

**The Fund for Municipal and Local Parties:
A Guide to Intervenor Funding Pursuant to
Article 10 of the Public Service Law**

Important General Guidance

This guidance document provides information about the availability of intervenor funds in the Article 10 process for the siting of major electric generating facilities in New York State. The siting process is conducted by the New York State Board on Electric Generation Siting and the Environment (Siting Board). As a consequence of the timing requirements discussed below, it is important that parties interested in obtaining intervenor funds work quickly to assemble their requests as soon as the Preliminary Scoping Statement or Application is filed by an applicant. Parties should consider commencing the preparation of their requests as soon as they become aware of the potential that a Preliminary Scoping Statement or Application may be filed. However, funding requests will not be accepted until called for by the Presiding Examiner.

The Fund for Municipal and Local Parties

Article 10 applicants are required to provide funds to be used to defray certain expenses incurred by municipal and local parties as they participate in the pre-application scoping process and in the proceeding before the Siting Board to consider the Article 10 Application. The funds, known as "intervenor" funds, are provided by the assessment of fees on the applicant.

"Intervenor" is a name used to refer to a party that joins an ongoing case or proceeding as a third-party for the protection of an interest. Some intervenors join as a matter of right established in the Article 10 statute; others are permitted to join at the discretion of the Presiding Examiner or the Siting Board.

Not all intervenors are eligible for intervenor funds; only "municipal and local parties" are eligible. Eligible "municipal parties" include any county, city, town or village located in New York State that may be affected by the proposed major electric generating facility. The Presiding Examiner must reserve at least 50% of the funds for potential awards to municipalities. Eligible "local parties" include persons residing in a community who may be affected by the proposed major electric generating facility. Such persons may seek intervenor funding either individually or collectively. Local parties are eligible to receive up to 50% of the funds.

Amount of Funds - Pre-application Stage

An applicant submitting a Preliminary Scoping Statement is assessed an intervenor fee equal to \$350 per megawatt (MW) up to a cap of \$200,000. For example, for a 100-megawatt facility, the pre-application intervenor fee would be \$35,000 (100 x \$350). If the applicant makes a substantial revision to its Preliminary Scoping Statement, the Siting Board may require an additional fee in an amount not to exceed \$25,000.

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Amount of Funds - Application Stage

An applicant submitting an Article 10 Application is assessed an intervenor fee equal to \$1,000 per megawatt (MW) up to a cap of \$400,000. For example, for a 100-megawatt facility, the pre-application intervenor fee would be \$100,000 (100 x \$1,000). If the applicant makes a revision to its Application requiring substantial additional scrutiny, the applicant will be assessed an additional intervenor fee equal to \$1,000 per megawatt (MW) of the proposed project, as amended, but no more than \$75,000. The presiding examiner may increase the level of the additional intervenor fee up to the maximum level of \$75,000 if the presiding examiner finds circumstances require a higher level of intervenor funding in order to ensure an adequate record. In addition, for facilities that will require storage or disposal of fuel waste byproduct, an additional intervenor fee will be assessed at the application phase of \$500 per megawatt (MW), but no more than an additional \$50,000.

Use of Funds

Intervenor funds can be used to defray expenses incurred by eligible municipal and local parties in the pre-application scoping process and in the proceeding before the Siting Board to consider the Application. They can be used to pay for expert witnesses, consultants, administrative costs (such as document preparation and duplication) and legal fees. No intervenor funds may be used to pay for appeals of Siting Board decisions or other matters before a court.

During the Pre-application Stage, the Presiding Examiner will award funds on an equitable basis when it is determined that the funds will be used to make an effective contribution to review of the Preliminary Scoping Statement and the development of an adequate scope of the Application to be submitted, and will provide early and effective public involvement. During the Application Phase, the Presiding Examiner will award funds on an equitable basis when it is determined that the funds will be used to contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility, and will facilitate broad participation in the proceeding.

Notice of Availability of Funds & Deadline for Funding Requests

Upon the payment of intervenor fees by the Article 10 Applicant at various stages, the Presiding Examiner or the Secretary to the Siting Board will issue a notice indicating the availability of intervenor funds and providing a schedule and related information describing how interested municipalities and local parties may make requests for the funds. Subject to the availability of funds, the Presiding Examiner may fix additional dates for submission of fund requests.

Requests for funds must be submitted to the Presiding Examiner no later than 30 days after the issuance of the notice of availability. Eligible municipal and local parties may request funds by filing the requests with the Secretary of the Siting Board and submitting a copy to the Presiding Examiner and to the other parties to the proceeding.

