STATE OF NEW YORK
OFFICE OF RENEWABLE ENERGY SITING AND ELECTRIC TRANSMISSION

Application of Fort Edward Solar, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 100-Megawatt (MW) Solar Energy Facility Located in the Town of Fort Edward, Washington County.

Matter No. 23-03023

APPLICANT'S RESPONSE TO APPEALS
OF GRASSLAND BIRD TRUST AND
AMERICAN LAND RESCUE FUND
OF RULING ON ISSUES AND PARTY STATUS

Dated: December 24, 2025

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A) INTRODUCTION

In accordance with 16 NYCRR § 1100-8.7(d)(1)(ii) Fort Edward Solar, LLC (Fort Edward or Applicant) hereby submits its response to (1) the Appeal of Grassland Bird Trust (GBT) and (2) the Appeal of American Land Rescue Fund (ALRF) (together Petitioners) from the Ruling on Issues and Party Status on December 11, 2025. For the reasons stated below, the Petitioners' Appeals are meritless and should be dismissed by the Executive Director.

B) PROCEDURAL BACKGROUND

On December 11, 2025, Administrative Law Judges Henry James Joseph and Dawn MacKillop-Soller (the ALJs) issued a *Ruling on Issues and Party Status* ("Ruling") in Matter No. 23-03023, Application of Fort Edward Solar, LLC.[1]

The Ruling held that both GBT's Petition for Party Status and Issues Statement (the GBT Petition) and ALRF's Petition for Late Party Status and Issues Statement (the ALRF Petition) failed to raise any substantive and significant issues for adjudication. The Ruling also determined ALRF did not meet the requirements for late party status. On December 18, 2025, GBT and ALRF both appealed the Ruling to the Executive Director

The Petitioners' Appeals should be denied because the Petitioners have not identified any errors of law or fact, or abuses of discretion by the ALJs, and the Petitioners have failed to meet their burden of persuasion that an adjudicable issue exists. The Appeals disagree with the results but offer no basis under the regulations for the Executive Director to disturb the ALJ's Ruling. The Applicant's comprehensive *Response to Issues Statements* and *Response to Motion* address the arguments raised by Petitioners in their Petitioners for Full Party Status. The Applicant's *Response to Issues Statements* and *Response to Motion* are hereby incorporated by reference.

C) PRELIMINARY STATEMENT

Contrary to Petitioners' claims, the Ruling does not misapply incorrect standards or ignore the requisite regulatory standards but rather applies the proper application of the substantive and

[1] Ruling of the Administrative Law Judges on Issues and Party Status (Dec. 11, 2025) (DMM Item No. 101) [hereinafter "Ruling"].

significant requirement under ORES's regulations. Petitioners argue that the "substantive and significant" standard should be lower. Both ORES precedent and DEC precedent (upon which the ORES regulations were based) establish that line and Petitioners' disagreement with the regulatory standard does not warrant the Executive Director finding a different test or requirements for establishing "substantive and significant" in this case.

An issue is adjudicable only if it is *both* substantive and significant. It is substantive where it raises sufficient doubt that the applicant can meet statutory or regulatory criteria such that a reasonable person would require further inquiry.[2] It is significant only if resolution could result in permit denial, a major project modification, or the imposition of additional, material permit conditions.[3]

Here, the ALJs correctly determined that the vast majority of Petitioners' speculative assertions, generalized criticisms, and policy disagreements, did not raise sufficient doubt to satisfy the substantive test, let alone establish significance. ORES's uniform standards and conditions, together with the Draft Permit and the Net Conservation Benefit Plan (NCBP), meet the requirement of the regulations and provide robust protections for grassland birds. Petitioners offered no concrete factual basis for further inquiry.

Article VIII establishes a comprehensive and exclusive framework for the review of major renewable energy facilities. The statute and regulations identify, with specificity, the studies and analyses an applicant must provide. The adjudicatory process is therefore confined to issues tied directly to Article VIII and Part 1100.

Petitioners', in particular GBT's, reliance on Public Service Law § 136 to expand the scope of required review is unavailing. Section 136 declares the Legislature's intent to consolidate environmental review and provide a single, uniform forum for timely decision-making, "while also ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors… *as more specifically provided in this article*."[4] Public Service Law

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[2] 16 NYCRR § 1100-8.3(c)(2).
[3] 16 NYCRR § 1100-8.3(c)(3).
[4] N.Y. PSL § 136 (*emphasis added*).

§ 138(3) makes clear that it is ORES, not intervenors, that is charged with promulgating regulations "with respect to all necessary requirements to implement the siting permit program."

Equally important, Petitioners did not identify any specific environmental impact that cannot be addressed through the Uniform Standards and Conditions (USCs) and site-specific conditions provided in the Draft Permit. As PSL § 138 makes clear, ORES is authorized to impose permit terms necessary to ensure avoidance, minimization, or mitigation of potential impacts. The fact that Petitioners disagree with the adequacy of the USCs does not entitle them to relitigate settled regulatory standards or elevate their policy preferences into adjudicable issues.

