

NY created an agency to OK wind and solar projects quickly. Upstate towns aren't happy

l the Office of Renewable Energy Siting in 2020 to help achieve its climate goals. e towns say the agency ignores local concerns to satisfy developers.



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Key Points

Several upstate towns are suing the state over the creation of an agency designed to speed the approval of renewable energy projects.

The western New York town of Rush is fighting a plan to build a solar farm on land that was once home to Native American tribes.

Wind and solar developers are offering farmers thousands of dollars an acre to lease land for wind and solar projects.

New York's renewable energy build out had hit a wall.

The state deadline for creating an electric grid that relies on renewables for nearly three quarters of its energy was a decade away and large-scale wind and solar projects were having trouble getting approved. In 2020, just six renewable energy projects received permits from the state over the previous nine years and only one was under construction.

Developers were blaming state agencies responsible for protecting New York's environment and its agriculture for unnecessarily throwing roadblocks in their way. Their enemy was the siting process for renewable projects in the Department of Public Service known as Article 10. It would have to go.

State officials agreed. Houtan Moaveni, who headed the DPS department that oversaw siting of electric-generating facilities, said Article 10 "proved cumbersome and inefficient."

“Article 10 struggled to keep pace with New York’s ambitious clean energy mandates,” Moaveni said in a 2021 affidavit filed in response to a legal challenge.

In came the Office of Renewable Energy Siting (ORES), created by an act of the Legislature in April 2020. Led by Moaveni, it’s the only agency of its kind in the country dedicated to approving permits for large-scale renewable projects. Since June 2021, it’s approved seven renewable projects.

Its most powerful tool gives ORES the ability to override local town zoning laws and ordinances considered “unreasonably burdensome” to the state’s ability to achieve climate targets like zero carbon emissions by 2040. And it replaces Article 10’s seven-member board for approving permits with Moaveni.

More than two years after the office came into existence, it’s under attack by upstate towns from the Hudson Valley to the Finger Lakes and the shores of Lake Ontario.

Tension over the new law is playing out in Rush, a farming town in western New York some 15 miles south of Rochester, where Chicago-based Invenergy has been trying to win approval for its Horseshoe Solar Project since 2018.

Town officials say they feel abandoned by a state that has put its clean energy goals ahead of their concerns, bending to the wishes of renewables developers frustrated by years of delays and canceled projects, who successfully petitioned the state to ditch a time-consuming permitting process.

“I don’t know anyone in this administration who is anti-solar,” Rush Town supervisor Gerald Kusse, a Democrat, said in August. “Everyone in this administration is pro-renewable. Absolutely. No doubt about it. But the dictatorial approach that the state uses to site where Horseshoe is going to be ... For them to just come in and say we don’t care about your codes or laws or anything, we’re putting it here...”

One town fights back

A bill pending in the state Legislature would eliminate the office. And a lawsuit filed by upstate towns and birding groups say the regulations that created the office were written by a consultant who works on securing permits for developers in New York and across the country.

Invenergy's plan for western New York calls for some 600,000 solar panels on 1,200 acres of land in Caledonia and Rush, situated closely enough to transmission lines so it can deliver energy to a state grid hungry for renewables.

But Rush town officials fear they'll be saddled with a solar farm in a region where transmission lines don't even exist to carry renewable energy downstate where it's needed most.

More: Turbine plans for Lake Ontario shoreline hit headwinds

More: Despite 5-year debate over eagle safety, Windsor, Sanford wind farm moves forward

In November, Invenergy, transferred its application for Horseshoe out of Article 10 and into ORES, which was created by an executive law known as 94-C. Dozens of other projects have been moved into 94-C at the request of developers in recent years.

In February, ORES issued a draft opinion on the Horseshoe project, which overrode several of Rush's local zoning laws. Invenergy is hoping to have a permit by the end of the year.

Unmarked graves

On a late summer morning in western New York, so still a breeze barely disturbs a field of corn, the aroma of freshly laid fertilizer hangs thick in the air.

It's days like these when the folks in Rush are grateful for modern wonders.

"That's why I'm glad I have central air," Amber Corbin says, the pungent odor of manure drifting over from a nearby field where a tractor is at work. "I can keep the windows shut."

It's a tradeoff Corbin and others have come to accept in return for sweeping views of green pastures, nights so quiet sleep goes interrupted, and soil so prized homeowners earn extra income leasing land to farmers to grow corn, soybean and wheat.

