

STATE OF NEW YORK  
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

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Petition of Granada Solar LLC for a Declaratory Ruling  
that Proposed Solar Projects are Not Subject to Review  
Under Article 10 of the Public Service Law

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Case 18-F-\_\_\_\_\_

**PETITION FOR DECLARATORY RULING**

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**PETITION FOR DECLARATORY RULING**

Pursuant to Public Service Law (“PSL”) Section 161 and Part 8 of the Public Service Commission’s (the “Commission”) rules (16 NYCRR Part 8), Granada Solar LLC (“Granada”) hereby seeks a declaratory ruling from the New York State Board on Electric Generation Siting and the Environment (“Siting Board”) that two proposed 20 megawatt (“MW”) proposed solar projects in the Town of Easton, New York (the “Easton Projects”), and two proposed 20 MW proposed solar projects in the Town of Mohawk, New York (the “Mohawk Projects”), are separate and distinct projects and, as such, will not be aggregated and subject to review under Article 10 of the Public Service Law (“PSL”).<sup>1</sup>

Article 10 governs the siting of a single major electric generating facility in excess of 25 MW. However, the Siting Board has determined that the generating capacity of projects that can demonstrate “physical, legal, and operational separation” will not be aggregated into one major electric generating facility and thereby subject to review under Article 10. Applying factors considered by the Siting Board in similar proceedings, each project demonstrates sufficient physical, legal and operational separation and Granada respectfully requests that the Siting Board issue a declaratory ruling finding that neither the Easton Projects nor the Mohawk Projects

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<sup>1</sup> Part 8 of the Commission’s rules has been adopted by the Siting Board. *See* 16 NYCRR § 1000.3.

should be aggregated to constitute major electric generating facilities subject to review under Article 10.

**I. BACKGROUND**

**A. Granada Solar LLC**

Granada is a wholly-owned subsidiary of Conti Solar. Conti Solar is an industry-leader in solar power and energy storage development, as well as an EPC and O&M company. Conti Solar has successfully developed and installed over 650 MW of solar projects across the United States since its early initiatives in 2007. Conti Solar’s projects include ground-mount, landfill, carport and rooftop arrays as well as energy storage facilities.

**B. Town of Easton Projects**

Granada is proposing to construct two solar electric generating facilities in the Town of Easton, New York – Williams Solar and Johnson Solar. Each project will be owned by a unique project-level LLC and each has a generating capacity of 20 MW. From the outset, as shown below, each generating facility was developed to be a separate, stand-alone project.

The locations of the projects are shown in Figure 1 with Williams Solar depicted in red and Johnson Solar in blue. As can be seen from Figure 1 (attached), the projects are located on separate, non-adjacent parcels of land. The approximate distance between the two projects at their nearest point is 3,000 feet.

Each project will sell its output separately and will have separate off-take contracts for power, capacity, and RECs.

Both projects also submitted independent requests for interconnection to the New York Independent System Operator (the “NYISO”). Each project has its own position in the NYISO queue. Johnson Solar is in the NYISO queue as Q#600 and will connect to National Grid’s

Mechanicville to Schaghticoke 34.5kV transmission line. Williams Solar is in the NYISO queue as Q#730 and will connect to National Grid's Mohican – Luther Forest 115kV Line #3.

The transmission lines to which both projects will connect run parallel to one another. Each project will have its own separate interconnection to its respective transmission line. Both interconnections are located on the same parcel of land. However, each project will have its own unique lease agreement with the landowner for its interconnection facilities. The locations of the interconnections are depicted in Figure 2.

Project financing has not been obtained yet. However, at the appropriate time, the project companies also intend to seek separate financing for each project.

Granada will continue to maintain physical, legal, and operational separation for each project with the expectation that each could be financed and/or sold individually at a later date.

### **C. Town of Mohawk Projects**

Granada is also proposing to construct two solar electric generating facilities in the Town of Mohawk, New York – Sargalis Solar and Lavery Solar. Each project will be owned by a unique project-level LLC and each has a generating capacity of 20 MW. From the outset, as shown below, each generating facility was developed to be a separate, stand-alone project.

The locations of the projects are shown in Figure 3 with Sargalis Solar depicted in red and Lavery Solar in blue. As can be seen from Figure 3, the projects are located on separate, non-adjacent parcels of land. The approximate distance between the two projects at their nearest point is 4,000 feet.

Each project submitted a bid to the New York State Energy Research and Development Authority. On or about November 2017, each project received an award from NYSERDA under separate contracts.