ALRF also did not meet the requisite standard for achieving late party status because it offered nothing more than conclusory statements without any additional scientific and site-specific analysis or justification and the submission was devoid of any offer of proof. ALRF's disagreement with the protective order process is also not a substantive and significant issue requiring adjudication.

The record demonstrates that the Applicant, in response to ORES and stakeholders including GBT, the National Audubon Society, and others, redesigned the Facility to eliminate significant adverse impacts to threatened and endangered species, and as to unavoided impacts, satisfied its burden to ensure a net conservation benefit thereby mitigating any remaining potential impacts that could not be avoided consistent with the statutory standard.[5]

D) LEGAL STANDARD

A. Standards for Party Status and Adjudicable Issues Under Article VIII

As outlined in the Applicant's Response to Issues Statements and Response to Motion, the regulations require an adjudicatory hearing only to resolve substantive and significant disputed factual issues because an issue is subject to adjudication at an evidentiary hearing only where it is both "substantive and significant".[6] The burden is on a potential party to demonstrate that the

[5] Ruling at 43 (DMM Item No. 101); N.Y. PSL § 138(2).
[6] 16 NYCRR § 1100-8.3.

issues raised are substantive and significant.[7] An issue is substantive "if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry".[8] An issue is significant "if it has the potential to result in the denial of a siting permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the *Draft Permit*, including uniform standards and conditions".[9] Importantly, issues for adjudication at a hearing must be questions of **fact**—questions of law or policy are not factual issues appropriate for an evidentiary hearing.[10] Accordingly, the standard limits adjudication to genuine factual disputes where resolution is necessary to determine whether the Applicant has met the requirements of Article VIII and the Office's regulations.

Based on these standards, the ALJs' Ruling correctly held that no substantive and significant fact issues are joined for adjudication in this proceeding.[11]

B. Standards of Proof, Witnesses and Scientific Credibility

In this proceeding, Petitioners submitted one expert report, an assessment by GBT drafted with the assistance of Joel Merriman from Avian Consulting Services, Inc. (GBT Assessment).

To obtain Full Party Status, a proposed party must submit a detailed offer of proof identifying, witnesses, evidence, and the basis for each issue raised.[12] To raise a fact issue for adjudication, a potential party must allege facts that are either (i) contrary to what is in the application materials or draft siting permit, (ii) demonstrate an omission in the application or draft siting permit, or (iii) show that defective information was used in the application or draft siting permit.[13] Here, ORES staff has reviewed the application and found that the Applicant's project, as proposed and conditioned by the draft siting permit, conforms to all applicable requirements of the relevant statutes and regulations, the burden of persuasion is on the potential party proposing any

[7] 16 NYCRR § 1100-8.3(c)(4).
[8] 16 NYCRR § 1100-8.3(c)(2).
[9] 16 NYCRR § 1100-8.3(c)(3).
[10] *Application of Heritage Wind, LLC* (Matter 21-00026) Ruling on Issues and Party Status at 5 (July 8, 2021) DMM Item No. 47 [hereinafter "Heritage Issues Ruling"].
[11] Ruling at 44 (DMM Item No. 101).
[12] 16 NYCRR § 1100-8.4(c)(2)(ii).
[13] Ruling at 14 (DMM Item No. 101).

issue related to the application or draft siting permit to demonstrate that it is both substantive and significant.[14]A potential party satisfies their burden of raising an issue for adjudication by submitting an adequate offer of proof, usually supported by expert testimony or analysis. The evidence must make a credible showing that a defect exists and could substantially affect permit issuance.[15] Conclusory or speculative statements, lay observations or untested methodologies are insufficient, only fact-based evidence from qualified experts can raise an adjudicable issue.[16] The process is not intended for academic debate or unresolved general speculation. The Legislature made it clear that adjudicatory hearings are not intended to be automatic whenever any expert offers an alternative view; rather, they are warranted only where a petitioner or expert opinion establishes a triable factual dispute of a magnitude that could alter the outcome of the permit.[17]

Applying the governing standards, the ALJs correctly found that GBT and ALRF failed to present substantive and significant factual issues warranting adjudication, and ALRF did not meet the standard for achieving late party status. For example, Joel Merriman's statements in the GBT Assessment did not demonstrate unmitigated site-specific impacts; instead, they reflected a difference of expert opinion, which is insufficient where ORES and New York State Department of Environmental Conservation (NYSDEC) staff had already reviewed the data and imposed enforceable mitigation through a net conservation benefit plan conditions. The ALJs likewise rejected claims that the Facility as proposed will not achieve a net conservation benefit based on the terms of the Draft Permit and mitigation proposed by the Applicant. Additionally, the ALJs determined that there were no procedural irregularities in portions of the Application's confidentiality status and overall application process.