Requests for Intervenor Funds

Parties preparing requests for funds are encouraged to submit their requests using a standard format as may be provided for that purpose either on the Siting Board Website [["http://www.dps.ny.gov/SitingBoard/"\]](http://www.dps.ny.gov/SitingBoard/) or by the Presiding Examiner. A request for intervenor funds must contain:

1. a statement of the number of persons and the nature of the interests the requesting party represents;
2. a statement of the availability of funds (without intervenor funding) from the resources of the requesting party and from other sources and of the efforts that have been made to obtain such funds (from other sources);
3. the amount of funds being sought;
4. to the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;
5. if known, the name of any other interested person or entity who may, or is intending to, employ such expert;
6. a detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility;¹
7. if a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;
8. a statement as to the result of any effort made to encourage the Article 10 Applicant to perform any proposed studies or evaluations and the reason it is believed that an independent study is necessary; and
9. a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person.

The Presiding Examiner is required to examine each request for funds to determine whether the request complies with the above rules. A request for intervenor funds that does not comply fully with each requirement of the rules will not be granted. Providing a complete request for funds in the first instance will abbreviate the process of obtaining a grant of funds and will avoid successive filings and rulings, which otherwise may be necessary and will delay the award of funds. If the party believes a regulatory provision is not applicable to its circumstances, the party should explicitly state this contention in its funding request, and also explain why the provision is not applicable.

¹ [Note: In addressing this provision, a party must provide more than a recitation of the regulatory language in a conclusory statement to the effect that "each person identified above will contribute to a complete record." Instead, the party must specify in what manner, or specifically how, its participation will contribute to a complete record in this proceeding. For example, a party might identify, if applicable, that it has a unique concern or interest, not addressed by other parties, that it intends to study or otherwise address on the record, and specify how the party plans to address the issue. For the pre-application stage, a party might identify the need to hire an expert to better define the scope of appropriate studies that should be included in the application to remedy a deficiency uniquely identified by the party in the scope described in the Preliminary Scoping Statement.]

Conferences to Consider Funding Requests

At the Pre-application Stage, an initial conference to consider fund requests will be convened by the Presiding Examiner between 45 days and 60 days after the filing of a Preliminary Scoping Statement. At the Application Stage, a similar initial conference may be convened. Anyone interested in receiving notices of such conferences may subscribe to the service list established for the case. At any conference held to consider fund requests, intervenors should be prepared to discuss their funding requests and the award of funds. At any pre-hearing conference that may be held to consider fund requests, the parties should be prepared to discuss their funding requests and the award of funds. Parties are encouraged to consider consolidating their requests with similar funding proposals made by other parties.

Award of Funds

After a party submits a funding request, the Presiding Examiner will issue a formal ruling granting or denying the funding request in whole or in part. In making any funding award, the Presiding Examiner is not making any determination on the merits of the issues identified in the award. A party who receives a funding award will then be contacted by the Department of Public Service (DPS) Finance Office and asked to sign Local Assistance Contract documents, which set forth the terms and conditions for providing intervenor funding.

Disbursement of Funds

No funds will be disbursed until after the work has been performed and detailed invoices have been submitted to DPS for review by both the Presiding Examiner and the Finance Office. Any moneys remaining in the intervenor account after the Siting Board's jurisdiction over an Application has ceased shall be returned to the applicant.

Reporting Requirements

Each party receiving an award of funds must use the awarded funds only for the purposes that have been specified in the particular award of intervenor funding. A party receiving an award of funds must also comply with certain reporting requirements. On a quarterly basis, unless otherwise required by the Presiding Examiner, any party receiving an award of funds shall:

1. provide an accounting of the monies that have been spent; and,
2. submit a report to the Presiding Examiner showing:
 - a) the results of any studies and a description of any activities conducted using such funds;
 - b) whether the purpose for which the funds were awarded has been achieved;
 - c) if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved;
 - d) and why further expenditures are warranted.

APPENDIX 1

Relevant Excerpts from Article 10 of the Public Service Law

Section 160(1)&(9)[Definitions]:

1. "Municipality" means a county, city, town or village located in this state.

9. "Local parties" shall mean persons residing in a community who may be affected by the proposed major electric generating facility who individually or collectively seek intervenor funding pursuant to sections one hundred sixty-three and one hundred sixty-four of this article.

Section 163(4)[Pre-Application Procedures]:

4. (A) Each pre-application preliminary scoping statement shall be accompanied by a fee in an amount equal to three hundred fifty dollars for each thousand kilowatts of generating capacity of the subject facility, but no more than two hundred thousand dollars, to be deposited in the intervenor account established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the hearing examiner's direction to defray pre-application expenses incurred by municipal and local parties (except for a municipality submitting the pre-application scoping statement) for expert witness, consultant, administrative and legal fees. If at any time subsequent to the filing of the pre-application the pre-application is substantially modified or revised, the board may require an additional pre-application intervenor fee in an amount not to exceed twenty-five thousand dollars. No fees made available under this paragraph shall be used for judicial review or litigation. Any moneys remaining in the intervenor account upon the submission of an application for a certificate shall be made available to intervenors according to paragraph (a) of subdivision six of section one hundred sixty-four of this article.

