to be accounted for, as delays anywhere in the process can significantly increase the total time needed to permit and construct major renewable projects and make them operational.

We found that, while the permit siting process has improved since the inception of Section 94-C, issuing a final siting permit actually takes more than 1 year – and, in some cases, significantly more than 1 year – from the date the application is initially filed. For the 15 projects reviewed by ORES, we found that, in meeting Section 94-C time frames, ORES did not track the time to issue a notice of incomplete application or for the applicant to respond. Further, it did not consider the time prior to an application’s transfer to ORES. For the 14 projects that received final siting permits, it took an average of 1,094 days (3 years) to deem the application complete – the longest part of ORES’s process. Overall, it took an average of 1,333 days (3.7 years) from the initial application date to the date the final siting permit was issued.

While the timing prior to an application transferring from Article 10 is out of ORES’s control, as is the application’s quality and the applicant’s responsiveness, an accurate picture of the real time needed to issue a permit to a major renewable energy facility is necessary to determine if the State is on track to meet the goals of the Climate Act. A realistic accounting of the total time it can take to site major renewable energy projects would increase the chances of overall success for the Climate Act and its ambitious goals for New Yorkers and help decision-makers more effectively determine if they will meet or make any necessary adjustments to meet required Climate Act time lines.

## Timeliness of Permit Siting Process

Since the inception of Section 94-C, ORES reviewed or was reviewing 15 major renewable energy projects. We reviewed all 15 projects and found that ORES met the 60-day deadline for determining an application’s completeness and the 60-day requirements to render a decision and issue a draft siting permit once an application was deemed complete for all 15 projects. Also, the public comment period for the 14 approved projects met or exceeded the 60-day minimum requirement.

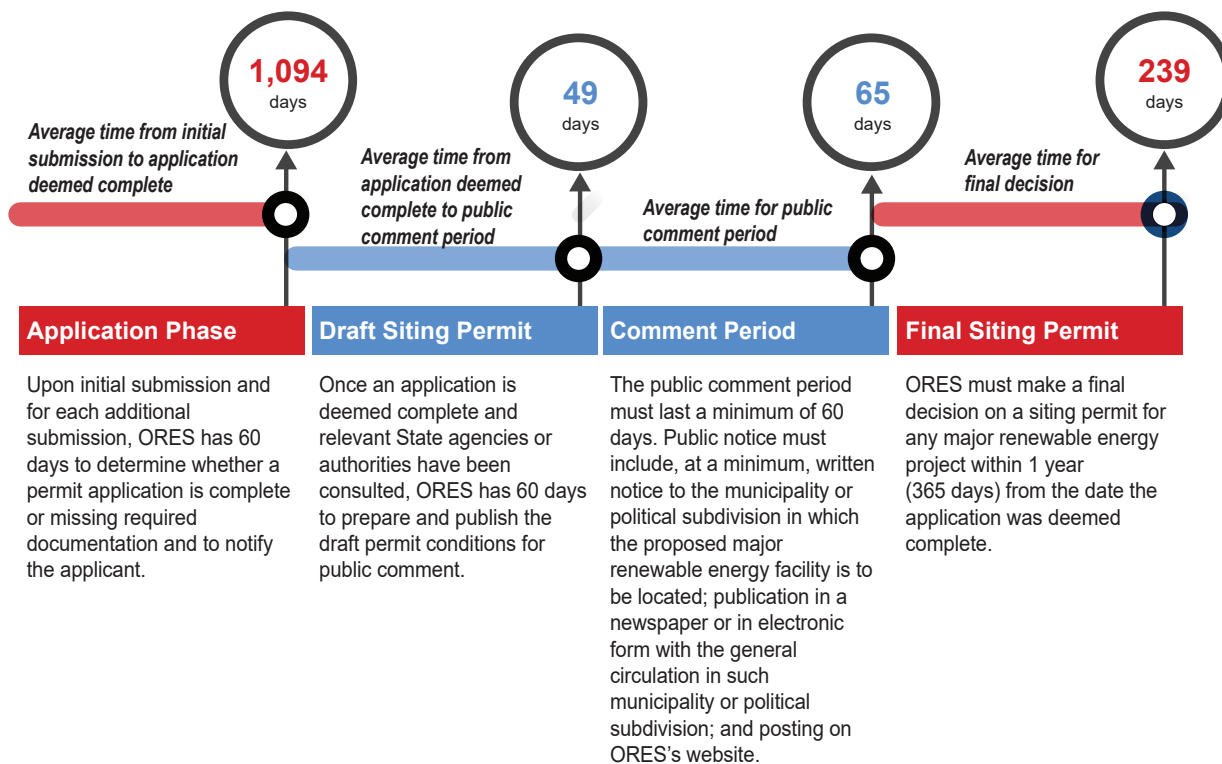
For the 14 approved projects, ORES met the requirement to render a decision and issue a final siting permit within 1 year of deeming the application complete, as required by Section 94-C. The application for the 15th project was deemed complete on February 10, 2023 and was still under review as of December 4, 2023, which means it had not exceeded the 1-year time frame. However, we note the initial application for this project was submitted on February 18, 2022, which placed it at day 654 in the application review process at the time of our audit.