Taken together, the submissions from GBT and ALRF reflect disagreement with ORES's determinations and the application process, but fail to demonstrate any omissions, errors, or contrary facts sufficient to cast doubt on the adequacy of the Application. Under 16 NYCRR § 1100-8.3(c), such speculative, duplicative, or conclusory assertions cannot meet the substantive

[14] Ruling at 14 (DMM Item No. 101).
[15] In the Matter of the Application of Custom Compost, DEC Application No. 3-5136-00058/00001, Ruling on Issues and Party Status at 11 (Mar. 25, 2004).
[16] *Id.* at 10-11, citing Halfmoon Water Improvement Area No. 1, (N.Y. Dept. Env. Conserv., Apr. 2, 1982).
[17] 16 NYCRR § 1100-8.3(c)(3); see also Application of Hoffman Falls Wind, LLC (Matter 23-02976) (June 18, 2025)

and significant standard. Therefore, the ALJs properly concluded that no issues warranted adjudication.[18]

E) RESPONSE TO GBT APPEAL

C. The ALJs Properly Applied the "Substantive and Significant" Standard and Denied Party Status

GBT mischaracterizes both the applicable legal standard and how the ALJs applied it in the Ruling. Contrary to GBT's claim, the ALJs properly applied the test to identify "substantive and significant" issues codified in 16 NYCRR § 1100-8.3(c)(2) and did so consistently with longstanding precedent interpreting identical language in prior ORES and NYSDEC proceedings.

Petitioners fundamentally misstate the governing standard for adjudicable issues and misread the NYSDEC precedent relied upon. ORES correctly applied the substantive and significant tests in 16 NYCRR § 1100-8.3, which place the burden of persuasion squarely on the party proposing an issue to demonstrate, with a non-conclusory and factually grounded offer of proof, that there is sufficient doubt as to the applicant's ability to meet applicable statutory or regulatory criteria and that the issue could materially affect the permit outcome. The standard does not provide that mere disagreements, any opposing expert opinions, or any expressions of concern automatically entitle a party to an adjudicatory hearing or require further inquiry.

GBT's reliance on the isolated statement in *In the Matter of the Application of Custom Compost* "[w]here the proposed testimony is competent and runs counter to the Applicant's assertions an issue is raised" is misplaced.[19] This language does not establish that any opposing evidence, no matter how generalized, speculative, or unsupported, automatically triggers adjudication. On the contrary, NYSDEC precedent makes clear that an intervenor's offer of proof must still be non-conclusory, grounded in a sound factual or scientific foundation, and sufficient to raise real doubt as to the applicant's ability to meet applicable statutory or regulatory criteria. Merely offering testimony that "disagrees" with the applicant, without demonstrating a defect,

[18] Ruling at 44 (DMM Item No. 101).
[19] In the Matter of the Application of Custom Compost, DEC Application No. 3-5136-00058/00001, Ruling on Issues and Party Status at 11 (March 25, 2004).

omission, or regulatory noncompliance, is legally insufficient to raise a substantive and significant issue.

Indeed, the same NYSDEC rulings Petitioners cite demonstrate that most proposed issues are routinely rejected, even where contrary evidence is offered, unless the intervenor meets the full substantive and significant threshold. The NYSDEC cases where hearings were ordered involved documented regulatory violations not simply competing expert views.[20] For example, in the *Sullivan County Division of Solid Waste* proceeding, the ALJ ordered adjudication not because of generalized disagreement or competing expert opinions, but because the record demonstrated chronic, documented violations of the Department's odor control regulations, coupled with the applicant's failure to submit an enforceable odor control plan that created genuine doubt as to ongoing compliance. By contrast, the ALJ rejected the vast majority of other proposed issues in that case despite extensive public opposition and contrary claims because there was insufficient evidence to support the claims.

GBT also again rely on Senator Fahy's affirmation *from another proceeding* as probative, despite the Ruling's correct determination that it is irrelevant to the proceeding.[21] The affirmation was submitted to express concerns over local law waivers, an issue not found in this proceeding. Despite GBT's claims, ORES does not "cast aside the reasonable person standard."[22]

Moreover, GBT's assertion that ORES must identify issues because NYSDEC sometimes does so is without merit. The question is not whether some hearings have ever been granted under NYSDEC Part 624, but whether a petitioner met their burden in this specific proceeding under Part 1100. The ALJs' determination that GBT did not is entitled to deference, as supported by the cases referenced by GBT, and may be disturbed only if arbitrary, capricious, or affected by an error of law, which Petitioners have not shown.

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[20] In the Matter of the Application of the RULING ON ISSUES City of New York Department of Sanitation for AND PARTY STATUS a Solid Waste Management Permit, DEC Application No. 2-6105-00666/00001, Ruling on Issues and Party Status (Aug. 30, 2004); In the Matter of Sullivan County Division of Solid Waste, DEC Application No. 3-4846-00079/00021, Ruling of the Administrative Law Judges on Party Status and Issues (July 20, 2004); In the Matter of the Applications of ONTARIO COUNTY, DEC Application Nos. 8-3244-00004/00007, 00001, and 00021, Ruling on Issues and Party Status (May 6, 2015).

[21] Ruling at 30 (DMM Item No. 101).

[22] Appeal of Grassland Bird Trust at 17 (Dec. 18, 2025) (DMM Item No. 103) [hereinafter "GBT Appeal"].

