

Response to the Notice of Incomplete Application  
TO THE  
**New York State Office of Renewable Energy Siting**  
FOR A  
**§94-C PERMIT FOR MAJOR RENEWABLE ENERGY FACILITY**  
FOR THE

**Hemlock Ridge Solar Project**

Town on Barre and Shelby – Orleans County, New York

Matter No. 21-00748

January 2022

*Applicant:* Hemlock Ridge Solar LLC  
Three Radnor Corporate Center, Suite 300  
100 Matsonford Road, Radnor, PA 19087  
Contact: Joseph Green, Development Director  
Phone: (866) 946-3123  
Email: [joe.green@communityenergyinc.com](mailto:joe.green@communityenergyinc.com)

*Prepared By:* Environmental Design & Research, D.P.C.  
217 Montgomery Street, Suite 1100  
Syracuse, New York 13202  
[www.edrdpc.com](http://www.edrdpc.com)  
Contact: Caitlin Graff, Upstate New York Environmental Services Leader  
Email: [cgraff@edrdpc.com](mailto:cgraff@edrdpc.com)

## TABLE OF CONTENTS

NEW YORK STATE OFFICE OF RENEWABLE ENERGY SITING.....	1
General Requirements.....	1
Exhibit 2 – Overview and Public Involvement.....	1
Exhibit 3 – Location of Facilities and Surrounding Land Use.....	2
Exhibit 4 – Real Property.....	2
Exhibit 5 – Design Drawings.....	2
Exhibit 6 – Public Health, Safety, and Security.....	4
Exhibit 7 – Noise and Vibration.....	4
Exhibit 8 – Visual Impacts.....	8
Exhibit 9 – Cultural Resources.....	10
Exhibit 11 – Terrestrial Ecology.....	11
Exhibit 12 – NYS Threatened or Endangered Species.....	12
Exhibit 13 – Water Resources and Aquatic Ecology.....	14
Exhibit 14 – Wetlands.....	14
Exhibit 15 – Agricultural Resources.....	16
Exhibit 16 – Effects on Transportation.....	17
Exhibit 17 – Consistency with Energy Planning Objectives.....	18
Exhibit 18 – Socioeconomic Effects.....	19
Exhibit 19 - Environmental Justice.....	19
Exhibit 23 – Site Restoration and Decommissioning.....	20
Exhibit 24 – Local Laws and Ordinances.....	21
Exhibit 25 – Other Permits and Approvals.....	22

## NEW YORK STATE OFFICE OF RENEWABLE ENERGY SITING

### General Requirements

1. 19 NYCRR §900-1.4(a)(4)(i)-(vi) requires the creation of “[a] website that includes a description of “[t]he proposed facility, its location, and the range of potential environmental and health impacts of the construction and operation of the facility; a map of the proposed facility site; a statement detailing when and where the application may be examined; information on the availability of the local agency account funds; an explanation of how and where persons can file a request to receive notices concerning the proposed facility; and information as to how to access relevant documents on the ORES website.” Please revise the content of the website to include the required information with links in a more prominent location to make the website more user friendly and ensure the information is easily accessible to the public.

*Response:* The project website has been revised to include the required information in a more user-friendly manner. The Facility website can be found at <https://www.communityenergyinc.com/hemlockridgesolar>.

2. 19 NYCRR §900-2.1(e) requires that “[i]f the same information is required for more than one exhibit, it may be supplied in a single exhibit and cross-referenced in the other exhibit(s) where it is also required.” When addressing the comments set forth herein, the Office respectfully requests that additional cross-references to other Exhibits and Appendices be included in the updated Application materials.

*Response:* Comment noted. Additional cross references have been included in updated Application materials.

3. To the extent information requested herein is already provided in another Application Exhibit, Appendix or Figure, the Office will consider a revised Exhibit, Appendix and/or Figure containing appropriate cross references to that information (with supporting explanation(s), where required).

*Response:* Comment noted. To the extent information requested is already provided in another Exhibit, Appendix, or Figure, an appropriate cross reference has been added.

### Exhibit 2 – Overview and Public Involvement

1. Exhibit 2 contains a description of the components of the proposed Solar Facility, and an analysis of the proposed Facility’s potential environmental and other impacts. In compliance with 19 NYCRR §900-2.3(a), please supplement Exhibit 2 to integrate cross-references to the Exhibit 5 Design Drawings which support each of the required findings, determinations and considerations requested of the Office.

*Response:* Exhibit 2 has been updated to include the requested cross reference to Appendix 5-A (Site Plan Drawings), in addition to other Application materials.

### **Exhibit 3 – Location of Facilities and Surrounding Land Use**

1. 19 NYCRR §900-2.4(g) requires “[a] map of existing zoning districts and proposed zoning districts within the study area and a description of the permitted and the prohibited uses within each zone.” A description of permitted and prohibited uses is only provided for zoning districts within the Facility Site (i.e., the Town of Shelby and the Town of Barre Agricultural/Residential districts). Please provide a description of the permitted and prohibited uses for each zoning district located within the Study Area. Please also revise Figure 3-6 to depict the Town of Barre Flood Hazard Overlay district and correctly identify the Town of Shelby Wildlife Protection Overlay district and the Town of Shelby Hamlet district.

*Response: Supplemental Exhibit 3 – Rev. 1, Section (g) and Appendix 3-C (Study Area Zoning Use Tables) provide the requested information regarding the permitted and prohibited uses within each zoning district within 5 miles of the Facility, although the Facility is only sited in certain districts within the Towns of Barre and Shelby (Orleans County). Figure S3-6 has been updated to include the requested overlay districts.*

2. 19 NYCRR §900-2.4(q) requires “[o]verlays on aerial photographs which clearly identify the facility site and any facility layout, interconnection route, the limits of proposed clearing or other changes to the topography...” Figure 3-11 depicts the proposed limits of construction activity, but it is unclear whether the proposed limits of construction activity include the limits of proposed clearing and grading. Please revise Figure 3-11 to clearly identify the proposed limits of clearing and grading on the aerial photographs.

*Response: Figure S3-11 has been updated to provide the requested information.*

### **Exhibit 4 – Real Property**

1. 19 NYCRR §900-2.5(a) requires “[a] map of the facility siteshowing property boundaries with tax map sheet, block and lotnumbers; the owner of record of all parcels included in the facility site and for all adjacent properties; easements, grants, deed restrictions, and related encumbrances on the parcels comprising the facility site...” Please revise Figure 4-1 (Sheet 3 of 6) to depict the Wetland Reserve Program Conservation Easement located on a parcel adjacent to the Facility Site (as shown on Figure 3-9)

*Response: Figure S4-1 has been updated to portray the requested information.*

### **Exhibit 5 – Design Drawings**

The information provided in Exhibit 5 does not contain sufficientdetail for the Office to complete its review in compliance with 19NYCRR §900-2.6.

1. **Maximum Height of Solar Facilities** – 19 NYCRR §900-2.6(e) requires that “[t]he maximum height of solar facilities, exclusive of electric collection, transmission or substation/switchyard components, shall not exceed twenty (20) feet from finished grade. The height of arrays shall bemeasured from the highest natural grade below each solar panelto its maximum potential height.” The proposed maximum heightof

arrays is inconsistent throughout the Application. The array elevation detail presented in the Design Drawing Set shows a fifteen (15) foot height, while the text in Exhibit 5 states that the solar arrays will have a typical height of approximately twelve (12) feet above finished grade at their tallest position. Please correct the proposed maximum height of the array panels throughout the Application.

