

## A Layperson Summary of the Key Part of NYS Article 10

*{See the actual words of the law on the next page}*

### SECTION 168:

3. The board may not grant a certificate for the construction of a wind project, unless the board determines that:

*{Note: In effect “a” thru “d” list four possible reasons why a proposed wind project may be rejected by the Article 10 Board. The Town has a reasonable argument as to why each of these conditions is problematic.}*

- (a) the wind project is **a beneficial addition to the state’s electric generation capacity**; *and*
- (b) the construction and operation of the wind project **will serve the public interest**; *and*
- (c) **the adverse environmental effects of the construction and operation of the wind project will be minimized** or avoided to the maximum extent practicable; *and*
- (d) **the wind project results in or contributes to a significant adverse environmental impact in the community in which the facility would be located**, the applicant will avoid, offset or minimize the impacts caused by the wind project upon the local community for the duration that the certificate is issued to the maximum extent practicable, **using verifiable measures**; *and*

*{Note: “e” is premised on protecting the “environment, public health and safety” — which is 100% consistent with the basis for the proposed wind law. This paragraph says that there are only TWO legal conditions where the Article 10 Board can reject any provisions of a local wind law: **1)** if they are unreasonable “based on existing technology,” and **2)** if they are unreasonable “based on the cost to ratepayers.” None of the rules and regulations of the proposed wind law are unreasonable for either of those reasons — so none should be rejected.}*

- (e) the wind project is designed to operate in compliance with applicable state and **local laws and regulations** concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant.

However, the board **may** choose not to accept any part of a local law, if it finds that such regulations are “unreasonably burdensome” to the proposed wind project.

“Unreasonably burdensome” is defined\* as regulations that are **unreasonable based on existing technology**, or **unreasonable based on the needs of, or costs to, electricity ratepayers**.

**The board shall provide the municipality an opportunity to present evidence in support of their ordinance.**

\* See page 76 of this PSC [document](#) for the legal definition of this phrase.

**The Actual Words of the NYS Article 10 Statute are [here](#).**

The actual words for the key section cited above are:

SECTION 168:

3. The board may not grant a certificate for the construction or operation of a major electric generating facility, either as proposed or as modified by the board, unless the board determines that:
- (a) the facility is a beneficial addition to or substitution for the electric generation capacity of the state; and
  - (b) the construction and operation of the facility will serve the public interest; and
  - (c) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; and
  - (d) if the board finds that the facility results in or contributes to a significant and adverse disproportionate environmental impact in the community in which the facility would be located, the applicant will avoid, offset or minimize the impacts caused by the facility upon the local community for the duration that the certificate is issued to the maximum extent practicable using verifiable measures; and
  - (e) the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the board may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement, including, but not limited to, those relating to the interconnection to and use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. The board shall provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation or other local action issued thereunder.

*Note: consult a qualified attorney before making any legal decisions.*

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