Finally, Petitioners' attempt to transform the "substantive and significant" standard into a low-bar, whereby project opposition and disagreement warrant a hearing in every case is directly contradicted by the regulations, ORES's formal rulemaking record, and decades of NYSDEC precedent and a blatant attempt to fundamentally change the relevant legal standard and expeditious review explicit in ORES's statutory mandate. The reasonable-person inquiry to identify whether an issue is "substantive" is akin to a screening mechanism. The ALJs therefore acted lawfully and rationally in crediting the application record, Staff's technical review, and the absence of any demonstrated regulatory defect, in denying adjudication where Petitioners offered only disagreement, speculation, and policy objections.

II. The Ruling is Not Arbitrary and Capricious, is Not an Abuse of Discretion, and Does Not Contain Errors of Law

GBT claims that the Ruling disposes of GBT's Petition without directly responding to the many issues raised in GBT's expert report and misrepresents GBT's attempts to inform the ALJ about the Facility's impacts to birds.[23] These claims are either unfounded or not supported by site-specific evidence.

(a) Members of the Audubon Society Did Not Properly File Comments

According to GBT, ORES ignored 1,300 comments submitted by the National Audubon Society.[24] However, these alleged comments are nowhere to be found on the DMM. In order for comments to be posted, members of the public must either formally post a comment on the DMM or they can email or mail comments to ORES to be posted on the DMM. GBT claims that members submitted comments through an "action alert" but does not specify exactly how the comments or provide additional details about what the "action alert" is. GBT also does not offer any evidence that the DMM was not working properly or that members of the public were experiencing issues with comment submissions.

Without any additional proof of these comments or even additional details, GBT's claim is meritless. Additionally, it is odd that out of 1,300 commenters, there was not a single person

[23] GBT Appeal at 17 (DMM Item No. 103).
[24] GBT Appeal at 18 (DMM Item No. 103).

that noticed their comment was not posted and attempted to reach out to ORES, GBT, or the Applicant. Members of the public were clearly able to post public comments and were not experiencing substantial issues prohibiting them from doing so as evident by the 258 public comments noted in the Ruling.[25] Additionally, any written comments received via mail, such as Public Comment #s 267 and 272 were scanned and posted to the DMM by ORES.[26]

GBT has not provided any evidence, other than the claim that they "were informed" by the National Audubon Society, that comments were submitted, never posted to the DMM, and ultimately ignored by ORES. Without any additional information or proof, GBT's claim is nothing more than a mere accusation. Even assuming the comments exist, their submission would not be probative as they are described to be form comments similar to other public comments submitted by GBT members in this proceeding.

(b) The Ruling Accurately Dismissed Exhibit C of GBT's Petition Because it Lacks Any Probative Value

GBT argues that the Ruling misapprehends the purpose and the value of the map GBT submitted as Exhibit C of their Petition.[27] The Ruling properly determined that the use of the large red circle, completely enclosing the Wildlife Management Area (WMA) is "inaccurate."[28]

GBT's use of Exhibit C is, and was always, misleading. GBT claims that the red circle, "accurately depicts," the Facility's location in and around multiple conservation areas.[29] GBT's figure displays a large red circle that completely covers the WMA. However, as the Applicant noted in its Response to Issues Statements, particularly Attachment B, the Facility is not sited in the WMA at all.[30] The map created by GBT not only incorrectly shows the location of the Facility, but it also overstates the impacts of the Facility by using a large red circle, rather than the actual Facility components (which do not encompass the entirety of the red circle, it is a subset of locations), to falsely inflate the Facility's footprint and impacts. Therefore, the Ruling correctly

[25] Ruling at 4 (DMM Item No. 101).
[26] *Application of Fort Edward Solar, LLC* (Matter 23-03023) Public Comment #s 267 and 272.
[27] GBT Appeal at 18 (DMM Item No. 103).
[28] Ruling at 23 (DMM Item No. 101).
[29] GBT Appeal at 18 (DMM Item No. 103).
[30] Response to Issues Statement at 17 (DMM Item No. 91).

characterized GBT's Exhibit C as a "gross overstatement," regardless of whether it was intentional or not, and lacking any probative value.[31]

Contrary to GBT's belief, questioning and addressing the use of GBT's description of the Facility as "surrounding" the WMA is not a semantic argument.[32] It speaks to the frequency at which GBT misrepresented the Facility's impacts, particularly when using the word "surround" ten times without qualification.[33] The Facility does not "surround" the WMA at all, the Applicant removed panels to the North and West as part of a major redesign, with the closest Facility components now being sited 900 (fencing), 1,630, and 2,300 feet from the WMA towards the West and the East. The ALJs properly held that GBT misrepresented the Facility's impacts through Exhibit C and its overall description of the Facility.