According to ORES officials, previously under Article 10, the permitting process averaged 4–5 years to complete. We found that, while permit siting process timing has improved since the inception of Section 94-C, issuing a final siting permit actually takes more than 1 year – and, in some cases, significantly more than 1 year – from the date the application is initially filed. The time from a project’s initial

application until application completion varies. We acknowledge ORES isn't required to count these days to comply with the 1-year requirement in Section 94-C, and ORES does not have the authority to force the applicant to submit additional information within a specific time frame. However, for planning and to understand the feasibility of meeting Climate Act goals, these days need to be accounted for, as they can significantly increase the total time needed to permit and construct large-scale renewable projects and to make them operational.

For example, for all 15 projects – including Article 10 transfers and Section 94-C applications – we determined that, on average, it took 1,096 days (3 years) to deem the application complete. The five projects that elected to transfer from Article 10 to Section 94-C took an average of 1,268 days (3.5 years) for their application to be deemed complete. Finally, for the 14 projects that received final siting permits from ORES, we found it took slightly less time – an average of 1,094 days (3 years) – to deem the application complete. For these 14 projects, it took an average of 1,333 days (3.7 years) from the initial application date to issue the final siting permit. Some of the delay was prior to the application's transfer from Article 10 and also from waiting on applicant responses to incomplete applications (see Figure 1).

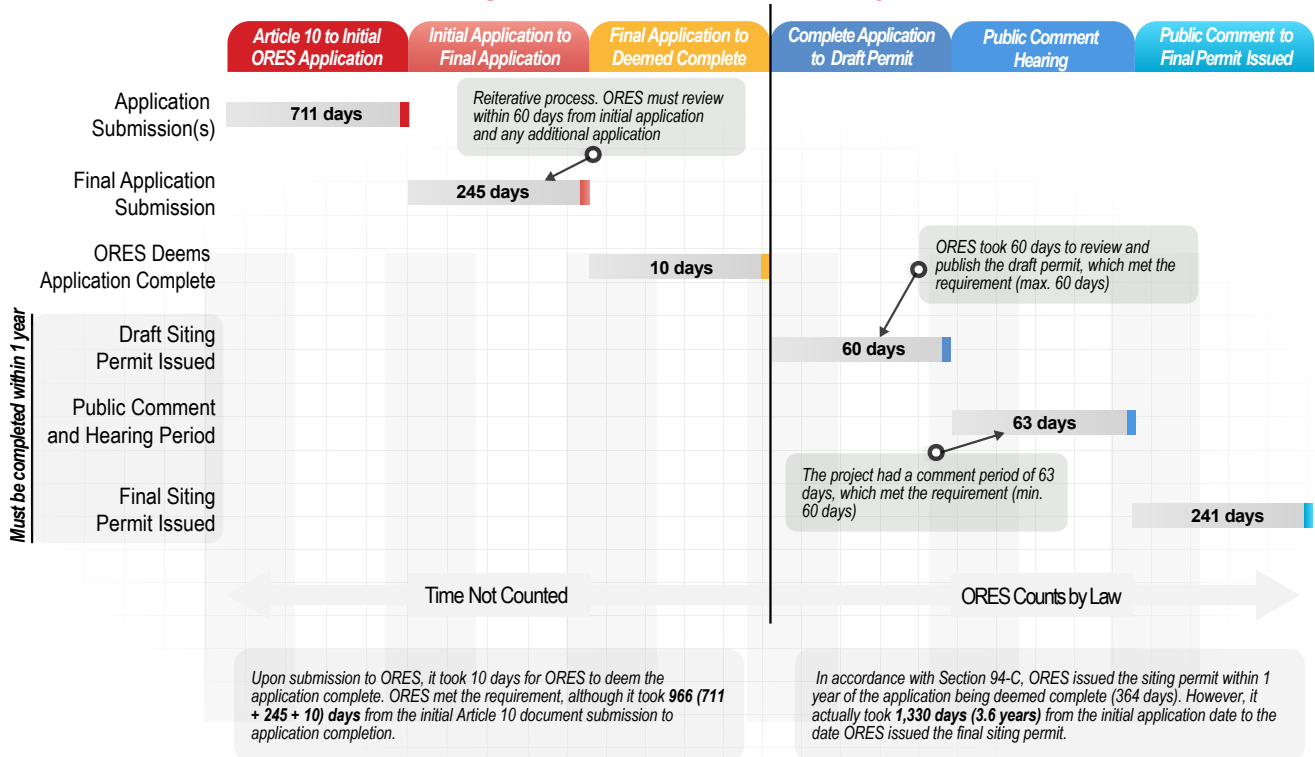
**Figure 1 – Time Line Averages for the 14 Permitted Projects**