It's a town with a history that dates to a time when Indian tribes fished and hunted along the Genesee River. A giant oak tree stands in the middle of an empty field, an oak savanna likely created by Native American tribes setting fire to the surrounding woods so they'd have a clearing to hunt.

Today, Rush, with a population of roughly 3,500, is home to retirees who once trekked to jobs at Xerox, Kodak or Bausch & Lomb and present-day commuters who head north to work in healthcare or education but arrive home to the cow-and-barn backdrop of life in rural New York.

They've grown comfortable with 20th-century innovations like solar panels that capture the sun's rays and convert it to energy. A few years ago, town officials adopted an ordinance that allowed for 150 of Rush's 10,000 acres of land to be used for solar farms. A 22-acre solar farm has already been approved.

Invenergy says its 180-megawatt installation would create enough power for 43,000 homes, with a promise of reducing carbon emissions by 125,000 tons.

Sixty acres would be in Rush on parcels of property Invenergy, one of North America's largest renewables developers, leased from farmers, as well as a National Grid switchyard along the Genesee. Spanning roughly 7.5 miles, the Horseshoe project – the name taken from the shape of the Genesee in the area – will be one of the largest solar farms in the state.

Residents say they didn't learn about the project until local farmers signed leases. But soon, a local residents' group – Residents United to Save our Hometown (RUSH) – mobilized with a state-of-the-art website highlighting the impact the array would have on the town.

Farmers side with developers

A few acres of solar panels was one thing. A utility-scale installation on property zoned for residential was unsightly.

RUSH formed an alliance with members of two Seneca nations, who fear solar panels will dig into land that holds the unmarked graves of Native Americans who settled the area before European settlers arrived.

A 2020 Indigenous Peoples Day rally attracted some 100 protesters who walked along the river to a site near what was the ancient Indian village of Canawaugus. A traditional tobacco-burning ceremony was held to honor the dead.

“You're just driving a pylon into the ground and you don't know whether you damage the burial site at all,” said Paul Winnie, a member of the Tonawanda Seneca Nation and a rally

organizer. “In our tradition once the person goes there, they’re supposed to stay there. It’s just our belief that they shouldn’t be disturbed.”

The Horseshoe plan met with little resistance in Caledonia, where the largest chunk of the project will be built. But in Rush the debate has pitted neighbor against neighbor.

Some farmers took the side of Invenergy.

“This is an unprecedented amount of investment that will allow our farmers and residents to sustainably diversify their profits,” Suzanne Stokoe, an owner of Stokoe Farms, whose family has lived in the area since 1812, said in a letter to state officials.

Stokoe appeared in a video for Invenergy, saying her company was taking “a very small portion of farmland and putting it into harvesting solar energy.”

Residents who considered themselves pro-renewable – their own homes outfitted with solar panels – were lining up against the project.

The Rush town council was upended in 2019 as candidates supported by RUSH won seats on the five-member board.

Among them was Corbin, a recently-retired high school biology teacher reared in Rush.

“I never thought about getting into politics,” said Corbin, a Democrat. “But when I started reading that they were boring under the Genesee River and putting this on sacred lands...”

By then, Janet Glocker, a retired economics professor and dean at Monroe Community College, was delving into the impact the project would have on Native American burial grounds, with the help of Winnie and others from the Seneca Nations.

'This land is sacred'

They hired a lawyer and an archaeologist to study the impact on the town’s agricultural history.

“This land is sacred,” Glocker, a RUSH co-founder, said during an August tour near the switching station. “For 500 generations Native Americans lived here, traveled here, they are

buried here. This is not Forest Lawn. People were not buried side by side. They were buried where they lived, where they fell.”

Corbin and Kusse wonder why the project wasn't moved to land nearby owned by the state.

Glocker wants Invenergy to deploy ground-penetrating radar to determine if the plan will disrupt ancient burial grounds.

“If you're going to pound steel beams into the ground to mount solar panels how would you know what you're pounding them in to,” she said.

Corbin's late father, an archaeologist, once walked the land where the solar farm will be, charting the Native American history there. Its fields gave up arrowheads and other artifacts that confirm the Native American presence.

“I appreciate the land that's here and obviously I'm very in favor of renewable energy in the right place and in the right size,” she said. “Horseshoe is truly an industrial power plant.”