(c) Senator Fahy's Affirmation Does Not Have Probative Value and is Irrelevant to this Proceeding

GBT claims that Senator Fahy's affirmation is "evidence of ongoing violations of legislative intent in ORES proceedings," and accuses ORES of refusing party status to local agencies and intervenors.[34] The Ruling correctly held that the affirmation is irrelevant to the proceeding due to the "wholly different circumstances" between Fort Edward Solar and Mill Point, which ultimately "robs it of probative value."[35]

Additionally, ORES does not programmatically refuse party status, refuse to hold hearings, or fail to apply the appropriate standard. In fact, ORES held a hearing several months ago.[36] The standard to achieve party status and submit issues for hearing is clear and well established. A potential party must raise a substantive and significant issue. An issue is substantive if it creates sufficient doubt about an applicant's ability to meet statutory or regulatory criteria such that a reasonable person would require further inquiry, and significant if its resolution could

[31] Ruling at 23 (DMM Item No. 101).
[32] GBT Appeal at 19 (DMM Item No. 103).
[33] Ruling at 24 (DMM Item No. 101).
[34] GBT Appeal at 19 (DMM Item No. 103).
[35] Ruling at 30 (DMM Item No. 101).
[36] *Application of Hoffman Falls Wind, LLC* (Matter Number 23-02976), Public Hearing held on August 25, 2025 (Transcript DMM Item No. 179).

lead to permit denial, major project modification, or imposition of substantial additional conditions.[37]

Here, the Ruling correctly found that GBT has not raised any issues that are substantive and significant.[38] Mere differences of opinion and disagreements with the siting of solar, along with a blanket submission of other exhibits without additional explanation, all attempting to raise a substantive and significant issue do not meet the standard of "precise" and "specifying" as sufficient offers of proof.[39] Senator Fahy's affirmation, despite GBT's referenced isolated language, was written with the primary focus of the Senator's concerns related to local law waivers, which is a completely different subject than those at issue here, is not relevant to this proceeding, and therefore has no probative value.

(d) The ASA's Interpretation of the Conservation Easements is Incorrect

According to GBT, the ALJs Ruling on the Agricultural Stewardship Association's (ASA)'s conservation easements was arbitrary and capricious and an abuse of discretion.[40] GBT continues to characterize the ALJs depiction of the ASA letter as deceptive and inaccurate. The Applicant does not dispute that the ASA owns a real property interest in the Faille parcels in the form of an easement. However, the Ruling correctly acknowledged the Applicant's analysis that the ASA misinterpreted the language of the agreement.[41]

ASA's interpretation that the proposed mitigation will violate the restrictive covenants is incorrect. The ASA claims that Public Service Law Article VIII is not the type of program referred to in that section, and refers to the USDA Conservation Reserve Program as an example of what would be permitted on the property. However, the USDA Conservation Reserve Program is not discussed in the conservation easements at all. The language of the easement refers to "any federal or state or local program," and does not further delineate what programs are and are not permitted. ASA's refusal to consider mitigation under Public Service Law Article VIII is a clear misinterpretation of the easement's language.

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[37] 16 NYCRR § 1100-8.3(c)(2); 16 NYCRR § 1100-8.3(c)(3).
[38] Ruling at 16-31 (DMM Item No. 103).
[39] 16 NYCRR § 1100-8.4(c)(2)(ii); 16 NYCRR § 1100-8.4(c)(1)(v).
[40] GBT Appeal at 20 (DMM Item No. 103).
[41] Ruling at 29 (DMM Item No. 101).

Additionally, the ASA's interpretation that the Applicant's plans are not compatible with the purpose of the easements is also incorrect. The ASA is still allowed to use the property for "Agricultural Uses" by enrolling the parcel in the Article VIII mitigation process. The Applicant also provided ASA with a grazing plan evaluation to identify the potential methods for continuing agricultural practices on the mitigation parcels while still conserving the land for grassland bird mitigation. Even if the Faille parcels do not ultimately end up being the location of the NCBP mitigation, in accordance with the statute and regulations, the draft permit requires that the Applicant provide a net conservation benefit and identify parcels for conservation that will do so or provide funding to the New York State mitigation bank to do so.

Ultimately, the Ruling correctly determined that GBT failed to state a substantive and significant issue regarding the viability of the NCBP based on the Faille parcels.[42]

(e) The Ruling Properly Disposes of GBT's Arguments Regarding Impacts to Grassland Birds

GBT argues that the Ruling is arbitrary and capricious because ORES acknowledges a difference of opinion between ORES Staff, GBT's offer of proof, and the Applicant's offer of proof, but ultimately decided not to grant party status.[43] GBT misinterprets past precedent and the regulatory standard. The Ruling correctly held that GBT's offer of proof, Joel Merriman's avian comments, did not demonstrate unmitigated site-specific impacts; instead, they reflected a difference of expert opinion and speculation, which are insufficient where ORES and NYSDEC staff had already reviewed the data and imposed enforceable net conservation benefit conditions.[44]

GBT also notes that ORES Staff is "anonymous" and may have missed something important in this case and appears to suggest that ORES Staff is not qualified to review submissions and assist with issue determination, ultimately violating the reasonable person standard.[45] This claim is erroneous and an attempt to disqualify ORES Staff. There is no requirement for ORES to identify their experts at this stage. Discovery is not even permitted prior

[42] Ruling at 30 (DMM Item No. 101).
[43] GBT Appeal at 20 (DMM Item No. 103).
[44] Ruling at 21-22 (DMM Item No. 101).
[45] GBT Appeal at 20 (DMM Item No. 103).

to the issues determination, at which point any party has a right to serve disclosure demands and expert witnesses are disclosed.[46] ORES's reliance on the opinions of their own qualified staff prior to discovery and disclosure of witnesses to determine whether an issue is substantive and significant does not violate the reasonable person standard.