Note: 1,094 + 239 = 1,333, the average number of days from the initial application to the final siting permit.

In addition, we found that ORES met the requirement to render a decision and issue a final siting permit within 1 year of an application being deemed complete for all 14 permitted projects. However, we also reviewed the entire time period the applications were with ORES. For all 15 projects, from application submission or transfer to ORES until the application was deemed complete, the average time was 278 days. For the 14 approved projects, we calculated the average time from the date the application was submitted or transferred to ORES to the date the final siting permit was issued as 510 days. One project took 872 days – over 2 years – from the date the application was filed with ORES to the final siting permit. Only two projects took less than 1 year to complete the entire siting permit approval process with ORES. The shortest time frame was 359 days. For example, an application for a solar project was submitted to ORES on August 10, 2021. However, two notices of an incomplete application were issued; therefore, the application was not deemed complete until April 22, 2022 – 255 days after the application was filed. While, in accordance with Section 94-C, ORES issued the final siting permit on April 21, 2023 – within 1 year of the application being deemed complete – it actually took 619 days from the date the application was submitted to ORES for ORES to issue the final siting permit. Further, this application was initially filed under Article 10 on August 30, 2019 – 1,330 days (3.6 years) before the final siting permit was issued (see Figure 2).

**Figure 2 – Permitted Solar Project**



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Neither the time prior to an application's transfer to ORES nor the time to issue a notice of incomplete application and for the applicant to respond is taken into consideration in meeting Section 94-C time frames. While the timing prior to an application transferring from Article 10 is out of ORES's control, as is the application's quality and the applicant's responsiveness, an accurate picture of the real time it can take to site permit a major renewable energy facility is necessary to determine if the State is on track to meet the goals of the Climate Act.

In addition, since it was established in 2020, ORES has issued only 14 final permits for major renewable energy projects. We reviewed the Open NY data portal large-scale projects list along with ORES's existing and potential future permits lists and identified 50 potential future projects. Logically, without improvements to the process, it follows that the chances of more delays increase as ORES's workload increases. With the ambitious goals of the Climate Act, ORES needs to take steps to improve overall timeliness for issuing siting permits for major renewable energy facilities, including tracking the total time from the initial application submission to the issuance of a final siting permit. Such transparency and realistic accounting for time would allow the State to better track whether the Climate Act requirements can be met in a timely manner, including that, by 2030, a minimum of 70% of the statewide electric generation secured by LSEs to meet their customers' demand must be generated by renewable energy systems and that, by 2040, the statewide electrical demand system must be zero emissions. An understanding of how long projects take from the start until generation of energy would help decision-makers more effectively determine if they will meet or make any necessary adjustments to meet required Climate Act time lines.

## Recommendation

1. Track the number of days from receipt of the initial application to final permit issuance to provide the actual number of days it can take to issue a final siting permit.

# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine whether ORES is fulfilling its obligations under State law to issue siting permits for major renewable energy projects within the required time frames. The audit covered the period from April 2020 through July 2023.

