

STATE OF NEW YORK  
OFFICE OF RENEWABLE ENERGY SITING

ORES DMM Matter Number 21-00752 - Application of RIVERSIDE SOLAR LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Section 94-c of the New York State Executive Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 100 Megawatt (MW) Solar Energy Facility Located in the Towns of Lyme and Brownville, Jefferson County.

RULING ON ISSUES AND PARTY STATUS, AND ORDER OF DISPOSITION

(Issued December 30, 2022)

JOHN L. FAVREAU and ELIZABETH A. PHILLIPS, Administrative Law Judges:

Proceedings

On October 18, 2021, Riverside Solar, LLC (Riverside or applicant), applied to the New York State Office of Renewable Energy Siting (Office or ORES) for a siting permit pursuant to Executive Law § 94-c to construct and operate a 100-megawatt (MW) photovoltaic solar energy generation facility located in the Towns of Lyme and Brownville, Jefferson County. The facility site is approximately 1,168 acres with a limit of disturbance of 628 acres. The facility would include photovoltaic panels, associated electrical collection lines, inverters, transformers, gen-tie line, access roads, temporary construction staging and storage areas, and a collection substation. The facility would interconnect to the existing National Grid Lyme Tap Line off the Thousand Islands - Coffeen St. 115-kV transmission line #4.

On December 17, 2021, ORES issued a notice indicating the application was incomplete. Applicant filed a response on February 23, 2022, and filed additional information and

clarification on April 21, 2022. ORES issued a second notice indicating the application was incomplete on April 25, 2022, and applicant filed an additional application supplement on May 26, 2022. On July 5 and July 8, 2022, applicant filed additional information, clarification, and documentation. On July 14, 2022, ORES staff issued a notice that the application as amended and supplemented was complete pursuant to Executive Law § 94-c and its implementing regulations.

On September 12, 2022, ORES staff issued a draft permit (Draft Permit).<sup>1</sup> On that same day, the ORES Office of Hearings issued a combined notice of availability of draft permit conditions, public comment period and public comment hearing, and commencement of issues determination procedure (Combined Notice).<sup>2</sup> Applicant published the Combined Notice in the *Watertown Daily Times* on October 11, 2022, the *Thousand Islands Sun* on October 12, 2022, and the *Watertown Pennysaver* (published as the *Northern New York Pennysaver*) on October 14, 2022.<sup>3</sup> Applicant also served the Combined Notice on the party list for this proceeding, and on all persons entitled to receive a copy of the application pursuant to 19 NYCRR 900-1.6(a) or notice of the application pursuant to 19 NYCRR 900-1.6(c).<sup>4</sup>

The Combined Notice invited members of the public to comment on the proposed facility and the Draft Permit, either orally at the public comment hearing to be held on November 17, 2022, or by submitting written comments to the Office by November 23, 2022. Due to a lake-effect snowstorm, a state of emergency was declared in the project's location and the public

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<sup>1</sup> DMM Item No. 57, draft siting permit.

<sup>2</sup> See 19 NYCRR 900-8.2(d); DMM Item No. 58, combined notice.

<sup>3</sup> DMM Item No. 62, attachment 2, affidavits of publication.

<sup>4</sup> DMM Item No. 59, affidavit of service; DMM Item No. 60, affidavit of service; DMM Item No. 62, attachment 1, affidavit of service.

comment hearing was postponed to November 22, 2022, pursuant to a Notice of Rescheduled Public Comment Hearing (Reschedule Notice) issued November 17, 2022.<sup>5</sup> Applicant published the Reschedule Notice in the *Watertown Daily Times* on November 21, 2022, and in the *Thousand Islands Sun* on November 22, 2022. On November 17, 2022, applicant also served the Rescheduled Notice on the party list for this proceeding, and on all persons entitled to receive a copy of the application pursuant to 19 NYCRR 900-1.6(a). On November 18, 2022, applicant served the Reschedule Notice on all persons entitled to receive notice of the application pursuant to 19 NYCRR 900-1.6(c).<sup>6</sup> By email dated November 23, 2022, we extended the deadline for written public comments to November 28, 2022.<sup>7</sup>

Pursuant to the Combined Notice, petitions for party status to participate in the issues conference and, if necessary, an adjudicatory hearing, were to be filed on or before November 28, 2022.<sup>8</sup> The Combined Notice also set November 28, 2022, for the submission of applicant's issues statement and the municipal statements of facility compliance with applicable local laws and regulations.<sup>9</sup>

#### Public Comment Hearing and Written Comments

The public comment hearing was held as scheduled on November 22, 2022, at 5:00 p.m. at the Brownville Fire Department, 121 Brown Boulevard, Brownville, New York. Several speakers provided oral comments. One speaker representing the International Brotherhood of Electrical Workers spoke in support

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<sup>5</sup> DMM Item No. 63, reschedule notice.