Contrary to GBT's belief, the Ruling's determination that the NCBP satisfies ORES regulations is not erroneous. The Ruling correctly held and noted that "significant adverse impacts to wildlife have been quantified and mitigated according to statue and regulation."[47] In fact, this conclusion is a testament to the efficacy of not only the ORES process, but the role of intervenor groups like GBT which help spur the important modifications such as the one the Applicant made in direct response to stakeholder and ORES Staff input.[48]

GBT also claims that the Ruling commits an error of law, "by holding ORES is only required to consider impacts where state law expressly prohibits the installation of a solar energy facility."[49] This is a mischaracterization of the Ruling. The ALJs simply determined that GBT has failed to show legal support for the existence of any additional requirements, because it was unable to do so through any site-specific and scientific reasons.[50]

GBT then continues to mischaracterize the Ruling by describing it as "offensive to common sense" because it held that the location of the bird areas does not "create any increased level of scrutiny or heightened mitigation requirements nor invalidate the statutory and regulatory structure under Article VIII.[51] What the Ruling properly held is that the mere presence of the Facility in the grassland bird areas creates does not create impacts that are unable to be mitigated. The Applicant took additional care to specifically design the Facility to avoid, minimize, and mitigate impacts to grassland birds while also considering the grassland bird areas. The Ruling correctly noted that not only did the Applicant never deny impacts, but it properly quantified them and effectively

[46] 16 NYCRR § 1100-8.6.
[47] Ruling at 22 (DMM Item No. 101).
[48] *Id.*
[49] GBT Appeal at 20 (DMM Item No. 103).
[50] Ruling at 22 (DMM Item No. 101).
[51] GBT Appeal at 21 (DMM Item No. 103).

minimized and mitigated them.[52] Therefore, the ALJs ruling was not arbitrary and capricious, and the decision should be upheld.

(f) The Ruling Properly Determined that the Default Mitigation Ratio is Adequate

According to GBT, the Ruling is an error of law because it holds that the Uniform Standard Conditions (USCs) can never be challenged.[53] Not only is this claim dramatic, but it is far from the truth. ORES has issued Site Specific Conditions (SSCs) in the past when they are deemed necessary.[54] The information provided by GBT did not demonstrate the necessity for ORES to deviate from the USCs and issue an SSC for the Facility.

While the Applicant agrees with the ultimate decision of the Ruling that GBT has not raised any substantive and significant issues for adjudication, the Applicant believes the ALJs properly determined, based on the record, that the Facility does not require an additional SSCs to address grassland bird impacts. The USCs were not blindly applied to the Facility without any method of review or analysis. The Applicant submitted substantial information to help ORES make the informed decision to not apply an SSC because it was not necessary. The Applicant conducted all required wildlife surveys and impact assessments in accordance with Article VIII regulations and ORES protocols, including grassland bird and raptor surveys, habitat characterizations, and the preparation of a NCBP. The Facility's location in and around the grassland bird areas does not invalidate these efforts, nor does it mean the Facility Site requires additional protections due to the Facility. Based on the results of the surveys and impact assessments, the Applicant carefully developed mitigation efforts, including a significant redesign of the Facility, to address impacts. The Facility has been designed to avoid, minimize, and mitigate impacts and where impacts are unavoidable, has prepared a NCBP to ensure that the Facility will have a net conservation benefit that will benefit all of the species noted by GBT.

Simply stated, GBT did not provide the necessary evidence to establish the need for an SSC or an alternative mitigation ratio than that required by the regulations. The ALJs reviewed

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[52] Ruling at 22-23 (DMM Item No. 101).
[53] GBT Appeal at 21 (DMM Item No. 103).
[54] *Application of Prattsburgh Wind, LLC*, (Matter 21-00749) (SSC added to final permit of post-construction monitoring plan to reflect presence of bald eagles on Facility Site).

the materials submitted by GBT and the Applicant, to correctly determine that GBT has failed to identify substantive and significant issues that would require additional SSCs for the Facility.[55]

(g) The Ruling Properly Determined that the Mitigation Parcels are Available

GBT continues to argue that the ASA's interpretation is correct and that the Faille parcels are not available to be used for mitigation, but has not provided any additional justification than the argument introduced above.[56] To reiterate why the ASA misinterpreted the language of the easements, the Applicant refers to the response in section E(II)(d) above, which address the same arguments and incorporated herein by reference. GBT also claims that the Ruling contains a factual error when alleging that only 157 out of the 357 acres of parcels are subject to the ASA easements, but does not state what the correct acreage is or provide any further analysis regarding why this claim is incorrect.[57] Similar to GBT's claim about the alleged conservation easement acreage inaccuracy, GBT argues that the Ruling improperly determines the proposed mitigation payment is sufficient despite the unique local conditions, but does not provide any justification or analysis as to why. The Ruling correctly determined that even if the Faille properties were not included in the final NCBP, the mitigation fee will allow the Facility to achieve a net conservation benefit.[58]

There is no need to further address GBT's request to include an SSC that includes a different mitigation ratio and identify different conservation properties because doing so is not necessary. The proposed mitigation, including the use of the Faille parcels, is enough to achieve a net conservation benefit as correctly determined by the ALJs. For this, and all other reasons discussed above, GBT's objections concerning the Facility do not raise an adjudicable issue, identify genuine errors of law or an abuse of discretion which would warrant different results. Therefore, the ALJs' Ruling is reasonable and should be upheld.