Invenergy's project manager, Kate Millar, says public input was taken into consideration in every phase of the Horseshoe project and led to modifications designed to allay concerns voiced by members of Native American groups and others. In 2020, Invenergy eliminated 70 acres considered “culturally significant” from its plans after a survey by an archaeological firm it had hired. In total, some 200 acres were eliminated from the initial plan after concerns were raised by the tribal nations, Invenergy says.

Invenergy responds

“We take the development of a project like this very seriously,” Millar said. “It's about being in the community. We have a local office on the main street in Caledonia. I became such a familiar face in these communities that I had a standing room at the local hotel.”

The Horseshoe site was chosen for its proximity to the grid and farmers willing to lease portions of their land.

“A lot of these landowners operate thousands and thousands of acres and so this was a way of diversifying some of their revenues,” Millar said.

It's unclear how much farmers were offered for their land. But in a document filed by Invenergy, the company pegged the range for one leaseholder between \$5,000 and \$80,000 annually depending on the number of acres used. Payments are calculated on a per-acre basis.

In January, Invenergy announced it had received a \$3 billion in investment from Blackstone, the global asset manager.

It's developing several other large-scale projects in New York, including the Alle-Catt Wind farm on 30,000 acres of private land in Allegany, Cattaraugus and Wyoming counties.

State invests billions

In 2017, towns in the Hudson Valley imposed moratoriums on solar farms or limited the number of acres where they'd be allowed after out-of-state solar developers swept into the region offering farmers between \$1,000 and \$3,000 annually per acre.

The state stepped in when it discovered developers filing applications for projects without even getting landowner consent. A farmers' trade group warned members they could face financial penalties for turning agricultural land over for energy use.

Since then, momentum has picked up, forcing upstate towns to push back against developers eager for a share of the billions of dollars the state is investing in the renewable build out.

The state already invested some \$35 billion in 120 large-scale renewable energy projects.

And the pressure is on to get these projects hooked into the grid.

The state will need 60 gigawatts of solar power from residential, commercial and utility-scale sources by 2050 if it's to achieve its climate goals, according to a state report issued last year. That's roughly 180 million solar panels, according to the Department of Energy. A single gigawatt powers about 750,000 homes.

But currently there are just two small utility-scale solar farms with the ability to deliver energy to the grid at the— Department of Energy's Brookhaven National Laboratory on Long Island — and Branscomb Solar in Easton, east of Saratoga Springs. Their total output is about 50 megawatts.

Solar power from non-utility scale sources reached 4 gigawatts this year.

State officials says they're confident the state can meet its climate goals with projects coming online.

"The Hochul administration is committed to fighting climate change through clean energy deployment while maintaining robust community engagement with a thorough permitting and review process that mitigates impacts to New York's farmland," spokeswoman Katy Zielinski said. "This work is critical because we're not just the first generation to feel the effects of climate change, we're also the last generation that can do something to combat it."

Over the past five years, New York has awarded contracts to 112 large-scale renewable energy facilities. Those include solar farms, land-based wind farms and hydroelectric facilities, some paired with battery storage, state officials say. And there are plans to add 9 gigawatts of offshore wind off the coast of Long Island by 2035.

State officials say the projects will spur nearly \$11 billion in private investment and bring more than 13,000 new short- and long-term jobs to local communities in more than 30 counties.

The recently-enacted Inflation Reduction Act could increase the amount of tax credits available for developers, nearly doubling government investment in wind and solar to \$321 billion, according to a report by Princeton University. That money could be used to offset funding from the New York State Energy Research and Development Authority that is helping projects get built.

Upstate land relatively cheap and abundant

Upstate New York, where land is cheaper and abundant, will shoulder much of the burden for the build out, as the state works to reduce the downstate region's near-total reliance on fossil fuels, which in recent months has led to a surge in energy costs and higher bills for ratepayers.

The downstate region, which includes Westchester County and New York City, relies on natural gas for nearly 90 percent of its energy needs. Upstate is 91% carbon free thanks largely to hydropower from the Robert Moses Niagara Hydroelectric Power Station and three

state-subsidized nuclear power plants upstate – two on Lake Ontario and the R.E. Ginna nuclear power plant near Rochester.

At public hearings, residents question why the upstate region is being stuck with all the development.