Both projects also submitted independent requests for interconnection to the NYISO. Each project has its own position in the NYISO queue. Sargalis Solar is in the NYISO queue as Q#682 and will connect to National Grid’s Ephratah – Florida 69kV transmission line (Line #7). Lavery Solar is in the NYISO queue as Q#748 and will connect to National Grid’s Johnston – Market Hill 69kV transmission line (Line #8).

The transmission lines to which both projects will connect run parallel to one another. Each project will have its own separate interconnection to its respective transmission line. The interconnections for both projects are located on the same parcel of land. However, each project will have its own unique lease agreement with the landowner for its interconnection facilities. The locations of the interconnections are depicted in Figure 4.

Project financing has not been obtained yet. However, at the appropriate time, the project companies also intend to seek separate financing for each project.

Granada will continue to maintain physical, legal, and operational separation for each project with the expectation that each could be financed and/or sold individually at a later date.

## **II. ARGUMENT**

### **THE EASTON AND MOHAWK PROJECTS ARE SEPARATE AND DISTINCT PROJECTS AND SHOULD NOT BE AGGREGATED SO AS TO CONSTITUTE MAJOR ELECTRIC GENERATING FACILITIES SUBJECT TO ARTICLE 10 OF THE PSL**

A developer is required to seek approval under Article 10 before building a major electric generating facility. PSL § 160(2) defines the term major electric generating facility and “an electric generating facility with a nameplate generating capacity of twenty-five thousand kilowatts or more.” For projects less than 25 MW, the Siting Board has rejected “[t]he argument

that the generating capacity of separate generating facilities on different sites should be combined for purposes of determining jurisdiction under Article X . . . .”<sup>2</sup>

The Siting Board most recently addressed the issue of aggregating small renewable generating facilities in the *Brookhaven* proceeding.<sup>3</sup> In *Brookhaven*, petitioners proposed to construct 14 renewable energy generating facilities on non-adjacent sites with nameplate capacities between 0.4 and 23 MW. The facilities would be built and operated by American Capital Energy, Inc. (“ACE”) through fourteen to-be-formed subsidiary LLCs. Each was to have a separate interconnection but could share employees under a contract with ACE as well as a remote monitoring system. The Siting Board held that, “Article 10 does not require that the capacity of all generating units owned or proposed by a single developer be combined for jurisdictional purposes.”<sup>4</sup> The Siting Board explained that both PSL § 162 (1) and PSL 164 (1), by their terms, refer only to a facility constructed on a single site.

Here, like the situation in *Brookhaven*, both projects in the Town of Easton and both projects in the Town of Mohawk are on different sites. Based on the plain language of Article 10, for this reason alone, no projects should be aggregated. Nevertheless, the Easton and Mohawk Projects also satisfy other Siting Board criteria for determining sufficient separation.

In *Brookhaven*, the Siting Board found that its interpretation of Article 10 was “consistent” with past declaratory rulings interpreting former Article X.<sup>5</sup> According to the Siting Board, “[i]n considering whether Article X applied to multiple-unit projects, the prior Siting

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<sup>2</sup> Case 01-F-1632: *Petition of PPL Global LLC for a Declaratory Ruling that the Company's Construction of a 79.9 MW Natural Gas-Fired Generating Facility Located in the Hamlet of Edgewood, Town of Islip, is not a Major Electric Facility Subject to Article X of the Public Service Law*, Declaratory Ruling Concerning Jurisdiction Over a Proposed Facility (Dec. 12, 2001).

<sup>3</sup> Case 13-F-0436: *Petition of Town of Brookhaven for a Declaratory Ruling Concerning Fourteen Renewable Energy Projects*, Declaratory Ruling Concerning Jurisdiction Over Proposed Generating Units (Jan. 24, 2014).

<sup>4</sup> *Brookhaven* at 3.

<sup>5</sup> The Siting Board determined that the application of Article X precedent is appropriate because the portions of Article 10 which differ from Article X are not relevant to the question of aggregation. *Brookhaven* at 4.

Board found the relevant factors to include ‘physical, legal, and operational separation.’”<sup>6</sup>

Ultimately, the Siting Board concluded in *Brookhaven* that:

“The projects proposed by the Petitioners are separate generating units on non-adjacent sites, with independent connections to the grid. The projects are operationally distinct except that they may share staff and a remote monitoring system. Because the projects are separate, non-adjacent generating units, their capacity will not be aggregated for the purpose of Article 10.”<sup>7</sup>

Here, both the Easton and Mohawk Projects’ component facilities each have sufficient physical, legal, and operational separation so that the facilities of each project should not be aggregated to constitute major electric generating facilities.