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[55] Ruling at 27-28 (DMM Item No. 101).
[56] GBT Appeal at 22 (DMM Item No. 103).
[57] *Id.*
[58] Ruling at 29 (DMM Item No. 101).

F) RESPONSE TO ALRF APPEAL

I. The ALJs Properly Applied the Late Filing Standard

According to ALRF, the ALJs misapplied the standard for late filing because practical access to redacted materials was not provided and ALRF did not exist during earlier outreach phases.[59] The Applicant will demonstrate that the ALJs in fact applied the correct standard.

(a) Practical Access to Confidential Information Was Provided, ALRF Did Not Follow the Proper Procedure

ALRF argues that access to confidential information under the protective order is "theoretical" and therefore not meaningful. ALRF claims that it "could not obtain copies" and "could not meaningfully analyze the documents." This is not correct and the Ruling correctly held that "ALRF could have obtained access to the redacted information."[60] In fact, ALRF did not need the confidential information to properly submit an offer of proof and raise a substantive and significant issue. But still, ALRF did not follow established procedure, but instead tried to obtain the materials via FOIL and a site visit to ORES's offices. These claims do not establish "good cause" for the late filing because ALRF had not signed the Protective Order and would not have been granted access to the confidential information. ALRF also argues that it was "not given timely instructions for review" and "was functionally unable to review materials before the petition deadline."[61] Simply put, the resources to discern the proper process have been available to ALRF since August and the Ruling correctly held that ALRF could have accessed the information "well before the deadline for submission of petitions for party status."[62]

Therefore, the Ruling does not misconstrue the term "availability" and applies the correct legal standard.

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[59] Appeal of American Land Rescue Fund at 4 (DMM Item No. 102) [hereinafter "ALRF Appeal"].

[60] Ruling at 38 (DMM Item No. 101).

[61] ALRF Appeal at 4 (DMM Item No. 102).

[62] Ruling at 38 (DMM Item No. 101).

(b) ALRF's Incorporation Date Does Not Prevent Access to the Proceeding

ALRF argues that because it was incorporated in 2024, no earlier participation was possible.[63] This statement is not correct and the Ruling correctly holds that ALRF was aware of the proceeding early enough to participate.[64] The Applicant submitted the Fort Edward Solar Application on August 20, 2024.[65] That same day, ORES filed a protective order outlining the process to access confidential information.[66] On July 28, 2025, ORES issued a Draft Permit to Fort Edward Solar pursuant to Article VIII and its implementing regulations at 16 NYCRR Parts 1100-1 through 1100-15.[67] A Combined Notice was issued with the Draft Permit, instructing potential parties to submit requests for Party Status by October 6, 2025, including identification of the substantive and significant issues each proposed party seeks to adjudicate as well as notifying the public of the public comment hearing on September 30, 2025.[68] Notably, the Ruling acknowledges that ALRF's representative was present at the public hearing and even presented public comments.[69] The Ruling also correctly noted that the Applicant fully satisfied all notice requirements beginning in 2022.[70] Even if ALRF was incorporated in 2024, it still had a full year to become involved in the proceeding.

Ultimately, ALRF's incorporation in 2024 does not support the argument that ALRF did not have time to learn and become more aware about the proceeding, and ALRF has not provided any evidence to the contrary. Therefore, and for the reasons above, the ALJs correctly applied the late filing for petition of party status standard under 16 NYCRR § 1100-8.4(e) and the Ruling should be upheld.

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[63] ALRF Appeal at 4 (DMM Item No. 102).
[64] Ruling at 38 (DMM Item No. 101).
[65] Application (DMM Item Nos. 24-41).
[66] Protective Order (DMM Item No. 38).
[67] Draft Permit (DMM Item No. 80).
[68] Combined Notice (DMM Item No. 81).
[69] Ruling at 39 (DMM Item No. 101).
[70] *Id.* At 38.

II. The ALJs Applied the Proper Evidentiary Standard

According to ALRF, the ALJs imposed an unlawfully high evidentiary burden for party status.[71] The ALJs did not impose an unlawfully high burden, they applied the correct burden as indicated by the Ruling.[72] The standard is clearly laid out in the regulations and supported by years of precedent. In order to achieve party status, a potential party must identify substantive and significant issues requiring adjudication. An issue is adjudicable only if it is both substantive and significant. It is substantive where it raises sufficient doubt that the applicant can meet statutory or regulatory criteria such that a reasonable person would require further inquiry.[73] It is significant only if resolution could result in permit denial, a major project modification, or the imposition of additional, material permit conditions.[74] Additionally, the offer of proof requirement that it refers to requires "specifying the witness(es), the nature of the evidence the person expects to present and the grounds upon which the assertion is made with respect each issue identified."[75] The standard to prove an issue is adjudicable does not change for the organization that is filing. Whether the filings are coming from an individual, an organization or legal counsel, the burden must be met at the standard in which it is written.[76]

