

Some Possible NYS Community Options Regarding NYS Energy Policy 94-c

Although the new NYS renewable energy regulations ([94-c](#)) are onerous, they are not impregnable...

Unfortunately, over the last few years, NYS energy policies have gotten progressively worse. With passage of the [CLCPA](#), they have now deteriorated from a romantic ideal, to an unaffordable and scientifically unrealistic mandate.

Although the [NY State Constitution](#) charges the Governor and Legislature to act in the best interest of NYS citizens and businesses, these energy policies embody ineffective and unscientific ideological virtue signaling – instead of addressing the health, safety and welfare of the citizens, businesses and ecosystems of New York State.

This breach of responsibility is due to the fact that our State is allowing our energy policies to be written by **special-interest lobbyists**. These policies are focused on the economic and/or political interests of the lobbyists' clients. *None of the special-interest lobbyists controlling Albany are focused on the best interest of NYS citizens, business, military or our environment.*

Since NYS energy policies are essentially devoid of real Science, they inevitably result in three (3) predictable outcomes:

- a) the benefits are always less than promised,
- b) the costs are always more than projected, *and*
- c) there are numerous adverse unintended consequences.

This outline is written for NYS communities who may **not** be interesting in hosting an industrial wind complex *and* who are interested in preserving their rights from such matters as [Section 94-c](#). If NYS communities do not fully utilize (and defend) their rights, it stands to reason that they will continue to be extracted.

[BTW, the suggestions here just address **onshore wind energy**. Although solar is problematic, industrial wind energy is much worse. That said, some of the same options listed below can be modified and then applied to solar.]

[It is a major mistake to believe that your community will not be affected by the CLCPA, as almost all NYS communities will experience its consequences. Read [this](#) to get an inkling. This [story](#) is also a crystal clear warning about what to expect. It's a small cost to protect your community, *so a word to the wise...*]

[According to the [State](#), offshore wind (Ocean and Great Lakes) will be a major component to meeting the arbitrary CLCPA goals. For coastal communities to defend their rights against offshore wind, they need to understand and *fully utilize* the dozens of studies cited [here](#) to put on a sound science case.]

Why might your community be opposed to hosting an industrial wind project? There are multiple reasons. For example local citizens may not be happy about the fact that:

- the wind project will likely have a **net negative financial impact** on your community,
- the wind project will likely result in **serious eco-system problems**,
- there is **no scientific proof** that wind energy will make any consequential climate change difference,
- etc., etc. (See [here](#) for sample studies explaining all these negatives.)

If you are not enamored with being an industrial wind facility host, here are some of your options to defend your rights (*note: I'm not an attorney, so please consult with a competent lawyer regarding **any** legal avenue you choose to embark on*):

1 - Impose Financial Constraints.

This approach builds on well-defined rights, and opts out of inappropriate and unwarranted taxpayer financial give-aways to the lucrative wind industry.

County:

- a) Pass a Resolution prohibiting any wind energy related PILOT program.
- b) Require that your County IDA not approve any wind project until the IDA has done a *comprehensive* and *objective* net financial analysis of the proposed wind project, and that such an analysis conclude that the proposed project be a **proven net economic benefit** to the County. (*It is very unlikely that a wind project will be a net financial benefit to a NYS host community!*)

Town:

- a) Pass a Wind Ordinance stating that for any and all industrial wind projects, the host Town:
 - i) Officially opts out of the Tax Exemption provisions of NYS Real Property Tax Law §487, pursuant to the authority granted by ¶8 of that law, or by any other provision of law*, *and*
 - ii) For property tax purposes, the Town will assess any and all parts of an industrial wind facility at its **full current market value**.

- The market value will be determined by the documented construction cost, less any applicable depreciation. (Note: if the Town is offered a *Host Community Agreement*, it is imperative that full taxation be clearly spelled out in that.)
- b) Set up their Zoning law such that all industrial wind projects must be located in industrially zoned areas of the Town (i.e. not agriculture).
 - c) Require that the wind facility Applicant release all landowners from any confidentiality clauses in their lease or easement agreements, so that the Town can know the encumbrances on the taxable lands in their jurisdiction.