To accomplish our objective and assess internal controls related to ORES's obligations to issue siting permits within required time frames, we reviewed relevant laws and regulations, PSC Orders, Open NY, and PSC's Document and Matter Management System (DMM). We also interviewed agency officials. We reviewed all major renewable energy project applications transferred or submitted to ORES since its inception to provide conclusions on our audit objective and to test internal controls and compliance. We obtained and reviewed all siting permits and other relevant documents from PSC's DMM System and assessed the reliability of that data by reviewing existing information, interviewing officials knowledgeable about the system, and tracing to and from source data. We determined that the data from DMM was sufficiently reliable for the purposes of this report. Open NY is a public database that is used for widely accepted purposes and is obtained from a source generally recognized as appropriate. Therefore, in our professional judgment, it was not necessary for us to conduct data reliability testing on Open NY.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of ORES's oversight and administration of the application review and site permitting for major renewable energy projects.

## Reporting Requirements

We provided a draft copy of this report to ORES officials for their review and comment and considered their comments in preparing this final report. In their response, ORES officials disagreed with our recommendation. Our responses to certain ORES comments are embedded within ORES's response as State Comptroller's Comments.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Executive Director of the Office of Renewable Energy Siting shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and if recommendation was not implemented, the reasons why.

# Agency Comments and State Comptroller's Comments

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KATHY HOCHUL  
GOVERNOR

HOUTAN MOAVENI  
EXECUTIVE DIRECTOR

March 29, 2024

NYS Office of the State Comptroller  
State Government Accountability  
Attn: Barbara Barfield, CPA  
State Program Examiner 2

RE: Draft Report 2023-S-52 February 2024  
Office of Renewable Energy Siting  
Application Review and Site Permitting

Dear Ms. Barfield:

Please accept these comments on behalf of the Office of Renewable Energy Siting (ORES or Office) on the Draft Report 2023-S-52 / February 2024, Office of Renewable Energy Siting Application Review and Site Permitting for Major Renewable Projects (Draft Report). ORES welcomes the opportunity to discuss the details of the Draft Report, examine the current status of siting permit application review, and respond to comments in the Draft Report regarding considerations for potential improvement.

## **Background**

Pursuant to Executive Law § 94-c, ORES was created on April 3, 2020 for the purpose of consolidating the environmental review and permitting of major renewable energy facilities into a single forum in which a coordinated and timely review of siting permit applications is conducted by the Office to meet the State's renewable energy goals under the Climate Leadership and Community Protection Act (CLCPA or Climate Act), while ensuring protection of the environment and consideration of all pertinent social, economic, and environmental factors in the permitting decision.

The Office appreciates that the Office of the State Comptroller (OSC) acknowledges that ORES has met or exceeded all statutory deadlines. The Draft Report confirms that ORES has not only met, but in most cases has issued its decisions well before the legislatively-established deadlines. The Draft Report concludes that the average time from application completeness to issuance of the draft permit is 49 days (60-day deadline), the average time for public comments is 65 days (statutory minimum of

Empire State Plaza

P-1 South, J Dock

Albany, New York 12242



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60 days), and the average time from application completeness to final siting permit is 239 days (365-day deadline). (See Draft Report at 10.) Moreover, the record shows that the Office has met every 60-day deadline for completeness review, both for the review of initial applications, and for each application supplement subsequently submitted by applicants. The Draft Report demonstrates that ORES is fulfilling its statutory mandate to provide a coordinated and timely review of proposed major renewable energy facilities to meet the State's renewable energy goals under the Climate Act.

ORES staff has worked tirelessly to set up this new Office, and to fulfill its statutory duties on a timely basis. The challenges of implementing the nation's first state office devoted exclusively to renewable energy siting during extremely difficult circumstances have been met with the professionalism, fairness, and teamwork envisioned by Executive Law § 94-c.

Within one year of the Office's creation, as required by statute, the Office promulgated a comprehensive regulatory framework for the siting of major renewable energy facilities (see 19 NYCRR part 900 [Part 900]). Immediately upon enactment of Executive Law § 94-c, the Office began working with prospective applicants, including the transfer applications from the Public Service Law (PSL) Article 10 process to the Executive Law § 94-c process. Through the diligence and dedication of staff, ORES has met or exceeded all deadlines and timeframes associated with the various steps of the application review process. ORES is current with all applications filed to date and is positioned to timely address anticipated future applications.

