



OVERVIEW

of the SEQR Process

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This document is one of a series of reports and guides that are all part of the NYSERDA Wind Energy Tool Kit. Interested parties can find all the components of the kit at: www.powernaturally.org. All sections are free and downloadable, and we encourage their production in hard copy for distribution to interested parties, for use in public meetings on wind, etc.

Any questions about the tool kit, its use and availability should be directed to: Vicki Colello; vac@nyserdera.org; 518-862-1090, ext. 3273.

In addition, other reports and information about Wind Energy can be found at <http://www.powernaturally.org/> in the on-line library under “Large Wind.”

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Overview of the SEQR Process

New York’s State Environmental Quality Review Act (SEQR) requires the consideration of environmental factors early in the planning stages of any actions that are directly undertaken, funded or approved by local, regional, and state agencies. SEQR is both a procedural and substantive law. The law requires certain procedures or steps to be followed in the environmental review. It also requires that agencies base decisions or conclusions on substantive information developed in the environmental review of a project. The review process may result in an agency requiring project modifications or even project denial if the potential adverse impacts cannot be mitigated or avoided. Another component of SEQR is the requirement to consider alternatives in the review process.

Classify the Action: Type I, Type II, Unlisted

Actions under SEQR are listed as Type I, Type II, or Unlisted. The classification of an action is important in determining the procedures to be followed. Type I actions are those projects that are more likely to require the preparation of an Environmental Impact Statement (“EIS”) than unlisted actions. The criteria for classifying actions as Type I can be found in DEC’s regulations at Title 6 of the Compilation of Codes, Rules and Regulations of the state of New York (“6 NYCRR”) § 617.4. Type II actions are those actions that have been determined not to have a significant impact or are otherwise precluded from environmental review under the Environmental Conservation Law (“ECL”) Article 8. Type II actions are not subject to review under SEQR, and a list of these actions can be found in 6 NYCRR 617.5. All actions that are not Type I or Type II are considered Unlisted actions. However, an involved agency has the discretion to treat an Unlisted action as a Type I action.

Examples of Type I actions include any project over 100 feet above ground level in a locality without zoning regulations pertaining to height, as well as any project that involves the physical alteration of 10 acres. This would include not only alteration from turbine construction but also lay down areas, access roads, transmission lines, and any electrical substation improvements. (If a project is in an agricultural district, the threshold for physical alteration is only 2.5 acres.) To date, most of the commercial wind projects have exceeded these thresholds and have been classified as Type I actions. As described below, Type I actions require certain procedures to be followed, but do not always require the preparation of an Environmental Impact Statement.

For Type I actions, SEQR requires that a project sponsor complete the Full Environmental Assessment Form (“Full EAF”). The Full EAF requires the project sponsor to provide more information regarding a project than the Short Environmental Assessment Form. If a wind developer submits an application to a local municipality for a commercial wind project and a state or local agency determines that a project is a Type

If action, then the Full EAF should be included with the application or a request should be made to have one submitted. The project sponsor may also choose to supplement the Full EAF with any studies or analyses related to the particular project. SEQR also requires that a coordinated environmental review be conducted. This means that all involved agencies (agencies with discretion to approve, fund, or undertake an action) cooperate to produce one integrated environmental review. It also allows interested agencies (agencies with concerns but without jurisdiction) to participate in the review.

Lead Agency

SEQR requires that one of the involved agencies lead the environmental review. This agency is referred to as the “Lead Agency” and has numerous responsibilities in the coordinated environmental review. Typically, the lead agency is selected based on whether the anticipated impacts are primarily of statewide, regional or local significance. If impacts are generally local in nature, then either an agency at the town or county level should assume the role of lead agency. For this reason, the local municipalities have assumed the role of lead agency. In some cases, municipalities have assumed lead agency by default because no other agency had jurisdiction. The Commissioner of the New York State Department of Environmental Conservation (DEC) resolves any disputes regarding who serves as lead agency.

Determination of Significance

Once a lead agency has been established, a determination of significance must be made. For Type I actions, the determination of significance is a declaration made by the lead agency regarding the potential for a project to have significant impacts on the environment. A negative declaration indicates the project will have minimal impacts, while a positive declaration indicates the potential for “significant” adverse environmental impacts. A negative declaration ends the SEQR process. A positive declaration requires the preparation of an EIS.

