

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

Public Service Law Article VIII Permit Application
of Fort Edward Solar, LLC, for the Proposed
Fort Edward Solar Facility, located in the Town of Fort
Edward, Washington County, New York

Matter No. 23-03023

**OFFICE OF RENEWABLE ENERGY SITING
AND ELECTRIC TRANSMISSION
RESPONSE TO THE MOTION OF
AMERICAN LAND RESCUE FUND, INC.**

March 11, 2026

Joseph Foskett, Esq.
William Bittinger, Esq.

On behalf of:
NEW YORK STATE OFFICE OF
RENEWABLE ENERGY SITING
AND ELECTRIC TRANSMISSION
Three Empire State Plaza
Albany, NY 12223-1350

Contents

I. PRELIMINARY STATEMENT 1

II. PROCEDURAL BACKGROUND 1

III. ALRF FAILS TO MEET THE STANDARD FOR SUPPLEMENTATION 3

IV. THERE IS NO OTHER BASIS TO CONSIDER THE PROFFERED REPORT.....4

V. CONCLUSION6

I. PRELIMINARY STATEMENT

This matter involves an application (Application) for a permit to construct a 100 megawatt (MW) solar energy facility (Facility) in the Town of Fort Edward, Washington County, NY, currently pending before the NYS Office of Renewable Energy Siting and Electric Transmission (ORES or Office).¹

On March 4, 2026, American Land Rescue Fund (ALRF) submitted a motion requesting to supplement and amend its late-filed petition and appeal with “newly available scientific evidence” (Motion). The Motion raises two issues: (1) whether the Office’s regulations allow the supplementation of a late-filed petition that was previously rejected by the Administrative Law Judges (ALJs) and is currently on appeal; and (2) whether “newly available scientific evidence” qualifies as a sufficient basis for supplementation. The answer to both questions is no.

It was already determined that ALRF did not meet the regulatory criteria necessary to file a late petition, having failed to show good cause for its late filing or that its participation would materially assist in the determination of adjudicable issues raised in the proceeding. Plainly, there is currently no petition to supplement. Further, the regulations provide that supplementation is appropriate only where a potential party demonstrates that it did not have sufficient time to prepare a petition, not to allow in a newly prepared report almost five months beyond the petition filing date. Moreover, the information now offered in the current motion does not raise any substantive and significant issues, nor does ALRF demonstrate that it would materially assist in the determination of a substantive and significant issue for adjudication. As such, the Motion is facially insufficient to command the relief requested and should be denied.

II. PROCEDURAL BACKGROUND

For a complete recitation of the procedural background of this proceeding, including pre-application procedures, Staff review of the Application, issuance of the Draft Permit and the Combined Notice of Availability of Draft Permit Conditions, Public Comment Period and Public Comment Hearing, and Commencement of Issues Determination Procedure (Combined Notice), the public hearing and comment period, and submission of the Applicant’s statement of issues and the petition for party status by Grassland Bird Trust, Inc. (GBT), please see Staff’s Response to Petition for Party Status and Statement of Issues by the Applicant (Staff’s Responsive Brief) filed on October 27, 2025.²

¹ The Application was filed pursuant to regulations at 16 NYCRR Part 1100 implementing Public Service Law Article VIII and effective July 17, 2024, which regulations remain applicable to the pending Application and are cited herein.

² Record 90, Staff Responsive Brief.

On November 7, 2025, over a month after the October 6, 2025 deadline for petitions set forth in the Combined Notice, ALRF filed a Motion to Accept Late Filing, Petition for Party Status, and related documents (together, ALRF Late Filed Petition).³ On November 24, 2025, Staff and the Applicant submitted responses to the ALRF Petition.⁴ ALRF requested leave and filed a reply on November 24, 2025, to which Staff responded on November 25, 2025.⁵

On December 11, 2025, Administrative Law Judges Henry James Joseph and Dawn MacKillop-Soller issued a Ruling of the Administrative Law Judge on Issues and Party Status and Order of Disposition (Issues Ruling or Ruling) which denied ALRF's Late Filed Petition and found no issues for adjudication.⁶

ALRF appealed the Issues Ruling on December 17, 2025 (ALRF Appeal).⁷ On December 26, 2025, ORES Staff submitted a Response to ALRF's Appeal.⁸ Now, more than two and a half months later, and almost five months since the deadline to file petitions for party status, ALRF seeks to supplement and amend its late-filed petition and appeal with a report prepared for ALRF by the not-for-profit Hudsonia titled *Preliminary Biodiversity Analysis of the Washington County Grasslands* dated February 8, 2026 (Report).⁹ For the reasons stated below, Staff submits this response in opposition.