*Response: The PV array elevation detail in the Design Drawing Set (Sheet C-603) has been revised to depict a twelve (12) foot height, which is the typical maximum height of the panels above grade. Additionally, Exhibit 9(b)(1) was revised to clarify that the PV arrays are not expected to be more than 12 feet above grade, rather than 15 feet.*

2. Collection Line ROWs - The following updates are required to the general site plan drawings and details in Exhibit 5 and Appendices 5-A and 5-B:

- a) 19 NYCRR §900-2.6(f)(1)(i)(c) requires “[e]lectric cable collection line corridors (including an indication of permanent rights-of-way (ROW)).” Please revise drawings for Appendix 5-B to include all ROWs associated with collection lines.

*Response: The revised Site Plan Drawings in Appendix 5-A, Sheet C-603, provide the requested information regarding all rights of way associated with the electrical collection system.*

- b) 19 NYCRR §900-2.6(f)(2)(iii) requires “[t]ypical underground infrastructure section details including single and multiple circuit layouts with dimensions...” Although drawing C-603 provides details for the installation of a single circuit collection line, details for the installation of multiple circuit installations are missing. Please supplement Exhibit 5 and provide multiple circuit details, a general description of the cable installation process, and revised drawings that clearly indicate the limits of disturbance and clearing width limits.

*Response: The revised Site Plan Drawings in Appendix 5-A, Sheet C-603 provide the requested information regarding multiple circuit details with the limits of disturbance and clearing width limits. A general description of the cable installation process was provided in the Application in Exhibit 10 (Geology, Seismology, and Soils) Section (a)(3).*

3. Splice Vaults - The following update is required to the general site plan drawings, Civil Design and Electrical Design Drawings, and other details in Exhibit 5 and Appendix 5-A:

- a) 19 NYCRR §§900-2.6(f)(1)(i)(c) and (f)(2)(iii) require that the general site plan drawings and typical details include information for any proposed splice vaults at solar facilities. Please provide supplemental information for splice vaults including vault dimensions, level of cover, required trench length, width, and depth, clearing width limits for construction and operation of the Facility, and limits of disturbance.

*Response: The revised Site Plan Drawings in Appendix 5-A, Sheet C-603, provide the requested information regarding junction boxes at the Facility.*

4. Disturbance Limits - 19 NYCRR §900-2.6(f)(1)(i)(e) requires “[a]pproximate limits of disturbance for all facility components.” Please revise Appendices 5-A and 5-B to include limits of disturbance or provide a standalone set of maps which include the proposed Facility facilities and related limits of disturbance.

*Response: The revised Site Plan Drawings in Appendix 5-A include the limits of disturbance. The limits of disturbance were also shown on Figures 3-11 (LOCA only; Supplemental Figure S3-11 also shows the LOVM and LOG), 11-1, 14-2 included with the Application and submitted to the Office in shapefile format. The Electrical Design Drawings submitted as Appendix 5-B were not updated as the limits of disturbance for the POI and substation are included in Appendix 5-A.*

5. Collection and Interconnection Stations – 19 NYCRR §900- 2.6(f)(1)(i)(g) requires “[e]xtents of collection and interconnection stations and any applicable local setbacks.” The design drawings do not include setbacks of proposed collection and interconnection stations. Please revise the design drawings to illustrate any applicable setbacks pertaining to the proposed collection and interconnection stations.

*Response: The 94-c setbacks for solar facilities described in §900-2.6(d) were displayed on the Site Plan Drawings presented in Appendix 5-A of the Application. The revised Site Plan Drawings in Appendix 5-A include local setbacks applicable to proposed collection and interconnection stations.*

## **Exhibit 6 – Public Health, Safety, and Security**

1. 19 NYCRR §900-2.7(a)(2) requires the “[a]nticipated volumes of such wastes to be released to the environment during construction and under any operating condition of the facility.” Please supplement Exhibit 6, sections (a)(1) and (a)(2), to address tree clearing and stump removal, including waste volumes or acreage cleared and notation that any off- site disposal site for stumps (if utilized by Applicant) will be an approved Land Clearing Debris landfill site.

*Response: The information provided in Section (a)(1) of Exhibit 6 includes a discussion of tree clearing and identifies the closest licensed landfill that that Applicant will use for off-site waste disposal of tree clearing debris. The Applicant updated Section (a)(2) in Exhibit 6 – Rev. 1 to provide an estimate of waste volumes and acreage related to tree clearing and stump removal.*

## **Exhibit 7 – Noise and Vibration**

The design contained in the Application does not comply with the requirements of 19 NYCRR §900-2.8, and deficiencies in Exhibit 7 discussed below prevent the Office from completing its review in compliance with 19 NYCRR §900-2.8. Please address the following so that the Office can determine whether Facility-generated noise has been avoided, minimized and mitigated to the maximum extent practicable:

1. 19 NYCRR §900-2.8(b)(2)(ii) requires “[a] maximum noise limit of forty (40) dBA Leq (1-hour) at the outside of any existing non-participating residence from the collector substation equipment,” which threshold is increased by 5 dBA if a prominent tone occurs. The Pre-Construction Noise Impact Assessment (PNIA) in Appendix 7A does not provide sound pressure levels from the collector substation exclusively under the scenarios listed in the Application. Although Table 7-5 (Exhibit 7, p. 7) shows that the maximum sound level from the substation is 37 dBA (with a 5 dBA penalty included), it does not specify the operational noise conditions of the substation noise sources, time of day, the receptor at which such level is expected to occur, or how the level was obtained. Please provide the sound pressure levels from the collector substation equipment exclusively and specify whether these levels, in combination with any tonal penalty as specified in §900-2.8(b)(2)(iii), comply with the maximum design goal specified in §900-2.8(b)(2)(ii) at any non-participating residence. Please report the noise impacts from the collector substation as required by 19 NYCRR §900-2.8(q)(2) by using the maximum sound power levels as required by §900-2.8(d)(1)(i).

*Response: The PNIA included the sound level of the collector substation at the worst-case receivers under maximum sound power and specified that it met the maximum design goal including tonal penalties. Nevertheless, the PNIA has been revised to include additional information, including Tables 21 and 22 of Appendix D showing the substation-only sound levels at each receiver as overall A-weighted sound levels and 1/1 octave band sound levels. As with the original submission, the Project substation complies with the maximum design goal of 40 dBA, including tonal penalties. See Appendix 7-A- Pre-Construction Noise Impact Assessment – Rev. 1.*

2. 19 NYCRR §900-2.8(d)(1) requires that the evaluation “[u]se computer noise modeling software that follows the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) ... or the ISO-9613-2:1996 propagation standards...” 19 NYCRR §900-2.8(d)(1)(iv) requires that the model “[r]eport, at a minimum, the maximum A weighted dBA Leq (1-hour or 8-hour) sound pressure levels in a year...” 19 NYCRR §900-2.8(d)(1)(v) requires that the model “[r]eport the maximum A-weighted dBA Leq sound pressure levels in a year (Leq (8-hour)) at the most critically impacted external property boundary lines of the facility site...” The PNIA in Appendix 7A states that “[a]ttenuation due to foliage was included in forested areas within project parcels only...” In addition, Figure 57, in Appendix B of the PNIA, shows that seven foliage areas were included in the computer noise model. The only attenuations explicitly allowed under 94-c are listed in 19 NYCRR §900-2.8(e)(1) and include Adiv, Aatm, Agr, and Abar. Attenuation due to foliage is listed in Annex A of ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD), for information only. Please exclude foliage from the computer noise modeling and provide revised sound modeling results in tabular and graphical format as required by 19 NYCRR §900-2.8(d)(iv), (d)(v), (d)(vi), (k), (l), and (q)(2). Please state whether the Facility, as modeled without foliage, complies with the short-term design goals included in 19 NYCRR §900-2.8(b)(2) and report the maximum impacts in a year as required by 19 NYCRR §900-2.8(d)(1)(iv) and (v). Should additional mitigation be required to comply with design goals, please provide those details as required by 19 NYCRR §900-2.8(p)(3).