Towns across the state are organizing grassroots opposition groups and hiring lawyers, challenging developers' attempts to clear acres of trees for fields of solar panels and install wind turbines, which they say will kill birds and disrupt their migration. Other projects, like a wind farm project in the towns of Windsor and Sanford in Broome County will proceed anyway, with some mitigation measures in place to minimize the impact on avian life.

The citizens' group, Clear Skies Above Barre, with 135 members, is opposing the planned Heritage Wind farm, a 185 megawatt installation with 33 wind turbines in Barre. Opponents say some of the turbines will be built next to wetlands where bald eagles have their nests and serves as a migratory pathway for birds.

For the past eight years, the towns of Yates and Somerset along the shores of Lake Ontario have been fighting Apex Clean Energy's plan to convert wind coming off Lake Ontario into energy.

In Niagara County, Cambria Opposition to Industrial Solar, with 300 members, is fighting the Bear Ridge Solar Project planned for the towns of Cambria and Pendleton.

And the Hudson Valley town of Copake in Columbia County has gone to court to block construction of Hecate Energy's 60-megawatt Shepherd's Run Solar farm project. In 2017, Copake enacted a law prohibiting solar projects on ten acres or more.

And it's not just New York.

More: Fighting Apex Clean Energy

Professor: Upstate 'one of the worst places' for solar

Similar tensions are playing out across the country, with dozens of renewable energy projects delayed or canceled.

A June report by MIT researchers published in Energy Policy identified 53 utility-scale wind, solar and geothermal projects delayed or blocked between 2008 and 2021 in 28 states. Half of those were canceled.

Some question whether upstate is even a fit for solar-generated power.

“Upstate New York is one of the worst places in the country, at least in the lower 48, to build solar PV (photovoltaic),” said Tristan Brown, a professor at SUNY College of Environmental Science and Forestry in Syracuse and a member of a state advisory panel on climate change. “You think about December, where you can literally go the entire month without seeing the sun more than one or two days. That starts to have a big impact on your solar productivity.”

Batteries to store solar energy when the sun isn't shining will be needed along with transmission upgrades to move all the renewable energy being planned for upstate down to the lower Hudson Valley and New York City, Brown said.

His concerns were echoed by a report issued in September by the New York Independent System Operator, which oversees the state's grid.

The report warns that transmission is currently inadequate in the Finger Lakes, the Southern Tier and the North Country – areas where large solar and wind farms are planned – as well as on Long Island where offshore wind turbines are planned for the waters off the coast of Montauk.

ORES facing legal challenge

ORES decides whether developers of renewable projects of 25 megawatts or more are granted a permit.

It also creates a one-year deadline for a final decision, beginning after a completed project application is accepted. At the end of that year, if ORES has signed off, the project wins a permit.

Developers are required to meet with town officials and hold public hearings. Residents can raise their concerns in public comments after a draft permit is issued.

In Rush, town officials say many of their concerns were ignored, after Invenergy transferred its application for Horseshoe out of Article 10 and into ORES in November.

A draft permit issued by ORES in February overrode several municipal zoning laws.

Rush's laws say a solar panel can be no taller than 12 feet from the ground. ORES allowed Invenergy 17 feet.

Rush's town law limits utility-size installations to 50 acres and requires that construction not fall within 200 feet of property lines. Both restrictions were overridden by ORES.

Horseshoe argued that several of Rush's zoning laws were "unreasonably burdensome" and would make it difficult for the state to achieve its climate goals.

The company said Rush's acreage limits functioned as a "de facto prohibition" of large-scale renewable projects since up to 13 acres would be needed to space out enough solar panels for a megawatt of energy. And Invenergy said the 12-foot height limit would result in less energy production and higher costs.

Last year, attorneys Gary Abraham and Ben Wisniewski sued ORES on behalf of several towns – Cambria, Copake, Farmersville, Malone, Somerset and Yates – and birding groups that included the Rochester Birding Association, claiming the new law was designed to freeze towns out of the hearing process.

"The narrative that Article 10 was too slow is a canard," Abraham says. "If you're represented and you bring real issues, and you have experts, it takes years."

And, Abraham says, it's not local opposition that's stalling the approval. Typically, it's state agencies – like the departments of Environmental Conservation (DEC) and Agriculture and Markets (DAM) that are pressing developers to adjust their plans.

Agriculture officials may have questions about the loss of prime farmland and trees while the DEC will gauge the impact on wetlands.