A lead agency needs to understand the term “significance”. Although a subjective term, significance is measured by the magnitude (severity) and importance (relation to its setting) of the impacts. The bigger or more severe the impact, the more a detailed analysis is required. The importance of the impact will depend on the setting and the local community values. A lead agency should also consider whether the impacts are short or long term. A lead agency should note that a determination of significance is not the point at which to weigh the social and economic impacts of a project. A threshold determination should only be based on whether the project is likely to have significant impacts.

For commercial wind projects the potential environmental impacts can include, but may not be limited to, visual, sound, avian (birds and bats), water quality (wetlands, stream, stormwater runoff), historic preservation, agricultural, and community character. Some of these may be related to construction and will be short term impacts. Others will be related to the operation of the wind energy project and can be long term impacts. In either case, these potential impacts need to be carefully considered.

The threshold for requiring an EIS is not based on the number of turbines but on the potential for “significant” adverse impacts. Therefore, projects utilizing a small number of turbines are not exempt from performing an EIS unless a negative declaration is made.

If a lead agency decides to complete a negative declaration, it must consider all relevant impacts, not just those impacts within its jurisdiction. The lead agency’s decision must document, in writing, the reasons for the decision. The negative declaration must contain a reasoned elaboration of why the project will not have significant impacts on the environment. The negative declaration must also be based on information obtained before the lead agency at the time of the decision. It may not be based on future studies or conditions to be imposed by the lead agency.

Even for wind projects involving a small number of turbines, the potential impacts make it difficult to write a negative declaration based on the information provided in the Full EAF and application alone. In most cases where a lead agency has issued a negative declaration for a wind project the project sponsor has supplemented the Full EAF with studies and analyses. This additional information is what allows the lead agency to make a reasoned elaboration regarding the project impacts and why they are not significant.

EIS Process

If the lead agency believes significant potential impacts may occur due to the proposed project, SEQR requires the lead agency to issue a positive declaration and require the preparation of an EIS. Procedurally, the EIS process adds additional steps to the process, but the results are a more thorough environmental analysis.

The EIS process also provides formal opportunities for public participation throughout the process. They include scoping of the Draft EIS and a 30 day public comment period on the Draft EIS. These provide opportunities for the public and other agencies to provide input into the review process, resulting in a review with a broader perspective. It also increases the likelihood that the project will be consistent with community values. Although not required, a SEQR hearing also provides another opportunity for public participation in the process.

Another important component of the EIS process is the requirement to look at alternatives. For the wind projects that have been the subject of an EIS thus far, the range of alternatives that were reviewed include different turbine locations, a reduction in

the number of turbines, and the no action alternative. (SEQR requires the review of the no action alternative in an EIS.)

Remember that an EIS does not have to be encyclopedic; it does not have to address every possible impact. The process is set up for the lead agency to identify those potentially significant adverse impacts. The EIS should focus on those impacts. Through the scoping process the lead agency can limit the issues to be addressed in the EIS.

The preparation of a findings statement concludes the EIS process. A findings statement indicates that all requirements of SEQR have been met. Similar to the negative declaration, SEQR requires that the findings statement provide a reasoned elaboration why a project should be approved or denied. The findings statement is the time for an involved agency to weigh the potential adverse environmental impacts against the needs and benefits of the project. All involved agencies must issue their own findings statement.

SEQR Fees

Local communities that consider becoming a lead agency should be aware of the option of SEQR fees. In short, the SEQR fee provision allows a lead agency to require the project sponsor to provide money to assist in the SEQR review of the project. Many lead agencies have been reluctant to explore this option due to possible resistance they might receive from project sponsors. In fact, some project sponsors are willing to explore the option because it will, in most cases, expedite the review process. The other misconception is that the project sponsor provides for the consulting services; therefore, biasing the review. To avoid this scenario, the project sponsors have the option to establish a fund to allow the lead agency to hire their own consultants. The consultant would then report directly to the lead agency and not the project sponsor.

The above SEQR guidance has been developed to be geared toward commercial type wind projects. For more information on the SEQR and EIS process visit the New York State Department of Environmental Conservation (DEC) Environmental Impact Assessment in New York State website at <http://www.dec.state.ny.us/website/dcs/seqr/>. It provides information on SEQR including handbooks and guides for citizens and local officials. The website also contains EAF/EIS guidance on assessing sound emissions, visual impacts, dealing with stormwater, and erosion and settlement control. The types of projects that are automatically exempt from the SEQR process are also listed.