As noted above, in considering whether Article X applied to multiple-unit projects, the Siting Board determined that relevant factors include “physical, legal, and operational separation.” More specifically, the Siting Board has taken into consideration proximity of the projects, interconnections, ownership, shared services and resources, and how output from the facilities will be sold. Here, examining each of these factors with respect to the Easton and Mohawk Projects demonstrates that the two projects are entirely separate and should not be aggregated. Because the facts and circumstances of the Easton and Mohawk projects are essentially the same, the following analysis equally applies to both.

At the outset, it is important to take into consideration Granada’s intent behind developing the Easton and Mohawk Projects. Since project inception, it has been Granada’s intent to develop each solar generating facility as a separate, stand-alone project. Maintaining such separation was deliberate and done in contemplation of selling each of the projects individually at a later date. Granada’s intent is evidenced by formation of separate project

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<sup>6</sup> Brookhaven at 4.

<sup>7</sup> Id. at 5.

companies, securing separate off-take contracts, and filing separate interconnection requests to the NYISO.

With respect to physical, legal and operational separation, the facts of the Easton and Mohawk Projects are no different than those presented in *Brookhaven*. In *Brookhaven*, the Siting Board examined 14 projects on non-adjacent parcels, with separate interconnections, that were owned by subsidiaries of the same parent. Based on these facts, the Siting Board found that because “[t]he projects proposed by the Petitioners are separate generating units on non-adjacent sites, with independent connections to the grid” and “are operationally distinct,” “their capacity will not be aggregated. . . .”<sup>8</sup> Here, the Easton and Mohawk Projects will be owned by separate affiliated entities and are comprised two projects, on non-adjacent parcels with independent connections to the grid. Accordingly, based on *Brookhaven*, the two projects in the Town of Easton should not be aggregated and neither should the two projects in the Town of Mohawk.

The only fact distinguishing this situation from *Brookhaven* is that, the interconnections for both projects in Easton and both projects in Mohawk are being located on the same parcel under separate leases with the same landowner. This fact alone, however, should not be sufficient reason to aggregate any two projects. The Siting Board, on several occasions, has determined that siting proposed generation on land adjacent to, and even leased from, an affiliate does not require aggregation of the capacity from the two facilities for purposes of Article 10. For example, in the *NRG* proceeding, the Siting Board found that a 79.9 MW peaking unit was not a major electric generating facility even though it was located on adjacent land leased from an affiliate.<sup>9</sup> Here, the situation with both the Easton and Mohawk Projects is not as extreme as

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<sup>8</sup> *Brookhaven* at 5.

<sup>9</sup> Case 01-F-0222: *Petition of NRG Energy, Inc. for a Declaratory Ruling Determining that the 79.9 MW Stand-Alone Simple Cycle Gas Turbine Peaking Unit Proposed to be Installed by NRG Energy, Inc., Will Not Constitute a Major Electric Generating Facility Under Article X of the New York Public Service Law*, Declaratory ruling signed



in *NRG* because one project is merely locating interconnection facilities on the same parcel of land – not additional generation. In both Easton and Mohawk, each project could have secured separate, distant parcels upon which to locate interconnection facilities. However, the transmission lines to which the projects will connect run in parallel, and, after exploring several other interconnection location options, the chosen parcel for hosting both independent interconnection facilities is the most economic and feasible solution for each project, independent of the other neighboring project.

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by Chairman Helmer concerning facility proposed by an affiliate of existing facility owner (June 20, 2001). *See also* Case 01-F-1631: *Petition of CPN Bethpage 3rd Turbine, Inc. for a Declaratory Ruling that the Company's Construction of a 44 MW Simple Cycle Gas Turbine Peaking Unit is not a Major Electric Generating Facility Subject to Article X of the Public Service Law*, Declaratory Ruling Concerning Jurisdiction Over a Proposed Facility (Dec. 3, 2001).

### III. CONCLUSION

For the foregoing reasons, Granada respectfully requests that the Siting Board issue a declaratory ruling finding that,

1. The Johnson and Williams projects in the Town of Easton should not be aggregated to constitute one major electric generating facility for the purposes of Article 10; and
2. The Sargalis and Lavery projects in the Town of Mohawk should not be aggregated to constitute one major electric generating facility for the purposes of Article 10.