<sup>6</sup> DMM Item No. 74, affidavits of service.

<sup>7</sup> DMM Item No. 64, email from ALJ Favreau to applicant regarding extension of deadline for written public comments.

<sup>8</sup> See 19 NYCRR 900-8.2(d)(3).

<sup>9</sup> See 19 NYCRR 900-8.4(b)(1) and 19 NYCRR 900-8.4(d).

of the project stating that renewable energy sources are important, the developer will be using local labor which spends at local businesses, and the project would allow its members to work close to home and pay for necessary expenses. Three commenters called into question the benefits of the project. Concerns raised about the project and siting process include: the need for better communication about the project, and in particular between Riverside and non-participating residents; potential decrease in property values due to the project; clearing of forest resources which are known "carbon sinks"; ability to return the project site to its original state upon decommissioning; whether the project site is the "best" location and that agricultural producing land is being used for the project; that this project, and solar projects in general, are arguably not economically viable without government subsidies; that upstate New York is being chosen and taken advantage of because there is little benefit received and the land values are low; and the need to enforce greater setbacks from project infrastructure.<sup>10</sup> By the close of the public comment period on November 28, 2022, ORES received three written comments from members of the Laborers' International Union of North America Local 1822 and New York State Laborers Organizing Fund in favor of the project.

#### Issues Determination Procedure

The Town of Lyme filed its statement of compliance with local laws and regulations on November 28, 2022.<sup>11</sup> The Town stated that the project complies with the substantive requirements of its local laws, except for Town Codes § 776(E)(3)(i): Noise and §

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<sup>10</sup> DMM Item No. 67, public comment hearing tr.

<sup>11</sup> DMM Item No. 66.

776(E) (2) (i): Sureties/Bond, and that as for these two local law provisions, the Town is willing to accept the waivers of local law in the Draft Permit and that such acceptance for this project does not necessarily apply to future projects or local law compliance review. Additionally, concerning the bond amount, the Town requested that the amount be reviewed every three years and that the decommissioning surety be given in two bonds, one for the Town of Lyme and the other for the Town of Brownville.

On December 2, 2022, the Town of Brownville's statement of compliance with local laws and regulations was filed.<sup>12</sup> The Town stated that the project has been designed to comply with the substantive requirements of its local laws and that the Town does not have any substantive or significant issues with compliance to its local law requirements so long as the proposed facility follows the terms and conditions of the draft permit. The Towns of Lyme and Brownville did not petition for party status, nor did they identify any substantive and significant issues for adjudication.

Applicant filed its statement of issues on November 28, 2022, accepting the Draft Permit apart from two stated issues.<sup>13</sup> Applicant stated that ORES consider any denial of its requested clarifications or changes to be a substantive and significant dispute regarding the terms and conditions of the Draft Permit. First, applicant requests a site-specific condition (SSC) allowing applicant to use a phased notice to proceed approach to construction, similar to SSCs in other draft

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<sup>12</sup> DMM Item No. 68. The Town's statement was filed on behalf of the Town by Young/Sommer LLC, the law firm representing applicant.

<sup>13</sup> DMM Item No. 65.

permits and supported by ORES staff. Second, applicant requests that SSC(e) - Wetlands, which states "consistent with 19 NYCRR §§ 900-2.15(g) and 900-10.2(f)(2), to the extent that impacts cannot be avoided, the Permittee is required to submit a Wetland Restoration and Mitigation Plan which shall mitigate 2.1 acres of impacts to Unmapped Wetlands (W-BF-5) at a 1:1 mitigation ration of impact (creation, restoration and enhancement)" be revised to state "up to 2.1 acres of impact." Applicant claims that in accordance with 19 NYCRR 900-2.15(g), it has identified only 0.026 acres of wetland impacts requiring 1:1 mitigation. Applicant states that only "selective tree clearing" will take place in wetland area W-BF- 5, which it defines as clearing only trees by hand that will shade the solar panels, requiring no grading or grubbing or removal of tree stumps to limit soil disturbance. According to applicant, selective tree or shrub clearing is considered an allowed activity requiring no mitigation pursuant 19 NYCRR 900-2.15(g)(2). However, applicant agreed to submit an updated Wetland Restoration and Mitigation Plan prior to the start of construction and stated it will work with ORES staff to identify areas of proposed selective cutting of trees and shrubs.