*Response: The retention of large areas of dense foliage is a valid noise mitigation option. If applicants are willing to retain large areas of dense foliage, then they must have an option to quantify how effective it is in mitigating noise. ISO 9613-2 provides such an option in the main body of the standard, which is Amisc. Amisc,*

includes foliage attenuation. Annex A of the ISO 9613-2 standard, while informative, provides an acceptable methodology for calculating this attenuation. ORES has not provided an alternative methodology, nor do the ORES regulations forbid the use of Amisc. As such, the approach taken in the PNIA to model foliage is an acceptable method to estimate the minimization of noise due to the retention of vegetation around the Project. Nevertheless, modeling without foliage is included in the revised PNIA for comparison (see Tables 20 and 22 in Appendix D of the revised PNIA). The maximum design goals are met with and without foliage. See Appendix 7-A- Pre-Construction Noise Impact Assessment – Rev. 1. Figure S7-1 shows the sound contours of the Facility with foliage, while Figure S7-2 shows the sound contours without foliage. Similarly, Figure S7-3 shows the substation sound contours with foliage, and S7-4 shows the sound contours without foliage.

3. 19 NYCRR §900-2.8(h)(1) requires that “[t]he sensitive soundreceptors shown...” are “...identified by property tax codes...”. Please revise the following figures and tables to include TaxID numbers for sensitive sound receptors: Figures 7-1, 7-2; Figures 15 through 51 in the PNIA; and Figures 58 through 69 and Tables 16 through 18 in Appendix C of the PNIA.

Response: The Tax ID numbers for sensitive sound receptors have been added to Figures S7-1, S7-2, S7-3, and S7-4 and to Figures 15 through 28 in the revised PNIA. Tax ID numbers were also added to the large-scale construction noise figures that were added as Appendix G to the revised PNIA. In addition, Table 17: Receptor Info of the revised PNIA has been updated to include Tax IDs. Due to the number and density of receptors shown on the figures and the length of the Tax IDs, adding the Tax IDs to the remaining figures would make them difficult to read and would add confusion. The receptor numbers in the figures and other tables can be cross-referenced with Table 17. See Appendix 7-A- Pre-Construction Noise Impact Assessment – Rev. 1.

4. 19 NYCRR §900-2.8(j)(1) requires computer noise modeling “...[f]or the main phases of construction, and from activities at any proposed batch plant area/laydown area.” Please supplement Exhibit 7 with information regarding construction noise from the batch plant and laydown areas.

Response: The proposed Facility will not include a batch plant. Exhibit 7 – Rev. 1, Section (j) and Section 5.5 of the PNIA have been revised to include activities at laydown areas. The results of the construction noise modeling for the laydown yards are included in the revised PNIA as Table 12 and Figure 35. See Appendix 7-A- Pre-Construction Noise Impact Assessment – Rev. 1.

5. NYCRR §900-2.8(j)(4) requires that “[s]ound impacts shall be reported with sound level contours (specified in subdivision (k) of this section) on the map described in subdivision (h) of this section...” Sound contours were provided at the worst-case locations only, rather than for the study area. Please provide noise contours for construction activities (as required by subdivision (k)) until the 30 dBA noise contour is reached on the map of the study area (as required by subdivision (h))

Response: The sound levels out to 30 dBA for construction activities have been included in separate large format maps. See Appendix 7-A- Pre-Construction Noise Impact Assessment – Rev. 1, Appendix G.

6. 19 NYCRR §900-2.8(k)(2) requires that “[s]ound contours shall include all sensitive sound receptors and boundary lines (differentiating participating and non-participating)...” Please revise the following figures to include all boundary lines in the study area and differentiate participating from non-participating: Figures 7-1 or 7-2; Figures 15 through 51 in the PNIA; and Figures 58 through 69 in Appendix C of the PNIA.

*Response: Figures S7-1, S7-2, S7-3, and S7-4 and Figures 15 through 28 in the revised PNIA have been revised to include participating and non-participating boundary lines. Figures in Appendix C of the PNIA include a legend that distinguishes between modeled receptors as one of the following: non-participating residences, dilapidated residence, institutional, public, and property lines. The Figures added as Appendix G of the Revised PNIA also include boundary lines in the study area that differentiate participating from non-participating parcels. See Appendix 7-A- Pre-Construction Noise Impact Assessment – Rev. 1, Appendix G.*

7. 19 NYCRR §900-2.8(p) requires that “[t]he software input parameters, assumptions, and associated data used for the computer modeling shall be provided...” Please supplement Exhibit 7 with data used for computer noise modeling of the barriers, GIS files for barriers, site plan and elevation details of the substations, including all relevant noise sources and any noise mitigation measures, and indicate the lengths of each “L” shaped barrier.

*Response: The figures in the revised PNIA show the barriers and include labels indicating the size of each segment, in meters. A GIS file of barrier locations is included with this submittal. A site plan and elevation details of the substations are included in the Electrical Design and Substation Plan Drawings in Appendix 5-B, with further discussion in the VIA (Appendix 8-A). The Site Plan Drawings in Appendix 5-A have been updated to show the location of sound barriers.*

8. 19 NYCRR §900-2.8(p)(5)(ii) requires “[s]ound information from the manufacturers for all noise sources as listed above, and any other relevant noise sources.” Please revise the PNIA to include the manufacturer data for the substation high voltage transformer and the array transformers. If the manufacturer information is not available, but was obtained with a test, please provide a copy of the test report indicating whether it corresponds to the same equipment proposed for the Facility and any other relevant information of the test (e.g., and without limitation, technical specifications of the equipment tested, description of standards followed, sound instrumentation, testing conditions, derivation of results). For the transformers where sound power levels were estimated based on standards and/or algorithms, please provide a clear derivation of sound power levels. When sound power level information from a transformer manufacturer is not available, levels can be estimated by using the algorithms recommended by the Electric Power Plant Environmental Noise Guide (Volume 1, 2<sup>nd</sup> edition. Edison Electric Institute. Bolt Beranek and Newman Inc. Report 3637. 1983 Update). If additional mitigation measures for the substation and array transformers are required to comply with design goals in §900-2.8(b)(2), please submit details of those mitigation measures.

*Response: The sound power of the transformer is based on NEMA TR-1, as stated in the PNIA. Nevertheless, additional detail on how the spectrum was determined is provided in Section 5.1 of the revised PNIA. See Appendix 7-A- Pre-Construction Noise Impact Assessment – Rev. 1.*

## **Exhibit 8 – Visual Impacts**

The information provided in Exhibit 8 does not contain sufficient detail for the Office to complete its review in compliance with 19NYCRR §900-2.9.

1. Viewpoint Selection – 19 NYCRR §900-2.9(b)(4) requires that viewpoint selection be based upon the following:

- a) (iii) “[l]evel of viewer exposure (i.e., frequency of viewers or relative numbers, including residential areas, or high-volume roadways).” Please supplement Exhibit 8 with information regarding level of viewer exposure.