(b) Pre-application disbursements from the intervenor account shall be made in accordance with rules and regulations established pursuant to paragraph (b) of subdivision six of section one hundred sixty-four of this article which rules shall provide for an expedited pre-application disbursement schedule to assure early and meaningful public involvement, with at least one-half of pre-application intervenor funds becoming available through an application process to commence within sixty days of the filing of a pre-application preliminary scoping statement.

Section 164(6)[Application for a Certificate]:

6. (a) Each application shall be accompanied by a fee in an amount (i) equal to one thousand dollars for each thousand kilowatts of capacity, but no more than four hundred thousand dollars, (ii) and for facilities that will require storage or disposal of fuel waste byproduct an additional fee of five hundred dollars for each thousand kilowatt of capacity, but no more than fifty thousand dollars shall be deposited in the intervenor account, established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the board's direction, to defray expenses incurred by municipal and other local parties to the proceeding (except a municipality which is the applicant) for expert witness, consultant, administrative and legal

fees, provided, however, such expenses shall not be available for judicial review or litigation. If at any time subsequent to the filing of the application, the application is amended in a manner that warrants substantial additional scrutiny, the board may require an additional intervenor fee in an amount not to exceed seventy-five thousand dollars. The board shall provide for notices, for municipal and other local parties, in all appropriate languages. Any moneys remaining in the intervenor account after the board's jurisdiction over an application has ceased shall be returned to the applicant.

(b) Notwithstanding any other provision of law to the contrary, the board shall provide by rules and regulations for the management of the intervenor account and for disbursements from the account, which rules and regulations shall be consistent with the purpose of this section to make available to municipal parties at least one-half of the amount of the intervenor account and for uses specified in paragraph (a) of this subdivision. In addition, the board shall provide other local parties up to one-half of the amount of the intervenor account, provided, however, that the board shall assure that the purposes for which moneys in the intervenor account will be expended will contribute to an informed decision as to the appropriateness of the site and facility and are made available on an equitable basis in a manner which facilitates broad public participation.

APPENDIX 2

Relevant Excerpts from the Article 10 Regulations

16 NYCRR, Section 1000.10:

1000.10 Fund for Municipal and Local Parties

(a) Pre-Application Provisions

- (1) Each pre-application preliminary scoping statement shall be accompanied by an intervenor fee in an amount equal to \$350.00 for each 1,000 kilowatts of generating capacity of the subject facility, but no more than \$200,000.00.
- (2) All intervenor fees submitted with each preliminary scoping statement and application, as well as any intervenor fee required to be submitted when a pre-application scoping statement or application is amended, shall be deposited in an intervenor account, established pursuant to Section 97-kkkk of the State Finance Law.
- (3) Following the filing of a preliminary scoping statement, the Presiding Examiner or the Secretary shall issue a notice of availability of pre-application intervenor funds providing a schedule and related information describing how interested members of the public may apply for pre-application funds. Requests for pre-application funds shall be submitted to the presiding examiner not later than 30 days after the issuance of the notice of the availability of pre-application intervenor funds.
- (4) An initial pre-application meeting to consider fund requests shall be convened within no less than 45 days but no more than 60 days of the filing of a preliminary scoping statement. At any pre-application meeting that may be held to consider fund requests, participants should be prepared to discuss their funding applications and the award of funds. Participants are encouraged to consider the consolidation of requests with similar funding proposals of other participants.
- (5) If the pre-application preliminary scoping statement is substantially modified or revised subsequent to its filing, the Board may require an additional pre-application intervenor fee in an amount not to exceed \$25,000.00. In such circumstances, the presiding examiner may make awards of the additional funds, on an equitable basis, in relation to the potential for such awards to make an effective contribution to review of the preliminary scoping statement, thereby providing early and effective public involvement.