On December 13, 2022, applicant filed its response to all comments and to the statements of compliance filed by the Towns of Lyme and Brownville.<sup>14</sup> As to the requests by the Town of Lyme, applicant does not object to reviewing the decommissioning and site restoration cost estimate every third year, specifying changes to the letters of credits due to inflation, cost increases or other financial assurance approved by ORES. Additionally, applicant does not object that two bonds be executed separately for each Town in amounts that

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<sup>14</sup> DMM Item No. 69.

proportionately correspond to the type and value of infrastructure located in each Town. As to the comments received, including the written comment received at the public comment hearing,<sup>15</sup> applicant states that the comments questioning the project are general in nature, questioning ORES policies or procedures. Applicant also explains and clarifies the term "net conservation benefit," the height of any fencing, and the composition of solar panels. Applicant states that no substantive or significant issues for adjudication were raised by comments on the draft permit.<sup>16</sup> We agree.

ORES staff filed its substantive and significant issues brief on December 13, 2022.<sup>17</sup> ORES staff, similar to applicant, does not object to the Town of Lyme's request to review the decommissioning and site restoration cost estimate every three years and that the Towns each receive a bond in proportion to the infrastructure located in each. Further, ORES staff indicates that applicant's request for an SSC allowing a phased notice to proceed for construction is similar to previously agreed upon conditions in other ORES solar facility proceedings and it believes a stipulation resolving this issue would be filed in approximately two weeks thereafter. As for applicant's requested revision to "cap" the acreage for mitigation in SSC 6(e) - Wetlands, ORES staff indicates that it could not agree, and that the acreage "could fluctuate upward or downward" based on the final design of the project and final Wetlands Restoration and Mitigation Plan to be filed during the pre-construction compliance filing stage. Further, ORES staff notes it considered issues and comments raised by the Towns of Lyme and Brownville, and considered public filed comments, as well as comments received at the public comment hearing. ORES staff

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<sup>15</sup> DMM Item No. 72, applicant additional comment response.

<sup>16</sup> See 19 NYCRR 900-8.3(c)(1)(ii).

<sup>17</sup> DMM Item No. 70.

recommends the ALJs find that there are no substantive and significant issues requiring adjudication under 19 NYCRR 900-8.3(c), and that staff continue processing the siting permit.

On December 19, 2022, a procedural conference was held, and ORES staff and applicant participated. The purpose of the conference was to discuss the process to resolve the issues of the standard to be applied to define and interpret the phrase "selective cutting of trees and shrubs" and whether the wording of Draft Permit site specific condition 6(e) - Wetlands should be revised. By e-mail ruling filed December 19, 2022, we provided applicant and ORES staff the opportunity to file, on or before December 28, 2022, a stipulation resolving the issues or brief the issues by the same date.<sup>18</sup>

On December 29, 2022, pursuant to 19 NYCRR 900-8.12(b), applicant, ORES staff, and the Towns of Lyme and Brownville filed fully executed stipulations of settlement resolving the issues identified in filings and the procedural conference.<sup>19</sup>

#### Ruling on Issues and Party Status, and Order of Disposition

Pursuant to 19 NYCRR 900-8.3(b)(2), the purpose of the issues conference is to determine party status for any person or individual that has filed a petition and to narrow and define those issues, if any, that will require adjudication. Here, no petitions for party status were received. In addition, the record positions of applicant, ORES staff, and the Towns of Lyme and Brownville are that there are no substantive and significant issues requiring adjudication and that ORES staff continue processing the application.

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<sup>18</sup> DMM Item No. 71.

<sup>19</sup> DMM Item No. 73.



Based on the foregoing, including our review of the public comments filed in this proceeding, we find that an adjudicatory hearing in this matter is not necessary. Accordingly, the matter is remanded to ORES staff to continue processing the siting permit, including the agreed-upon resolution of issues as set forth in the stipulations of settlement.

(SIGNED)

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