*Response: As stated in Section 4.2.1 of the VIA, a total of 11 viewpoint locations representing the closest, most unobstructed views available within the visual study area were selected for simulation development, and 14 simulations were ultimately produced. The Visual Impact Assessment Supplement (Appendix 8-D) provides additional information regarding the level of viewer exposure. A geographic information system (GIS)-based population density analysis was undertaken to determine the density of building per quarter mile throughout the visual study area, with a focus on those portions of the area where the viewshed analysis suggests the potential for open views of the Facility. The analysis indicates that the Facility visibility is largely concentrated in areas where there are no buildings and areas where building density ranges from 1 to 7 per square quarter mile. Consequently, the selected viewpoints were located in these lower density areas where Facility visibility would be concentrated.*

- b) (iv) “[p]roposed land uses.” Please supplement Exhibit 8 with information regarding proposed land uses for the viewshed analysis.

*Response: The Visual Impact Assessment Supplement (Appendix 8-D) provides additional information regarding proposed land uses at the various selected viewpoints. To address proposed land uses at the various selected viewpoints, zoning ordinances within the visual study area were reviewed and an overlay analysis was performed to determine which districts the various selected viewpoints fell within. Viewpoints were concentrated in Agriculture/Residential zoning districts where visibility of the Facility would be concentrated. The potential for cumulative views of the Facility and other solar energy generation facilities that are currently proposed were also reviewed in Section 5.3.6 of the VIA (Appendix 8-A) submitted with the Application. Proposed land uses and local zoning were also discussed in Exhibit 3 (Location of Facility and Surrounding Land Use) of the Application.*

- c) (v) "[a]ssessment of visual impacts pursuant to the requirements of adopted local laws or ordinances." Please supplement Exhibit 8 with a discussion regarding visual impacts related to the requirements of local laws or ordinances.

*Response: The Visual Impact Assessment Supplement (Appendix 8-D) provides additional information regarding visual impacts related to the requirements of local laws and ordinances that pertain to the visual environment. As described within Section 3.6.1 of the VIA (Appendix 8-A) submitted with the Application, none of these laws identified specific visual resources or sensitive locations. Local laws were reviewed to identify viewpoints that illustrate the requirements of local laws and ordinances, which included setback requirements and underground power line requirements. Local laws and ordinances are also discussed in Exhibit 24 (Local Laws and Ordinances) submitted with the Application.*

2. Lighting Plans – 19 NYCRR §900-2.9(d)(9) requires lighting plans to address the following:

- a) (ii) "[p]lan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement and illumination levels..." Please provide a plan and profile of the proposed lighting arrangements.

*Response: The Visual Impact Assessment Supplement (Appendix 8-D) provides additional information regarding the plan and profile of the proposed lighting systems, and plan and profile drawings are included as Attachment 3. The Lighting Plan included with Appendix 8-B of the Application showed the manufacturer's cut sheets of the proposed pole mounted and building mounted lighting fixtures.*

- b) (iii)(a) "...[l]imiting the maximum total outdoor lighting output based on the lowest allowable OSHA limits; task lighting fixtures shall be designed to be placed at the lowest practical height..." Please supplement Exhibit 8 with information regarding the height of proposed fixtures and commit to limiting the maximum total outdoor lighting output based on lowest allowable OSHA limits.

*Response: The height of lighting fixtures is expressly stated in the Lighting Plan (Appendix 8-B, Attachment 2) as 25 feet above the ground. Additional information regarding lighting at the Facility is provided in supplementary Appendix 8-D, including the Applicant's commitment to limiting illumination to the lowest level allowed by OSHA requirements for safety and security.*

- c) (iii)(b) "...[f]ull cutoff fixtures, with no drop-down optical elements (that can spread illumination and create glare) for permanent exterior lighting, consistent with OSHA requirements and adopted local laws or ordinances, including development standards for exterior industrial lighting, manufacturer's cut sheets of all proposed lighting fixtures

shall be provided.” Please provide the manufacturer’s cut sheets for lighting fixtures at the substation.

*Response: The manufacturer’s cut sheets from LED Lighting Supply were included as Attachment A of the Lighting Plan (Appendix 8-B, Attachment 2). As indicated the Lighting Plan (included as Attachment 2 to Appendix 8-B), these lighting fixtures are in compliance with local code. Given that the lumens indicated for the lighting fixtures in the manufacturer’s cut sheets meet the foot-candle requirements of OSHA’s Safety and Health Regulations or Construction and Occupational Health and Environmental Controls<sup>1</sup>, the Lighting Plan is consistent with OSHA requirements. The Applicant is committed to limiting illumination to the lowest level allowed by OSHA requirements for safety and security. Additional information regarding lighting at the Facility is provided in Visual Impact Assessment Supplement (Appendix 8-D).*

### **Exhibit 9 – Cultural Resources**

The information provided in Exhibit 9 does not contain sufficient detail for the Office to complete its review in compliance with 19NYCRR §900-2.10. With full recognition of the substantive work completed to date, the cultural resources evaluation required pursuant to 19 NYCRR §900-2.10 remains incomplete.

1. 19 NYCRR §900-2.10(a)(4) requires “[a] Phase II site evaluation study to assess the boundaries, integrity and significance of identified cultural resources” if required by the Phase I study results. Correspondence from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) and State Historic Preservation Office (SHPO) (collectively, OPRHP/SHPO) dated July 30, 2021, states that “OPRHP concurs with EDR that EDR-OS-006 (USN 07302.000058) has the potential to be eligible for the State and National Registers of Historic Places. Due to the density, distribution, and types of artifacts present within EDR-OS- 006 and the corresponding potential for cultural features to exist below the plowzone (including burials), the Seneca Nation of Indians (SNI) and OPRHP recommend that this site be avoided. To facilitate the Tribal consultation, OPRHP recommends the complete avoidance of this site, including PV Arrays, or a Phase II Site Examination be completed. Please submit either a Site Avoidance and Preservation Plan or a Phase II Site Examination Scope of work for review.” Please provide the Site Avoidance and Preservation Plan or a Phase II Site Examination Scope of Work, as required. If site avoidance is implemented, arrays will be removed from portions of parcel 115.-1-31.1. Please provide revised figures to reflect the removal/relocation of panels.

*Response: The Applicant modified the Facility design to relocate proposed components (access roads, collection lines, potential PV arrays) that intersected site EDR-OS-006 site area and a 50-foot buffer, resulting in complete avoidance of the site. The Applicant has committed to the terms outlined in OPRHP’s Short Term/Under Construction Site Avoidance/Protection document, and has provided supplemental Appendix 9-G (Preliminary*

---

<sup>1</sup> U.S. Department of Labor, Occupational Safety and Health Administration. 2021. 1926.56 – Illumination. Available at: <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.56> (Accessed November 2021).

CRAMMP) outlining archaeological site avoidance, minimization, and mitigation measures proposed for the Project. To minimize the likelihood that any unanticipated impacts to archaeological site EDR-OS-006 occur because of subsequent minor layout changes or construction activities, the mapped location of the site will be included on Facility construction maps surrounded by a 50-foot (minimum) buffer labeled as "Environmentally Sensitive Area" and marked in the field by construction fencing with signs that restrict access. These measures should be adequate to ensure impacts to archaeological site EDR-OS-006 are avoided. Based on the complete avoidance of site EDR-OS-006, a Phase II Site Examination is not warranted.