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**Attachments and Figures:**

Figure 1: Location of the Easton Projects

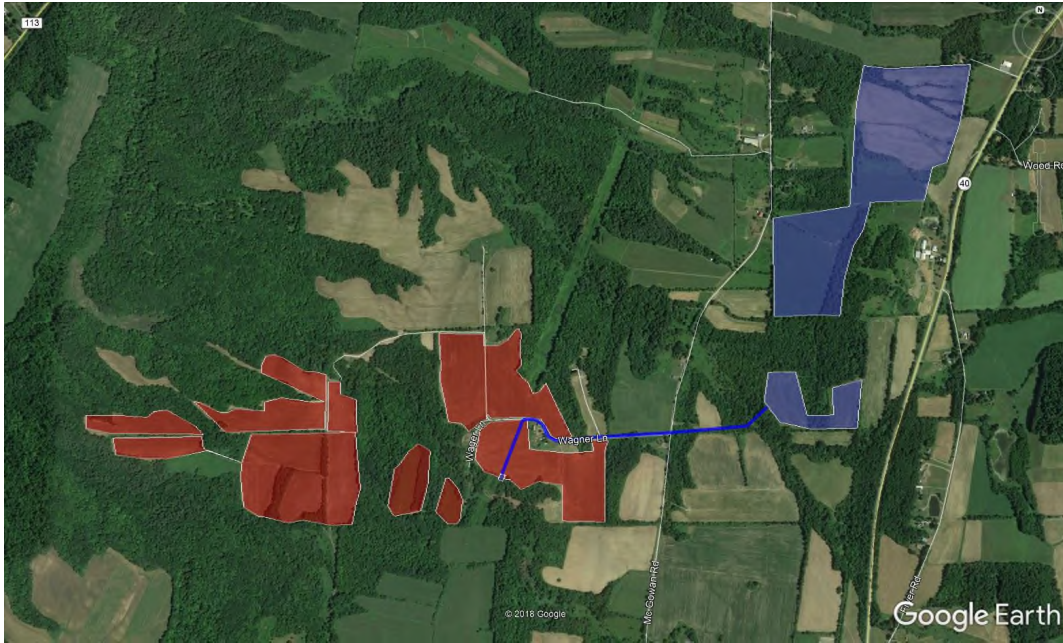


Figure 2: Interconnection Facilities of Easton Projects





Figure 3: Location of the Mohawk Projects

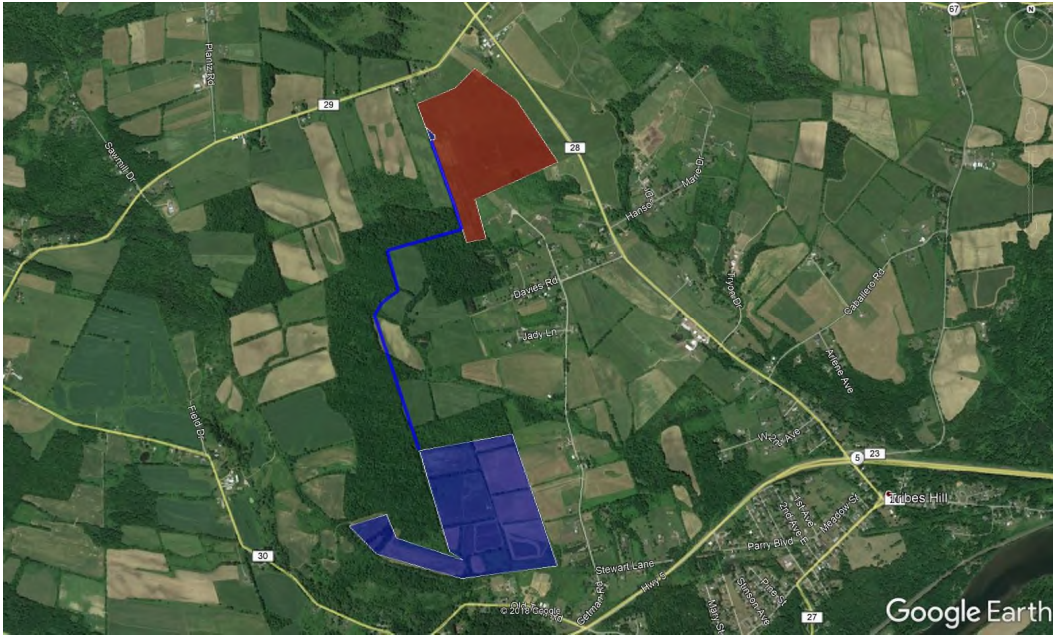


Figure 4: Interconnection Facilities of Mohawk Projects