Community:

School districts should oppose the adverse affects that industrial wind energy has on ecosystems and human health, as well as the likely NET negative financial burden on the host community. As such, all school districts (where Towns have passed legislation equivalent to the above), should officially opt out of the Tax Exemption provisions of [NYS Real Property Tax Law §487](#), pursuant to the authority granted by ¶8 of that law, or by any other provision of law*.

Pros: Addresses specific grievances with the State's ineffective energy policies. This is a low cost, quick, legally sound option.

Cons: Does not address several other problematic parts of the State's energy policies... Some parts may be legally challenged.

* Re §487: Download this [explanation](#), this [form](#) needs to be filed, and note this relevant recent [ruling](#).

2 - Pass a Creative Town Ordinance.

This approach basically follows the example of the Town of Dryden (NY) in their effort to resist a fracking project. The short version is that Dryden passed a general zoning law that did not focus on fracking – but made it an undesirable use. The NYS Appellate Court [upheld](#) the Town's right to do that.

Town:

Pass a General Zoning Ordinance listing a wide variety of things (including industrial wind energy) that would be inconsistent with your Town's character, objectives, etc.

Pros: The Dryden case could be a NYS legal precedent.

Cons: This route is time-consuming to make sure all the i's are dotted and t's are crossed. You would need an attorney experienced with the Dryden strategy.

3 - Declare Yourself a Sanctuary Community.

This idea has become in vogue recently. The basic concept is that the community (County and/or Town), opts-out of certain regulations imposed on it by the State. (Since certain states and cities [in NY] have done this regarding the Federal government, this is simply following their lead. Additionally nationwide [103 communities](#) have also done this opposing states that have reportedly infringed on their 2nd Amendment rights.)

This option has benefits similar to 'civil disobedience', i.e. the Community claims the higher moral position. Hopefully such an action might shame the Governor and the Legislature into making concessions. Any attempt to force the community into compliance will appear to be bullying, or it will expose the State for having a double standard. Such a strategy could give the 94-c issue a broader statewide exposure.

Pros: Addresses specific (but not all) grievances with the State's one-sided energy policies. This is a low cost, quick option.

Cons: Does not address several other problematic parts of the State's energy policies... It can be legally challenged.

4 - Work on Leaseholders.

It stands to reason that if no local property owners agree to wind leases/easements, then there will be no project. The reality is that there are numerous potential economic and legal downsides to signing such agreements. In this [document](#), over forty (40) are identified. Working with a farm organization can be helpful, as most of the targeted landowners are farmers.

Pros: If done in time, this is a low-cost effective option.

Cons: You're dealing with professional marketers who can convince farmers into acting against their own interests.

5 - Sue the State.

There are some aspects of the State's current energy policies that are unscientific, contradictory, counter-productive, and legally questionable. A lawsuit could be based on one or more of these. An example is that the State appears to have violated State Constitution [Home Rule rights](#) (e.g. inappropriately extracted the authority from NYS communities to reasonably regulate industrial wind projects). Another example is to make a case that the [civil rights](#) of citizens has been violated.

Pros: Specifically addresses the most (and the more serious), grievances of the State's unreasonable energy policies.

Cons: Expensive, time consuming, legally complicated, and sometimes subject to the ideology of the judge.

So these are the options we are currently aware of. If you have any corrections or additional ideas, please email them to me at “aaprjohn” at “northnet” dot “org” and I’ll update this document.

John Droz, jr. physicist 7-28-20

PS – I’m hopeful that the [NYS Association of Towns](#) (NYAOT) and the [NYS Association of Counties](#) (NYSAC) will be allies in helping NYS communities defend their rights and protect their ecosystems. If you are members of either of those organizations, I’d suggest asking for their assistance and support.

PPS – The question has been raised: with 94-c, is it still worthwhile to pass a more [traditional local wind ordinance](#) – i.e. one that has science-based rules and regulations (e.g. especially [these](#)). The short answer is **yes** – if for no other reason than the Town Board members are then fulfilling their State Constitutional [obligations](#) of trying to protect the health, safety and welfare of their constituents. If the State then extracts some of these, the onus is on them.