- (6) Each request for pre-application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies to other interested persons, as identified by the Secretary or presiding examiner.
- (7) The presiding examiner shall reserve at least 50% of the pre-application funds for potential awards to municipalities.
- (8) Following receipt of initial requests for pre-application funds, the presiding examiner shall expeditiously make an initial award of pre-application funds, and thereafter may make additional awards of pre-application funds, in relation to the potential for such awards to make an effective contribution to review of the preliminary scoping statement, thereby encouraging early and effective public involvement.
- (9) The presiding examiner shall award funds on an equitable basis to participants during the pre-application phase whose requests comply with the provisions of this section, provided use of the funds will make an effective contribution to review of the preliminary scoping statement, and thereby provide early and effective public involvement.
- (10) Subject to the availability of funds, the presiding examiner may fix additional dates for submission of fund requests.
- (11) On a quarterly basis, unless otherwise required by the presiding examiner, any person receiving an award of funds shall submit to the presiding examiner, and file with the Secretary, a report:
 - (i) detailing an accounting of the monies that have been spent; and
 - (ii) showing:
 - (a) the results of any studies and a description of any activities conducted using such funds;
 - (b) whether the purpose for which the funds were awarded has been achieved; or
 - (c) if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved and why further expenditures are warranted.
- (12) All disbursements from the pre-application intervenor account to any person shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.

(13)

(b) Application Provisions

- (1) Each application shall be accompanied by an intervenor fee in an amount:
 - (i) equal to \$1,000 for each 1,000 kilowatts of capacity, but no more than \$400,000.00, and
 - (ii) for facilities that will require storage or disposal of fuel waste byproduct, an additional intervenor fee of \$500.00 for each 1,000 kilowatts of capacity, but no more than an additional \$50,000.00, shall be deposited in the intervenor account.
- (2) If an amendment of an application is determined by the Chairperson to be a revision as defined in this Part, the application will require substantial additional scrutiny and the applicant shall submit an additional intervenor fee, in the amount equal to \$1,000 for each 1,000 kilowatts of capacity of the proposed project, as amended, but no more than \$75,000.00. The presiding examiner may, however, increase the level of the additional intervenor fee that shall be submitted, up to the maximum level of \$75,000 if the presiding examiner finds circumstances require a higher level of intervenor funding in order to ensure an adequate record for review of the revision to the application.
- (3) Following an applicant's publication of notice of filing a PSL Article 10 application, the presiding examiner or secretary shall issue a notice of availability of application intervenor funds providing a schedule and related information describing how municipal and local parties may apply for application funds. Requests for application funds shall be submitted to the presiding examiner within 30 days after the issuance of the notice of the availability of application intervenor funds.
- (4) The presiding examiner shall award funds during the application phase on an equitable basis to municipal and local parties whose requests comply with the provisions of this section, so long as use of the funds will contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility and will facilitate broad participation in the proceeding.
- (5) The presiding examiner shall reserve at least 50% of the intervenor funds for potential awards to municipalities.
- (6) Any municipality or local party (except an applicant) may request funds from the intervenor account to defray expenses for expert witness, consultant, administrative or legal fees (other than in connection with judicial review).

- (7) Each request for application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies provided to all other parties.
- (8) At any pre-hearing conference that may be held to consider fund requests, the parties should be prepared to discuss their funding applications and the award of funds. Parties are encouraged to consider the consolidation of requests with similar funding proposals of other participants.
- (9) Subject to the availability of funds, the presiding examiner may fix additional dates for submission of fund requests.
- (10) On a quarterly basis, unless otherwise required by the presiding examiner, any party receiving an award of funds shall submit to the presiding examiner and file with the Secretary a report:
 - (i) detailing an accounting of the monies that have been spent; and
 - (ii) showing:
 - (a) the results of any studies and a description of any activities conducted using such funds;
 - (b) whether the purpose for which the funds were awarded has been achieved; if the purpose for which the funds were awarded has not been achieved; whether reasonable progress toward the goal for which the funds were awarded is being achieved; and why further expenditures are warranted.
- (11) Disbursement of Funds
 - (i) All disbursements from the application intervenor account to any party shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.
 - (ii) All vouchers must be submitted for payment not later than six months after any withdrawal of an application or the Board's final decision on an application (including a decision on rehearing, if applicable).
 - (iii) Following withdrawal or final Board decision on an application, any funds that have not been disbursed shall be returned to the applicant.

(c) General Provisions

- (1) Each request for funds shall contain:
 - (i) a statement of the number of persons and the nature of the interests the requesting party represents;
 - (ii) a statement of the availability of funds from the resources of the requesting party and from other sources and of the efforts that have been made to obtain such funds;
 - (iii) the amount of funds being sought;
 - (iv) to the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;
 - (v) if known, the name of any other interested person or entity who may, or is intending to, employ such expert;
 - (vi) a detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility;
 - (vii) if a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;
 - (viii) a statement as to the result of any effort made to encourage the applicant to perform any proposed studies or evaluations and the reason it is believed that an independent study is necessary; and
 - (ix) a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person.
- (2) If the matter has not been assigned to a presiding examiner, the Secretary shall act as an interim examiner until a presiding examiner has been assigned to the matter.