2. 19 NYCRR §900-2.10(b) requires "[a] study of the impacts on historic resources within the project impact area, including the results of field inspections, a review of the statewide inventory of historic property, and consultation with local historic preservation groups and federal/state-recognized Indian Nations to identify sites or structures listed or eligible for listing in the State or National Register of Historic Places within the PIA, including an analysis of potential impact on any standing structures which appear to be at least fifty (50) years old and potentially eligible for listing in the State or National Register of Historic Places, based on an assessment by a qualified individual." OPRHP/SHPO determined in its April 7, 2021 letter that the Facility will adversely impact three properties eligible for inclusion in the New York State and National Registers of Historic Places. OPRHP/SHPO indicated that its review is ongoing and once the assessment of potential archeological impacts is completed, a formal recommended finding pursuant to Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law (NYSRPHPL) will be issued. Please provide OPRHP/SHPO's formal determination pursuant to Section 14.09 of the NYSRPHPL.

*Response:* The formal determination of adverse effect was received from OPRHP on November 3, 2021. OPRHP recommended that the Applicant should develop an appropriate historic preservation mitigation plan and once that mitigation plan is developed and agreed upon, it would be memorialized in a Letter of Resolution. The Applicant has therefore provided Supplemental Appendix 9-G (Preliminary CRAMMP) to comply with the recommendations. The letter also indicated that the Archaeology Unit has completed its review and has no further concern regarding archaeological resources provided the Site Avoidance and Preservation Plan for EDR-OS\_006 will be adhered to (see Appendices 9-E – Rev. 1 and 9-F).

## **Exhibit 11 – Terrestrial Ecology**

The information provided in Exhibit 11 does not contain sufficient detail for the Office to complete its review in compliance with 19 NYCRR §900-2.12.

1. 19 NYCRR §900-2.12(d) requires "[a] list of the species of mammals, birds, amphibians, terrestrial invertebrates, and reptiles that are likely to occur based on ecological communities present at, and bird and bat migration routes through, the facility, supplemented as necessary by site surveys, site observations and publicly available sources." Please develop a comprehensive list of mammals and terrestrial invertebrates that are likely located on the Facility site.

*Response:* The Applicant updated the Wildlife Species List in Appendix 11-A to include a comprehensive list of mammals and terrestrial invertebrates that are likely to occur in the vicinity of the Facility Site.

2. Please see comments in the discussion of Exhibit 12 (NYS Threatened or Endangered Species) below concerning the Applicant's assessment of potential significant adverse environmental impacts to listed and unlisted wildlife species under this Exhibit 11 (Terrestrial Ecology). To avoid repetition, this discussion is incorporated in Exhibit 11 by reference. Please update Exhibit 11 accordingly.

*Response:* The Applicant has updated Exhibit 11 to include additional discussion of potential impacts to unlisted species and cross-references to Exhibit 12 where the Applicant provides specific avoidance, minimization, and mitigation measures to avoid impacts to NYS listed species that would also apply to unlisted species discussed in Exhibit 11.

### **Exhibit 12 – NYS Threatened or Endangered Species**

1. 19 NYCRR §900-2.13(f) requires a Net Conservation Benefit Plan (NCBP) be submitted in compliance with §900-6.4(o) "[f]or a facility that would adversely impact any NYS threatened or endangered species or their habitat..." Please supplement Section 5.2 and revise Table 2 of the NCBP to identify all land necessary to meet the mitigation acreage of 273 acres as required for an approvable NCBP.

*Response:* Appendix 12-F and Exhibit 12 – Rev. 1 have been revised to provide the requested information.

2. The Application acknowledges that high-quality habitat exists within 5 miles of the Facility site that could attract threatened, endangered and unlisted species, including the Iroquois National Wildlife Refuge (NWR) (0.1 mile southwest of the Facility site), and the Tonawanda (5.5 miles southwest of the Facility site) and Oak Orchard Wildlife Management Areas (WMAs) (0.5 mile south of the Facility site). However, the discussion of the proximity of the Facility to these federal and state natural resources requires additional development in order for the Office to evaluate the Applicant's proposed avoidance, minimization and mitigation measures, in compliance with 19 NYCRR §900-2.13.
  - a) Please supplement Exhibit 12 to include additional detail demonstrating the location of the proposed Facility to these natural resources, and the Applicant's proposed measures to avoid, minimize and/or mitigate potential significant adverse impacts to threatened or endangered species, species of special concern, and unlisted species to the maximum extent practicable.<sup>2</sup>

*Response:* Please see additional discussion added to Exhibit 11 – Rev. 1 with respect to wildlife habitat and unlisted species. Please see additional discussion added to Exhibit 12 – Rev. 1 regarding threatened or endangered species or species of special concern and their suitable habitat.

---

<sup>2</sup> Since many of these measures may also benefit unlisted species, the Office requests that the Applicant consolidate discussion of unlisted species, normally listed in Exhibit 11, with this discussion in Exhibit 12, with cross-references in each Exhibit as appropriate.

- b) This supplement should evaluate and determine appropriate setbacks from the Facility site and the Iroquois National Wildlife Refuge and other State WMAs, in instances where proximity to these natural resources is relevant.

*Response:* There are no federal, state, or locally required setbacks relevant to the Facility in relation to the Iroquois National Wildlife Refuge and other State WMAs. Please see additional discussion of these resources in Exhibit 11 – Rev. 1 with appropriate cross-references added to Exhibit 12.

- c) Please include additional details demonstrating the Applicant's relevant avoidance strategies. For example, and without limitation, Exhibit 12 states that higher quality habitat areas (including farmland) located off-site at or near the Iroquois NWR, Tonawanda WMA, and Oak Orchard WMA were not pursued for Facility development and have been avoided. Please substantiate this statement with appropriate detail.

*Response:* The Applicant has updated Exhibit 12 – Rev. 1 to clearly address the Facility's avoidance of several protected lands within the 5-Mile Study Area that may provide higher-quality suitable habitat to the state-listed species identified within the Facility Site.

- d) Given this additional site-specific background, please expand the discussion of how the Applicant's siting, distancing and other measures will avoid, minimize and/or mitigate potential significant adverse impacts to these species, and achieve a net conservation benefit.

*Response:* Exhibit 12 – Rev. 1 has been updated to include additional avoidance, minimization, and mitigation measures.

- e) Please update Exhibit 12 with any information concerning the Applicant's additional consultation with USFWS (if any), and any feedback received from USFWS on the Applicant's proposed measures to avoid, minimize and/or mitigate potential impact(s) to all species of plant and animal wildlife, given the proximity of the Facility to the USFWS Iroquois National Wildlife Refuge.

*Response:* As stated in the Wildlife Site Characterization Report, the Facility Site is located approximately 0.1-mile from the Iroquois National Wildlife Refuge at its closest point and does not overlap or adjoin any part of the refuge. Therefore, no further consultation with USFWS is required for this Project. Please see Exhibit 11 – Rev. 1 for additional detail. The Applicant has also updated Exhibit 12 – Rev. 1 to clearly address that construction and operation of the Facility will result in no adverse impacts to the NWR.

3. To the extent this information or detail is provided in other Application Exhibits, cross-references to these Exhibits would be acceptable for the Office's review (with supporting explanation(s), where

required). The Office acknowledges that some of the detail requested in this section will require redaction in accordance with applicable provisions of the Environmental Conservation Law.