III. ALRF FAILS TO MEET THE STANDARD FOR SUPPLEMENTATION

ALRF's request for supplementation should be denied because there is no pending petition to supplement, and ALRF fails to show it should be provided an opportunity for supplementation.

ALRF does not have a pending petition to supplement pursuant to 16 NYCRR § 1100-8.4(c)(5), which provides:

³ Record 94, ALRF Motion to Accept Late Filing (Motion), Petition for Party Status (Petition) (together, ALRF Late Filed Petition), Declaration of Alexandra Fasulo, Exhibit Index, Certificate of Service, and Cover Letter.

⁴ Record 96, Applicant Response to Motion; Record 97, Staff Response to ALRF Late Filed Petition; see also Record 95, Email Ruling Setting Briefing Schedule.

⁵ Record 98, American Land Rescue Fund Request for Leave to File Reply (ALRF Reply Request); Record 99, ORES Response to ALRF Reply Request.

⁶ Record 101, Ruling of the Administrative Law Judge on Issues and Party Status, and Order of Disposition (Issues Ruling).

⁷ Record 102, ALRF Notice of Appeal and Appeal of Issues Ruling (ALRF Appeal).

⁸ Record 105, ORES Response to GBT and ALRF Appeals (ORES Response to ALRF Appeal).

⁹ Record 107, Exhibit A to ALRF Motion "Preliminary Biodiversity Analysis of the Washington County Grasslands" (Report).

Supplementation of petitions. Where the ALJ finds that a potential party did not have adequate time to prepare its petition for party status, the ALJ shall provide an opportunity for supplementation of the petition.¹⁰

The ALJs previously determined ALRF did not meet two of three required elements set forth in 16 NYCRR § 1100-8.4(e)(2) to file a petition for party status after the deadline established in the Combined Notice.¹¹ In the Ruling, the ALJ's held that ALRF failed to demonstrate good cause for its late filing and that it did not demonstrate how, if allowed to file, it would materially assist in the determination of an adjudicable issue. Staff argued in its Response to ALRF's Late-Filed Petition that it did not meet any of the three elements and in any event, ALRF did not raise any substantive and significant issues for adjudication. As noted in the Ruling, the regulations require a prospective party to meet every element in 16 NYCRR § 1100-8.4(e)(2) for a petition to be considered for submission after the deadline in the Combined Notice.¹²

Therefore, the ALJ's correctly rejected ALRF's Late-Filed Petition, and there is no petition to supplement at this time. While ALRF has appealed the Ruling, as discussed below, this does not provide an avenue for consideration of the Report. Moreover, ALRF fails to make the requisite showing to supplement a petition under 16 NYCRR § 1100-8.4(c)(5). The proffered Report is dated February 8, 2026, and states that it was "[p]repared for American Land Rescue Fund, Inc." and ["s]ubmitted in Support of: Motion of American Land Rescue Fund, Inc. to Supplement and Amend Petition and Appeal Pursuant to 16 NYCRR §§1100-8.5(c) and 1100-8.3(e)(4)."¹³

ALRF does not claim that it did not have adequate *time* to prepare its petition as the basis for its request for supplementation, but rather now seeks to add the Report to its pleadings -in its Motion made almost five months after the publicly noticed deadline for filing petitions for party status -as "newly available scientific evidence directly relevant to the issues raised therein."¹⁴ This

¹⁰ ALRF mistakenly cites to "16 NYCRR § 1100-8.3(e)(4)," which is from the revised regulations adopted pursuant to the Renewable Action through Project Interconnection and Deployment (RAPID) Act effective March 9, 2026. See Matter No. 24-M-0433. New § 1100-8.3(e)(4) provides: "Supplementation of petitions. Where the ALJ finds, *based on good cause shown by the petitioner*, that a potential party did not have adequate time to prepare its petition for party status, the ALJ shall provide an opportunity for supplementation of the petition. [emphasis added]. See DMM 24-M-0433 for additional information.

¹¹ Record 101, Issues Ruling at 38.

¹² Id. at 42.

¹³ Record 107, Exhibit A to ALRF Motion "Preliminary Biodiversity Analysis of the Washington County Grasslands" (Report).