To date, the Office has issued 15 final siting permits, totaling over 2.3 gigawatts (GW) of renewable energy capacity. As demonstrated by the records of decision on these permits, the Office conducted detailed, transparent, site- and project-specific environmental reviews for all 15 siting permits, including robust public participation, to ensure that the proposed facilities meet or exceed the requirements of Executive Law § 94-c and its implementing regulations.

**Statutory Deadlines**

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The Executive Law § 94-c process has several binding milestones and timelines. The critical periods for purposes of this review are:

1. The Office must issue a notice of complete application or notice of incomplete application within 60 days of receipt of a proposed siting permit application (Executive Law § 94-c[5][b]). The siting permit application remains incomplete until all requested information is received by the Office, and a partial submission of the requested material does not change the application's incomplete status. The Office responds within 60-days to application supplements filed in response to the Office's notice of incomplete application.
2. The Office must issue a draft siting permit or a notice of intent to deny the siting permit application within 60 days of an application being deemed complete (Executive Law § 94-c[5][c][i]).
3. The Office must issue a final decision on the siting permit within one year of the date on which an application is deemed complete or within six months if the facility is proposed to be located on an existing or abandoned commercial use, including brownfields, former commercial or industrial sites, landfills, former power plants, or other abandoned or underutilized sites (Executive Law § 94-c[5][f]).

### **Discussion**

The Draft Report's key recommendation is that ORES should track the number of days from receipt of an initial siting permit application through final permit issuance to provide a "realistic accounting of the total time it can take to site major renewable energy projects [and] provide important information needed to plan for the overall success for the Climate Act and its goals for New Yorkers." (Draft Report at 2.) This recommendation is premised upon the conclusion that certain aspects of the review process take significantly longer than "originally envisioned" when ORES was created. (Draft Report at 1.)

ORES concurs in the need to constantly evaluate and improve the time frames associated with the Executive Law § 94-c review process. Indeed, the record reflects that the Office already actively tracks all time frames associated with the siting permit application review process, including the date of initial

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application filing through the date of the final siting permit. As demonstrated by the information provided by ORES to OSC and publicly recorded on the ORES website and the NYS Department of Public Service's Document and Matter Management (DMM) System, the Office identifies with particularity the time frames associated with each step of the siting permit application review process.

It is worth reiterating, that the Draft Report confirms that ORES has not only met, but in most cases has issued its decisions well before the legislatively-established deadlines outlined above. As concluded in the Draft Report, the average time from application completeness to issuance of the draft permit is 49 days (60-day deadline), the average time for public comments is 65 days (statutory minimum of 60 days), and the average time from application completeness to final siting permit is 239 days (365-day deadline). (See Draft Report at 10.) Moreover, the record shows that the Office has met every 60-day deadline for completeness review, both for the review of initial applications, and for each application supplement subsequently submitted by applicants.<sup>1</sup> The Draft Report demonstrates that ORES is fulfilling its statutory mandate to provide a coordinated and timely review of proposed major renewable energy facilities to meet the State's renewable energy goals under the Climate Act.

In its analysis of the timeliness of the overall siting permit process, the Draft Report identifies the pre-completeness phases of the permitting process as areas in need of additional Office focus, although it acknowledges this is not contemplated by the statute nor within the control of the Office. While the Office continues to monitor and optimize all aspects of the Executive Law § 94-c process, the Office notes the following points to help clarify the report.

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<sup>1</sup>In the Draft Report shared with ORES, the report concluded that ORES missed one 60-day deadline for completeness review in one case. (See Draft Report at 9.) The record reveals, however, that ORES met all 60-day completeness review deadlines in that case, as well as in all other cases before the Office to date. The drafters of the report have assured us that the error will be corrected in the final version of the report.

**State Comptroller's Comment** – We revised our report based on additional documentation provided by ORES officials.

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As an initial point, as acknowledged by OSC, the pre-completeness phases of application development and review are not part of the one-year time frame for decision established by the Legislature under Executive Law § 94-c. Notwithstanding, it must be understood that the development of major renewable energy facilities is a complex endeavor. Separate and apart from the Executive § 94-c process, an applicant must devote substantial time and juggle numerous interrelated development activities that are often carried out in parallel before committing resources to the Executive § 94-c process. When we think about major renewable energy development, those projects are not developed over a series of months. It can take years to develop a large-scale solar or wind project and requires a significant financial investment.