*Response: The Applicant has revised both Exhibits 11 and 12 to include additional cross-references to the appropriate discussions.*

### **Exhibit 13 – Water Resources and Aquatic Ecology**

1. 19 NYCRR §900-2.14(b)(3) requires “[f]or the surface waters depicted on the map(s) required in paragraph (1) of this subdivision, a description of the New York State listed Water Quality Standards and Classification, ambient standards and guidance values, flow, presence of aquatic invasive species and other characteristics of such surface waters, including intermittent streams, based on actual on-site surface water observations conducted pursuant to section 900.1-3(f) of this Part.” The Application only contains water quality standards and classifications for delineated surface waters; it does not contain the ambient standards and guidance values. Please provide the ambient standards and guidance values, which can be found on the NYSDEC website at: [https://www.dec.ny.gov/docs/water\\_pdf/togs111.pdf](https://www.dec.ny.gov/docs/water_pdf/togs111.pdf).

*Response: The ambient standards and guidance values have been added to Exhibit 13 – Rev. 1, both confidential and redacted versions.*

### **Exhibit 14 – Wetlands**

The information provided in Exhibit 14 does not contain sufficient detail for the Office to complete its review in compliance with 19 NYCRR §900-2.15.

1. 19 NYCRR §900-2.15(a) requires “[a] map or series of maps showing jurisdictional boundaries of all federal, state and locally regulated wetlands and adjacent areas present on the facility site and within one hundred (100) feet of areas to be disturbed...” Please revise all maps of state jurisdictional wetlands to include 100-foot adjacent areas and label it “State-Regulated Adjacent Area.”

*Response: Figure S14-1 has been updated to include “State-Regulated Adjacent Areas.”*

2. 19 NYCRR §900-2.15l requires “[a] qualitative and descriptive wetland functional assessment, including seasonal variations, for all delineated wetlands that would be impacted...” Please supplement Appendix 14-A of the Wetland Delineation Report with the Wetland Functional Assessment for all delineated wetlands that would be impacted by the Facility.

*Response: The Applicant has included supplemental Appendix 14-C which contains the wetland functions and values assessment conducted for features identified in the Facility Site using the USACE New England District Highway Methodology Workbook Supplement Wetland Function and Value Evaluation Form for each delineated wetland in the Facility Site. References to the wetland functional assessment being appended to the Wetland Delineation Report (Appendix 14-A) have been updated to reflect this change in revised Exhibit 14 – Rev. 1.*

3. 19 NYCRR §900-2.15(d) requires “[a]n analysis of all off-site wetlands within one hundred (100) feet beyond the limit of disturbance...to determine their general characteristics and relationship...to delineated wetlands.” The Application indicates “[n]o impacts to state-jurisdictional wetlands, including unmapped freshwater wetlands, will occur as a result of Facility construction or operation.” The proposed Facility includes security fencing within jurisdictional wetlands and PV arrays are closely sited to wetlands that will impact state-jurisdictional wetlands during construction and operational maintenance. Please revise statements addressing §900-2.15(d) requirements accordingly.

*Response: This statement has been revised in Section (d) of Exhibit 15 – Rev. 1 as requested.*

4. 19 NYCRR §900-2.15(e) requires “...a demonstration of avoidance of impacts to such wetlands and their one hundred (100)-foot adjacent areas by siting all components more than one hundred (100) feet from any delineated NYS wetlands.” Based on Exhibit 14 maps and Application shapefiles dated July 28, 2021, the proposed Facility includes approximately sixty (60) feet of security fencing in jurisdictional wetlands 004, 005, and 009. PV arrays are sited within ten (10) feet of jurisdictional wetlands 004 and 009 and less than twenty (20) feet from wetlands F-005 and 022. Thousands of feet of fencing are sited within the adjacent areas of wetlands 004, 005, 008, 009, 010, and 022. Please revise the content and title of Table 14-1 to include impacts to jurisdictional wetlands, including those that will occur during construction and repetitive maintenance of vegetation both within and beyond security fence lines. Please revise the units in Table 14-1 to present impact figures in acres instead of square feet. Impacts to wetlands and wetland adjacent areas should not be categorized as “permanent” or “temporary.” Neither 19 NYCRR §900-2.15 nor the USACE New England District Highway Methodology Workbook Supplement use these terms. Total impact figures and summary tables of wetland and adjacent area impacts should be presented without temporal classifications.

*Response: Fence installation at solar energy generating facilities is not considered an impact by the USACE; this activity was mistakenly left out of the wetland impact calculations to state-regulated wetlands and adjacent areas. Table 14-1 has been revised to reflect impacts from the installation of fence posts in state-regulated wetlands and adjacent areas, although temporary work areas were previously indicated. In addition, units are now presented in acres and temporary and permanent impacts have been lumped together in Exhibit 14 – Rev. 1.*

*Note that the Buffalo and New York District USACE regional conditions do require a breakdown of temporary and permanent wetland impacts for the Water Quality Certification and Nationwide Permit process.<sup>3</sup> Additionally, the NYSDEC Guidelines on Compensatory Mitigation also differentiate between temporary and permanent impacts and the level of mitigation required for activities based on their temporal classification<sup>4</sup>.*

---

<sup>3</sup> USACE. 2021. *Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for the 2021 Nationwide Permits for New York State, Expiration March 14, 2026*. Available at: <https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/NWP/2021NWP-NY/NWP-58.pdf> (Accessed December 2021).

<sup>4</sup> NYSDEC, no date. *Freshwater Wetlands Regulation Guidelines on Compensatory Mitigation*. Available at: [https://www.dec.ny.gov/docs/wildlife\\_pdf/wetlimit.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/wetlimit.pdf) (Accessed December 2021).

*The Applicant disagrees with the Office's stance on not allowing for the categorization of impacts temporally but has provided this information in the requested format in Exhibit 14 – Rev. 1.*

5. 19 NYCRR §900-2.15(f) requires "...an explanation of all efforts the applicant made to minimize the impacts to wetlands and adjacent areas identified during wetland surveys." For each wetland and adjacent area in which impacts are unavoidable, pursuant to 19 NYCRR §§900-2.15(f) (1), (2), (3) and (4), please provide an impact minimization summary explaining: "(1)[w]hy the facility design and siting cannot avoid..." each wetland and adjacent area; "(2)[h]ow the facility design has minimized proposed impacts to NYS wetlands and adjacent areas...;" "(3)[h]ow the facility design and siting minimize impacts to NYS wetlands...and the function and values currently provided by these wetlands;" and "(4)[h]ow the facility design and siting will maximize and/or improve the function and values provided by the remaining adjacent areas surrounding the NYS wetlands."

*Response: Table 14-1 has been updated to include an explanation of why each impact to a state-regulated wetland or adjacent area could not be avoided in Facility design, and how the design has minimized proposed impacts to such features in Exhibit 14 – Rev. 1. An explanation of how the Facility design and siting minimize impacts to NYS regulated wetlands as well as functions and values of impacted and remaining NYS-regulated wetlands is presented in Exhibit 14 – Rev. 1 Sections (f)(2) through (4).*

### **Exhibit 15 – Agricultural Resources**

The information provided in Exhibit 15 does not contain sufficient detail for the Office to complete its review in compliance with 19 NYCRR §900-2.16. In order for the Office to complete its overall evaluation of the proposed Facility, including potential cumulative and other impacts on agricultural resources, please provide the following:

1. 19 NYCRR §900-2.16(a)(8) requires that the Applicant provide an assessment of the temporary and/or permanent impacts to agricultural production areas within the proposed Facility footprint. Please clarify Exhibit 15, section (a)(8) to include statistics for the acreage of the Facility footprint, the total acreage of agricultural production areas within that footprint, and the total acreage and percentage of agricultural production areas potentially impacted.