¹⁴ Record 107, ALRF Motion at 1.

is not an articulated basis for supplementation under 16 NYCRR § 1100-8.4(c)(5). The only provision in ORES regulations that contemplates new information is in the context of a modification of a final permit by the Office itself in the case of “[n]ewly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit.”¹⁵ Here, ALRF cannot claim that the Report -which ALRF itself had prepared and was not in existence when it filed its petition or appeal -is newly discovered information.

As such, ALRF’s motion for supplementation should be denied as improper and without basis in regulation.

IV. THERE IS NO OTHER BASIS TO CONSIDER THE PROFFERED REPORT

ALRF claims it “seeks to supplement the record with relevant scientific evidence directly bearing on whether a reasonable person would require further inquiry into the environmental impacts of the proposed facility under 16 NYCRR §1100-8.3(c).”¹⁶ ALRF requests that the Office accept this supplementation and amendment to its Petition and Appeal and consider the Report in evaluating whether ALRF raised substantive and significant issues under 16 NYCRR §1100-8.3(c). As demonstrated above, ALRF has failed to meet the standard for supplementation. In addition, contrary to its claims, a close review of the proffered Report demonstrates that it does not demonstrate any substantive and significant issues, nor would it provide any material assistance in the determination of adjudicable issues. Therefore, its request should be denied.

Staff carefully reviewed the Report to determine whether it contained any unique issues that had not yet been identified in this proceeding or presents a substantive and significant issue for adjudication. An issue is substantive if there is sufficient doubt about the applicant’s ability to meet statutory or regulatory criteria applicable to the project. 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.¹⁷ Staff also considered whether the Report would provide any material assistance in the determination of adjudicable issues raised in the proceeding,” importing the standard for a late filed petition. In both cases the answer is no.

¹⁵ 16 NYCRR § 1100-11.4(a)(4).

¹⁶ Record 107, ALRF Motion at 3.

¹⁷ 16 NYCRR § 1100-8.3(c).

ALRF's understanding of the probative value of the Report is misplaced. The Report presents a preliminary biodiversity analysis of the Washington County grasslands, covering a wide variety of topics from grassland birds¹⁸ to plants¹⁹ to sedimentary structures,²⁰ to PCB concentrations.²¹ The Report appears to utilize the same resources and materials as the applicants and other prospective participants in this matter to develop their analyses and opinions.²² The Report's primary conclusion is to recommend additional studies.²³

The Report does not raise any new information that has not already been raised by other prospective parties in this matter, does not raise any substantive and significant issues for adjudication, and would not materially assist in the determination of any substantive and significant issues raised for adjudication. Thus, the original request for late filing of the petition was properly denied, and there has been no showing in the current motion for reversal of that determination.

Furthermore, the Motion does not offer any "statement of the witness(es), the nature of the evidence the person expects to present and the grounds upon which the assertion is made with respect to each issue identified"²⁴ as, which is explicitly required by 16 NYCRR 1100-8.4(c)(2)(ii) to demonstrate an adequate offer of proof.

On March 9, 2026, GBT submitted a letter in support of ALRF's Motion. GBT's reference to 16 NYCRR § 1100-8.3(b)(1) is misplaced: while it addresses the discretion of an ALJ to revisit an issues determination, both ALRF and GBT have appealed the Ruling, so the matter has been removed from the ALJs' jurisdiction.²⁵ At any rate, as demonstrated above, the Report does not demonstrate any substantive and significant issues and therefore does not provide a basis to revisit the Ruling.

¹⁸ See, generally, Record 107, Exhibit A to ALRF Motion.

¹⁹ *Id.* at 14-15.

²⁰ *Id.* at 2, 7-8.

²¹ *Id.* at 16.

²² See *Id.*, generally, and at 19.

²³ *Id.* at 22.

²⁴ Record 101, Issues Ruling at 40

²⁵ GBT also cites to the incorrect regulation: 16 NYCRR § 1100-8.3(b)(2)(iv). The equivalent provision in the applicable regulation is 16 NYCRR § 1100-8.3(b)(1).

V. CONCLUSION

For all the reasons stated above, ALRF's Motion should be denied. Staff recommends that the Report be included as a public comment, which Staff may address in the summary and assessment of public comments pursuant to 16 NYCRR § 1100-8.3(c)(5).

Dated: March 11, 2026
Albany, NY

Respectfully submitted,

s/ Joseph Foskett
Joseph Foskett, Esq., Assistant Counsel

s/ William Bittinger
William Bittinger, Esq., Assistant Counsel

New York State Department of Public Service,
Office of General Counsel
On behalf of
New York State Office of Renewable Energy Siting
and Electric Transmission