"You can't permit a large industrial project in 12 months, it's just not done," Abraham said. "And the effect is really to just give these guys a pass on much of the law."

Invenergy's attorneys, unhappy with questions company officials were getting from state agencies about its projects, complained to top-ranking officials in the Cuomo Administration in 2020, according to documents obtained by the grassroots group, Save Ontario Shores, through a Freedom of Information Law request last year.

In a February 2020 email, Invenergy attorney Steven Russo wrote to Amanda Lefton, Cuomo's assistant secretary for energy and environment, complaining about state agencies:

“Invenergy is concerned with both DEC and DAM and how they are handling impacts from renewable projects, especially at the staff level. We are meeting with Basil to go over our DEC issues, though you should know their submissions in the DPS proceedings read like they are opposing a coal plant. Pretty crazy.”

The email was titled “It would be VERY bad for this meeting to be cancelled”

Basil Seggos heads the DEC.

Lefton now oversees the Bureau of Ocean Energy Management for the Biden Administration.

Russo's email suggested officials in the agriculture department believed wind and solar projects would lead to a permanent loss of agricultural land. But land leases typically expire after a set number of years.

“We wanted chamber there because we do not believe DAM gets it,” Russo writes. “Everyone is for clean energy in theory, but nobody wants to cede any ground on their own program in service to the Governor's clean energy goals.”

Russo declined to comment on the emails.

The documents obtained through the Freedom of Information request were filed with the state in the permit application process for a 100-megawatt wind farm in Guilford known as High Bridge Wind.

Millar acknowledged that bottlenecks in the permitting process created a problem for developers.

“The creation of the 94-C regulations and the Office of Renewable Energy Siting is a step in the right direction to make sure the state stays on its targets,” she said. “These are large projects and they take time but I think that there's been some pretty necessary reform to streamline some of these regulatory processes.”

Seggos says the DEC will continue balancing protection of natural resources with advancing the transition to clean energy, by taking a scientific approach to evaluating projects and

ensuring compliance with state regulations.

“New York State has repeatedly demonstrated our ability to work with applicants to eliminate or reduce potential environmental impacts to enable renewable projects to move forward and help achieve the state’s ambitious goals,” he said.

Among the claims in the lawsuit challenging ORES is that the regulations were written by a Pasadena company, Tetra-Tech, that works as a consultant for solar developers, including several with plans to build in New York.

“It is no small wonder that Tetra Tech concluded, speaking for ORES, that not a single one of the regulations it drafted might have any significant adverse impact on the environment,” Wisniewski writes in court papers filed in August.

A spokesperson for Tetra-Tech could not immediately be reached for comment.

The legal challenge was dismissed by a Supreme Court judge in Albany in October. Judge Peter Lynch noted the new regulations require public hearings and don't give ORES "limitless discretion."

The towns have appealed the ruling.

“The 94-c process was designed to eliminate meaningful opportunities for public and local government participation in the siting process,” Wisniewski said.

ORES is currently reviewing eleven wind and solar projects and seven others have received permits. More than 70 are in the pipeline, including over two dozen that were transferred out of Article 10 and into ORES by developers.

Additionally, since June 2020, the state siting board that oversees Article 10 proceedings stepped up its pace, approving eleven projects. In the nine previous years the board had approved six. In total, two dozen wind and solar projects have received permits over the past 11 years.

Under Article 10, a seven-member siting board issued a final decision on a permit. Under 94-C, that decision rests largely with Moaveni.

More: Despite concerns over bird migration, wind farm project advances

'A show trial'

Frustration with the new law has cropped up at public hearings in recent months.

In late August, ORES held a hearing in the upstate town of Ripley for ConnectGen's plans to build a 270-megawatt solar farm on 3,000 acres, one of the largest proposals in the state.

Some who spoke at the hearing questioned why trees would be cleared so the project could be developed. A fire chief wondered what would happen if there was a fire in the battery storage facility that would be built to house solar energy. What was it even made of? A representative from the Sierra Club, an environmental group pushing the state to add renewables, expressed support.

And Karen Engstrom of nearby Chautauqua wondered whether anyone was listening to residents' concerns.

"We are asking the state to protect us," Engstrom said. "Indeed, it is their responsibility to do so...It appears to me to be a show trial. Because what happens? These hired people go home and the state does whatever it planned to do in the first place."

Nuclear: Oswego rescued a nuclear power plant and thrived. A downstate village may not be as lucky.

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