Second, early project planning and community engagement are essential to ensure that the buildout of major renewable energy facilities at the scale and speed required to meet the State's climate targets does not adversely impact the State's most valuable resources or burden local communities. To effectuate this, the Office has designed comprehensive pre-application processes, provided at 19 NYCRR 900-1.3, as a central feature of Part 900, in which an applicant is required to consult with involved State agencies as well as the host municipalities and community members. The objective of the mandatory pre-application process is to identify at the earliest point in the project planning and development process, critical environmental and cultural resource impacts as well as important site-specific issues of local concern.

The pre-application procedures provide an opportunity to avoid and minimize potential impacts and conflicts before an application is submitted by sharing guidance and best available information early in the permitting process in a way that can expedite the development of a project while also protecting and elevating environmental and community resource. Additionally, the uniform standards and conditions (USCs) at 19 NYCRR subpart 900-6 are intended to put an applicant on notice of the standards and conditions required, as applicable, for a proposed facility to avoid, minimize, and mitigate those potential significant adverse environmental impacts that are common for particular classes and categories of major renewable energy facilities.

Collectively, the pre-application procedures and USCs are intended to inform facility design and development at the earliest

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possible stage, to allow an applicant to prepare the twenty-five detailed exhibits analyzing the potential significant adverse impacts of a major renewable energy facility, and propose measures to avoid, minimize, and mitigate those impacts to the maximum extent practicable as required by Executive Law § 94-c and Part 900. Ensuring that all parties to a permitting proceeding have all relevant information at the outset, makes the process more efficient and transparent. This should reduce back-and-forth with incomplete applications or poorly sited projects, historically a cumbersome part of the State's siting processes.

With respect to delays associated with the period from initial application filing to the Office's completeness determination, a robust application completeness review is necessary to ensure that ORES staff has all the information necessary to determine whether to issue a draft permit with site- and project-specific conditions or a notice of intent to deny the permit, and provide for public review of that determination. The timing for submitting the initial siting permit application or subsequent required application supplements, however, is outside the Office's control. Instead, applicants control the timing as well as the quality and completeness of the initial and subsequent application submissions.

Should an applicant fail to provide complete or relevant information, ORES staff cannot conduct their review of the application and ensure that the project meets all required criteria for approval. In this circumstance, the Office issues a notice of incomplete application to provide an applicant with the opportunity to file the required information. ORES staff are available to discuss a project's needs and requirements, reflecting ORES's ongoing efforts to streamline and expedite the permit process. Should an applicant fail to respond to a notice of incomplete application within three (3) months, the Office may send a follow up notice requesting a response within a reasonable timeframe. If the applicant fails to respond to the second notice, the Office may deem the application abandoned without prejudice. (19 NYCRR 900-4.1(f)(1), (2).) Beyond this, Executive Law § 94-c and Part 900 impose no further deadlines on applicants during this phase of application review.

With respect to projects already in the PSL Article 10 siting process before the State's Siting Board, those projects were provided the option of continuing under PSL Article 10, or transferring into the new siting process under Executive Law § 94-

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c on or after April 3, 2020. Pursuant to Executive Law § 94-c(4)(f)(i), a transfer application with a completeness determination previously issued in the PSL Article 10 proceeding is deemed to be complete upon filing under Executive Law § 94-c. Pursuant to Executive Law § 94-c(4)(f)(ii), transferred PSL Article 10 applications without a completeness determination are subject to the Executive Law § 94-c completeness review process by the Office. Under either scenario, the timing for filing a PSL Article 10 siting permit transfer application is outside the Office's authority.

With the above in mind, ORES nevertheless remains committed to improving every phase of the Executive Law § 94-c process, regardless of whether those phases fall under the Office's control or not. As noted in the Draft Report, "permit siting process timing has improved since the inception of Section 94-C." (Draft Report at 9.) The Office expects to continue to see improvements in the timeliness of each stage of project development and application review as all participants gain experience with the relatively new process, and incorporate lessons learned from prior reviews and final decisions.