*Response: Exhibit 15 – Rev. 1 has been updated to include the requested information.*

2. 19 NYCRR §900-2.16(b)(1) requires "[f]ield-verified active agriculture land use (including all lands involved in the production of crops, livestock and livestock products for three (3) of the last five (5) years)." Please supplement Exhibit 15 with a discussion regarding the field verification process and the past agricultural land use on the properties where landowners did not respond to the letter survey.

*Response: Exhibit 15 – Rev. 1 has been updated to include the requested information.*

3. 19 NYCRR §900-2.16(b)(4) requires the Applicant to prepare maps showing the location of known or suspected sub-surface drainage systems (including outlets), surface drainage, irrigation lines, or other unique agricultural facilities, which are relevant to the Agricultural Plan and Drainage Remediation Plan referenced in the regulations and Application Appendices. Please update Exhibit 15 to confirm that the Applicant's consultation (as described at Exhibit 15, section (b)(4)), includes County officials and that the Applicant's submission addresses all features listed in this provision. Please consult the local County Soil & Water Conservation District and USDA-NRCS Office to determine if there are as-built drawings available for the subsurface drainage. Updates to other pertinent Application Exhibits should be included, if required based upon this comment (e.g., Exhibit 5, Appendix 15-A, Appendix 15-B and/or Figure 15-4).

*Response: Exhibit 15 – Rev. 1 has been updated to address this deficiency. The Applicant has consulted with the Orleans County Soil and Water Conservation District during the Section 94-c Process to obtain additional information regarding surface and subsurface drainage within the 5-mile Study Area. However, the District requested written permission from each agricultural landowner within 5-miles of the Facility in order to release any information, including as-built drawings of drainage facilities, which is unrealistic and overly burdensome.*

### **Exhibit 16 – Effects on Transportation**

The information provided in Exhibit 16 does not contain sufficient detail for the Office to complete its review in compliance with 19 NYCRR §900-2.17.

1. 19 NYCRR §900-2.17(a) requires “[a] conceptual site plan, drawn at an appropriate scale, depicting all facility site driveway and roadway intersections showing: (1) horizontal and vertical geometry, the number of approach lanes, the lane widths, shoulder widths, traffic control devices by approaches, and sight distances.” Please supplement Exhibit 16 with a description of the traffic control mitigation measures that may be required for the construction, operation, and decommissioning of the Facility. Please also provide additional information regarding sight distances, whether trees or other obstacles block sight on roadways or new access points, and potential clearing remedies such as tree trimming, etc.

*Response: As stated in Exhibit 16, no permanent traffic control devices are proposed as part of the Project. Additionally, because of the relatively flat longitudinal profile of existing roads, sight distances are expected to be adequate for the Project and no obstructions to sight distances were observed (see Appendix C of the revised Route Evaluation Study [Appendix 16-A – Rev. 1]).*

2. 19 NYCRR §900-2.17(b)(2) requires “[a] review of transit facilities and routes, including areas of school bus service.” Please discuss whether the Applicant has consulted with the three school districts regarding potential impacts to bus routes and provide a summary of the consultations. Please also indicate the locations of bus routes and potential mitigation required due to Facility construction activities, including by way of example and not limitation, potential traffic impacts to East Shelby. If information is not yet available and bus routing is not finalized for the year(s) during which construction of the Facility is anticipated, routing can be provided along with mitigation measures through site specific condition requirements.

*Response: Based on correspondence with the Albion School District, Medina School District, and Oakfield-Alabama School District, it is anticipated that construction-related traffic will result in minimal to no impacts on the bus routes. The Applicant will continue to coordinate with the local school districts during construction of the Facility to avoid impacts and delays to bus routes. Additional details regarding the location and typical hours of school bus routes are included in the revised Route Evaluation Study (Appendix 16-A – Rev. 1).*

3. 19 NYCRR §900-2.17(d) requires “[a]n analysis and evaluation of the traffic and transportation impacts of the facility, including: (4) ...practicable mitigation measures regarding traffic and transportation impacts, including timerestrictions, the use of alternative technologies, the construction of physical roadway improvements, the installation of new traffic control devices, and the repair of local roads... during construction or operation of the facility.” Please describe how traffic impacts will be mitigated, the traffic control mitigation measures to be implemented for passing on narrow roadways and confirm that sight distance will be adequate.

*Response: Exhibit 16 – Rev. 1 and the Route Evaluation Study (Appendix 16-A – Rev. 1) have been updated to include the requested information. Measures to mitigate impacts to traffic and transportation are summarized in Section IV.C. of the revised Route Evaluation Study. Additionally, the line of sight at the entrances are documented in Appendix C of the revised Route Evaluation Study and no obstructions for safe turning were observed.*

4. Federal Aviation Administration (FAA) Notice of Proposed Construction or Alteration - 19 NYCRR §900-2.17(f)(1) requires “...[a] statement that the Applicant has: (i) received an informal Department of Defense review of the proposed construction or alteration in accordance with 32 Code of Federal Regulations Section 211.7,” or (ii) “[r]eceived a formal Department of Defense review of the proposed construction or alteration in accordance with 32 Code of Federal Regulations Section 211.6...” Please supplement Exhibit 16 with information regarding the status of the Department of Defense (DoD) coordination. If, however, an FAA Notice of Proposed Construction is not required (and therefore, DoD review status is also not warranted), please provide verification of the results of the online FAA Notice Criteria Tool.

*Response: The Facility does not exceed the notice criteria per the FAA Notice Criteria tool (accessed in September 2021) and therefore no coordination with the FAA is warranted.*

### **Exhibit 17 – Consistency with Energy Planning Objectives**

1. 19 NYCRR §900-2.18(d) requires “[a] description of the impact the facility would have on regional requirements for capacity.” Please provide a description of the impact the Facility would have on regional requirements for capacity with energy planning objectives.

*Response: The requested information has been added to Exhibit 17 – Rev. 1.*

## **Exhibit 18 – Socioeconomic Effects**

1. 19 NYCRR §900-2.19(i) requires “[a]n analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local emergency response capacity (this analysis to be made after consultation with the affected local emergency response organizations).” Please supplement Exhibit 18 with a summary of the comments received by the Applicant, if any, on the Safety Response Plan that was submitted on May 11, 2021, and the local capacity to respond to emergency events at the Facility in the Towns of Barre and Shelby.

*Response: To date, no comments from the Towns of Barre and Shelby on the Safety Response Plan or capacity to respond to emergency events at the Facility have been received by the Applicant. The Applicant will continue to coordinate with the Towns regarding public safety.*

2. 19 NYCRR §900-2.19(k) requires “[a] statement as to the host community benefit(s) to be provided by the applicant.” Please supplement Exhibit 18 to include any updated information regarding the host community benefits to be provided by the Applicant to the Town of Barre and the Town of Shelby, including a description of the proposed benefits and the form (e.g., payments, other described incentives, etc.).

*Response: Information provided in Section (k) regarding the host community benefits to be provided by the Applicant to the Town of Barre and the Town of Shelby represents the most up to date estimates. Information regarding these host community benefits has not changed since the submittal of the 94-c application. Negotiations regarding the PILOT agreement are ongoing.*

## **Exhibit 19 - Environmental Justice**

1. 19 NYCRR §900-2.20(a) requires “[a]n identification and evaluation of significant and adverse disproportionate environmental impacts of the facility on an Environmental Justice (EJ) area...” Please revise the evaluations and analyses using updated data which is publicly available on DECinfo Locator or the NYS GIS Clearinghouse.