The Ruling correctly held that ALRF did not provide a statement of the witnesses, nature of the evidence the person expects to present and the grounds upon which the assertion is made with respect to each issue identified.[77]

The Applicant invested significant resources into drafting wildlife studies, working with environmental consultants and subject matter experts to develop scientific and site-specific

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[71] ALRF Appeal at 5 (DMM Item No. 102).
[72] Ruling at 41-43 (DMM Item No. 101).
[73] 16 NYCRR § 1100-8.3(c)(2).
[74] 16 NYCRR § 1100-8.3(c)(3).
[75] 16 NYCRR § 1100-8.4(e)(2)(ii).
[76] *In the Matter of Bonded Concrete, Inc*. Project No. 41-87-0257 (June 4. 1990) (holding that "after the question has been joined, an adjudicable issue exists only where there are sufficient doubts about the applicant's ability to meet all statutory and regulatory criteria such that reasonable minds would inquire further. Requiring a greater showing would effect an unfair burden on intervening parties; allowing a lesser showing would over burden the adjudicatory system with issues of dubious merit.")

[77] Ruling at 40 (DMM Item No. 101).

conclusions about the Facility Site and the Facility's impact. To allow a potential party to achieve party status with "conclusory statements" without any justification or analysis such as those submitted by ALRF and as determined by the Ruling, would completely disrupt the overall application process for large-scale renewables under the Article VIII process.[78]

Additionally, the required standard does not close participation to small nonprofits and the public. This is precisely why there is Local Agency Account Funding for potential intervenors to apply for and use to hire experts and consultants. Therefore, despite ALRF's claims, the Ruling does not contradict the regulatory standard and in fact confirms the standard necessary and should be upheld.

III. The Ruling Does Not Contain Material Factual Errors

ALRF argues that the Ruling contains material factual errors related to: (1) Misstatements about access to species data; (2) Mischaracterizations of the Facility's location; and (3) An incorrect finding that ALRF did not raise separate issues from GBT.[79]

First, it is unclear what exactly ALRF is referring to. The Ruling does not state that ALRF "declined" access, the word declined is not used in the Ruling. Second, the Ruling does not discuss that ALRF "Exaggerated" the Facility's layout. In fact, the discussion of exaggeration was directly about GBT, not ALRF.

ALRF claims that it raised legal issues distinct from GBT's submissions. The Ruling correctly held that the issues raised by ALRF were already raised by GBT and that ALRF does not offer any "new or different site-specific studies or scientific information tending to show an error in the application or that erroneous information is contained therein which would supplement GBT's submission and thus inform the record."[80] As the ALJs correctly held, ALRF offers nothing more than "arguments, without reference to empirical support," and photographs of public signs.[81] Therefore, and for all the reasons herein, the Ruling does not contain material factual errors and should be upheld.

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[78] Ruling at 39 (DMM Item No. 101).
[79] ALRF Appeal at 5 (DMM Item No. 102).
[80] Ruling at 39 (DMM Item No. 101).
[81] Id.

IV. The ALJs Applied the Correct Standard for Determining Adjudicable Issues

ALRF argues that ALJs incorrectly applied a "quasi-summary-judgement standard."[82] This is incorrect. The ALJs properly ruled that absent any offers of proof, ALRF has not offered anything which will "materially assist" the determination of adjudicable issues.[83] Again, ALRF offers nothing more than conclusory statements such as "whether habitat fragmentation impacts were minimized." This is not enough that a reasonable person would require further inquiry. The Applicant also incorporates herein the discussion of the reasonable person standard in Section E(I) above.

Ultimately, ALRF has not identified any reason why the ALJs' Ruling should be overturned. Particularly when it comes to late filed petitions, ALRF failed to address the 16 NYCRR § 1100-8.4(e)(2) criteria.[84] The Ruling is supported by the Article VIII regulations and 20 years of precedent.[85]

G) CONCLUSION

None of Petitioners' objections concerning the Facility raise an adjudicable issue or identify genuine errors of law or abuse of discretion which would warrant a different result. The ALJs' Ruling is reasonable, supported by the record and consistent with precedent, and the Petitioners' Appeals fails to provide any factual or legal basis to overturn that determination or to render any issue as a substantive and significant issue. The Ruling properly found that the Petitioners' submissions failed to raise a substantive or significant issue for adjudication.

Accordingly, for the reasons set forth herein, the Petitioners' Appeal should be denied in its entirety, and the ALJs' Ruling should otherwise be affirmed.

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[82] ALRF Appeal at 6 (DMM Item No. 102).
[83] Ruling at 39-41 (DMM Item No. 101).
[84] Ruling at 41 (DMM Item No. 101).
[85] Matter of Heritage Wind, LLC, Ruling on Late-Filed Petitions for Amicus Status (Oct. 22, 2021); Matter of Suffolk County Water Authority, Ruling of the Administrative Law Judge on Issues and Party Status (Nov. 9, 2005).

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