### **Conclusion**

The primary cause cited in the Draft Report for any delays in the application review process are the delays occurring in phases of application development and review that are outside the statutorily set periods for application review established in Executive Law § 94-c. The Draft Report appears to suggest that the relevant timeframe for final decision should be measured from the date the initial application is filed, not the date the application is deemed complete. While ORES agrees that every reasonable effort should be made to move an application to completeness as quickly as possible, the Legislature did not include additional time frames beyond the one-year from completeness to final siting permit for good reason - the materials required to meet application deficiencies are as varied as the projects themselves and applicants have varying levels of experience and adeptness in providing the requisite submissions.

**State Comptroller's Comment** – As noted in our report, all permit process time frames should be accounted for, as any delays can significantly increase the total time needed to make major renewable energy projects operational. A realistic accounting of the total time would provide important information needed to plan for the overall success of the Climate Act and its goals for New Yorkers.

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ORES takes no solace in issuing a notice of incomplete application, and the agency is working steadily at improving both tracking of applications and communication with the applicant community on application requirements. The Office would, however, be remiss in its duties under the statute if ORES staff did not perform the requisite review of critical issues impacting the completeness of the application and allow applicants the necessary time to address those issues.

While ORES agrees that the scale and speed of the siting process are essential to meet the goals of the CLCPA, the State cannot address climate change at the expense of its natural resources or communities. The Executive Law § 94-c process provides for a coordinated review of proposed major renewable energy facilities on a case-by-case basis, without compromising the integrity of environmental standards or sacrificing community engagement. As demonstrated by the final siting permits issued to date, the Office conducts detailed, transparent, site- and project-specific environmental review, with robust public participation, to ensure that the proposed facilities meet or exceed the requirements of Executive Law § 94-c and its implementing regulations. Through this site- and project-specific review process, the Office ensures the protection of the environment and the identification of relevant areas of environmental concern, while also considering all pertinent social, economic, and environmental factors.

In conclusion, ORES is making every effort to educate the applicant community to the obligations they are required to meet under the approved regulatory and statutory scheme. ORES is routinely meeting all statutory deadlines, including the 60-day deadline for determining an application is complete, and the one-year statutory mandate for a permit determination after an application is deemed complete. ORES is also making every effort to ensure that the applications submitted meet the statutory and regulatory framework by identifying areas of deficiency in its incompleteness decisions, again within the 60-day time frame for reviewing applications once they are submitted.

Under the leadership of Governor Kathy Hochul, ORES stands ready to confront the most pressing existential challenge of our time -- the threat of climate change. The State's commitment to a successful and equitable transition away from the legacy of polluting fossil fuel generation is dependent on a responsible major renewable energy facility siting process. ORES is well-

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positioned to help the State meet the clean energy goals of the CLCPA. Over the past four years, ORES has demonstrated that it is possible to streamline and expedite permitting approvals for major renewable energy facilities without compromising on community or environmental protections. The Office looks forward to continuing to work hand-in-hand with all stakeholders as these facilities are developed and constructed.

Thank you for the opportunity to engage in dialogue regarding this report and the ORES process. We remain available to answer any continuing questions you may have.

*Houtan Moaveni*

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Houtan Moaveni  
Executive Director  
New York State Office of Renewable Energy Siting

Dated: March 29, 2024



# Contributors to Report

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## Executive Team

**Andrea C. Miller** - *Executive Deputy Comptroller*

**Tina Kim** - *Deputy Comptroller*

**Stephen C. Lynch** - *Assistant Comptroller*

## Audit Team

**Nadine Morrell**, CIA, CISM - *Audit Director*

**Cynthia Herubin**, CIA, CGAP - *Audit Manager*

**Brandon Ogden** - *Audit Supervisor*

**Barbara Barfield**, CPA - *Examiner-in-Charge*

**Andrew Davis** - *Senior Examiner*

**Heath Dunn** - *Senior Examiner*

**Erin Henderlong** - *Senior Examiner*

**Brendan Reilly** - *Senior Examiner*

**Thomas Owusu** - *Staff Examiner*

**Andrea Majot** - *Senior Editor*

## Contact Information

(518) 474-3271

[StateGovernmentAccountability@osc.ny.gov](mailto:StateGovernmentAccountability@osc.ny.gov)

Office of the New York State Comptroller  
Division of State Government Accountability  
110 State Street, 11th Floor  
Albany, NY 12236