*Response: As outlined on the NYSDEC’s Environmental Justice website (available at: <https://www.dec.ny.gov/public/911.html>), the NYSDEC’s potential EJ dataset utilizes 2014-2018 American Community Survey (ACS) census data. The Hemlock Ridge application relied on newer 2015-2019 ACS census data downloaded from the Integrated Public Use Microdata Series (IPUMS) National Historical Geographic Information System (NHGIS) and the statistical thresholds established by the NYSDEC in defining EJ areas within and adjacent to the Facility Site. According to the 2015-2019 ACS data, the closest potential EJ area is approximately 2.75 miles north of the Facility Site.*

*Accordingly, considering the age of the NYSDEC’s EJ data in comparison to the 2015-2019 ACS census data, the data utilized by Hemlock Ridge provides a more accurate representation of known environmental justice areas in proximity to the Facility at the time the Application was submitted.*

Appendix 19-A includes correspondence with the NYSDEC regarding the EJ methodology.

### **Exhibit 23 – Site Restoration and Decommissioning**

The information provided in Exhibit 23 does not contain sufficient detail for the Office to complete its review in compliance with 19NYCRR §900-2.24.

1. 19 NYCRR §900-2.24(a)(3) requires a Decommissioning and Site Restoration Plan that addresses aesthetics. Please supplement Exhibit 23 with information that discusses treatment of vegetative screening during decommissioning.

*Response: Exhibit 23 – Rev. 1 and the Decommissioning and Site Restoration Plan (Appendix 23-A – Rev. 1) have been updated to include the requested information. Vegetation that was planted during site construction for screening purposes will be removed, unless requested otherwise by the landowner(s).*

2. 19 NYCRR §900-2.24(b) requires “[f]or facilities to be located on lands owned by others, a description of all site restoration, decommissioning and security agreements between the applicant and landowner, municipality, or other entity, including provisions for turbines, foundations, and electrical collection, transmission, and interconnection facilities.” Please supplement Exhibit 23 with information clarifying the timeframe for notification and the security agreement with the Towns.

*Response: Exhibit 23 – Rev. 1 and the Decommissioning and Site Restoration Plan (Appendix 23-A – Rev. 1) have been updated to include the requested information. The Applicant intends to negotiate Host Community Agreements (HCAs) with the Towns, which will either include provisions specifically related to decommissioning or which will complement separate Decommissioning Agreements. Either the HCA or Decommissioning Agreement will provide instructions to the Towns on matters related to decommissioning, including notifications prior to decommissioning, as well as how and under what circumstances the Towns can access the financial assurance to perform decommissioning in the Facility owner’s absence, should that unlikely event occur. Timelines for providing notice to the Towns of intention to start decommissioning are discussed further in the Decommissioning and Site Restoration Plan at Section III(E).*

3. 19 NYCRR §900-2.24(c) requires that the Applicant provide for the Towns of Barre and Shelby “[a] gross and net decommissioning and site restoration estimate, the latter including projected salvage value (including reference to the salvage value data source), with line items (and associated dollar amounts)...” Please provide quantities and unit costs for decommissioning activities. Appendix 23-A notes that “[q]uantities and costs were estimated using...a variety of credible sources, current market prices...” Please provide all referenced sources.

*Response: The Decommissioning and Site Restoration Plan (Appendix 23-A – Rev. 1) has been updated to include the requested information. Quantities and costs were estimated using engineering judgment, DOT Pay Item Catalog, previously approved project pricing, previously approved agency pricing, RSM means data, USGS “Mineral Commodity Summaries”, current market prices, and current dollar value.*

4. The Applicant includes in Appendix 23-A an estimate for the value of the Facility panels that will be resold or recycled. ORES does not consider the resale value of Facility components (i.e., solar panels) in the decommissioning estimate. Please update Appendix 23-A by eliminating the resale value and adjust the proposed decommissioning gross and net estimates accordingly.

*Response: The Decommissioning and Site Restoration Plan (Appendix 23-A – Rev. 1) has been revised as requested. The approximate salvage and scrap values are not included in the decommissioning cost estimate.*

## **Exhibit 24 – Local Laws and Ordinances**

The information provided in Exhibit 24 does not contain sufficient detail for the Office to complete its review in compliance with 19NYCRR §900-2.25.

1. Pursuant to 19 NYCRR §900-2.24(c), the Applicant requests that the Office elect not to apply, in whole or in part, certain local law provisions in the Town of Barre and the Town of Shelby. Some provisions are common to the Towns (e.g., setbacks from unoccupied structures), whereas others approach the same topic differently (e.g., setbacks from participating lot lines in the Town of Shelby) or concern a topic that is unique to the local laws of a specific municipality (e.g., lot coverage and decommissioning requirements in the Town of Shelby). Comments:

- a) Please provide additional supporting information and detail for each request identified in Exhibit 24. Overall, the discussion of each request requires detailed and issue-specific information, maps and/or tables substantiating the reasons why, in the context of the proposed Solar Facility, the Applicant believes each local law provision is unreasonably burdensome, and that each request is for the minimum relief necessary.<sup>5</sup>

*Response: Exhibit 24 has been revised to address this comment. Figure S24-1 has been generated to support requested relief on setbacks, a table was added to support the requested lot coverage waiver in Section (c)(2) of Exhibit 24 – Rev. 1, and Appendix 24-B was added to provide additional support for requested waivers on decommissioning financial security requirements.*

- b) Additional detail should be provided with respect to any burden(s) imposed. By way of example, and without limitation, if compliance with a particular local law provision would potentially increase significant adverse environmental impacts to another resource or area (e.g., relocation of Facility components to areas under Applicant control that are not slated for development and will serve as buffer areas, or are reserved for

---

<sup>5</sup> For example, and without limitation, Exhibit 24 does not contain statistical or other support for the 72.2 acres and/or 15 MW of generating capacity that would be lost due to compliance with the Town of Shelby setback requirements, or maps, plans or reports addressing setbacks from relevant Facility improvements to other critical natural resources (such as the adjoining Iroquois National Wildlife Refuge and other State WMAs) where geographically pertinent. The reference to Appendix 2-A for the Town of Shelby setback discussion is insufficient for purposes of Exhibit 24; additional detail is required to support the relief requested.

agricultural use or potential grassland bird habitat), the relevant facts should be documented in the record so that the reasons for the Applicant's request are appropriately clear.

*Response: Exhibit 24 – Rev. 1 has been revised to address this comment.*

- c) If the requested relief would result in minimal impact(s) to the surrounding community, please substantiate the Applicant's argument with appropriate supporting information (e.g., and without limitation, supporting site plans and visual impact analyses), which may include new information and/or cross-references to materials already in the record.

*Response: Exhibit 24 – Rev. 1 has been revised to address this comment.*

- d) Additionally, a fulsome discussion and demonstration is required for any local law provision which Applicant asserts will preclude construction of the Facility entirely (e.g., and without limitation, the request concerning the Town of Shelby lot coverage limitation). Please update Exhibit 24 to include any additional information concerning review of such issues with Town officials.

*Response: Exhibit 24 – Rev. 1 has been revised to address this comment. No additional correspondence from the Town has been received in response to the Applicant's inquiries.*

### **Exhibit 25 – Other Permits and Approvals**

1. 19 NYCRR §900-2.26(a) requires that "[a] list of any Federal or federally-delegated, or federal or state recognized Indian Nation, permit, consent, approval or license that will be required for the construction or operation of the facility, which shall specify the date on which an application for any such approval was made or the estimated date on which it will be made..." Please provide information regarding the estimated timeline for other permits.

*Response: The estimated timeline for other permits is provided in Exhibit 25 – Rev. 1.*