STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE
OFFICE OF RENEWABLE ENERGY SITING
AND ELECTRIC TRANSMISSION

MATTER 23-03014 – Application of CAYUGA LAKE 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 60-Megawatt (MW) Solar Energy Facility Located in the TOWN OF LANSING, TOMPKINS COUNTY.

RULING ON MOTION TO DISMISS

(Issued September 28, 2026)

ANTHONY BELSITO and DAWN MacKILLOP-SOLLER,
Administrative Law Judges:

Introduction

In this ruling, we grant the Town of Lansing's motion to dismiss the Application in this proceeding, but hold such ruling in abeyance until October 5, 2026, as explained below.

Proceedings

On September 14, 2026, the Town of Lansing moved to dismiss the Application on the ground that Applicant Cayuga Lake Solar, LLC, does not have control over necessary portions of the facility site.[1] According to the Town, a portion of the facility site has been leased to TeraWulf Inc., an affiliate of the owner (Cayuga Operating Company LLC) of the parcel in question (Tax ID number 11-1-3.212) (the parcel) for a term of 80 years. In support of its motion, the Town submitted several maps showing

[1] DMM Item No. 91, Town of Lansing petition, pp. 2-3.

the parcel and the overlap of the proposed solar facility with that of a proposed data center, an area of approximately 30 acres. The Town also submitted a press release and an email from TeraWulf both of which state that the parcel has been leased to an entity other than Applicant as well as multiple emails from AES Clean Energy (Applicant's parent company) acknowledging its current lack of site control and providing a "rudimentary" "updated design" for the solar facility that excludes the parcel in question.[2]

The Town argues that without sufficient site control to construct the facility substantially consistent with the Application, or any reasonable expectation for Applicant to obtain such control, the Application should be dismissed without prejudice or alternatively, "the [Notice of Complete Application] NOCA and Draft Permit should be vacated consistent with 16 NYCRR §1100-7.1(b)(iii)," followed by issuance of a notice of incomplete application directing changes that reflect Applicant's lack of control over the parcel. The Town also requests that if the NOCA is vacated that Applicant be directed to provide additional local agency account funding of $1,000 per 1,000 kilowatts of capacity of the amended facility to support effective community participation regarding any amended Application.[3]

On September 14, 2026, Applicant filed its Issue Statement where it acknowledges that it has not obtained site control of the parcel and states that it is treating the parcel as "potentially participating" because it may be able to use the parcel "should the proposed data center not proceed to

[2] Town petition, Exhibits A-H.

[3] Town petition, pp. 12-13 (citing Matter No. 21-02553, Matter of Hecate Energy Columbia County 1 LLC [Shepherd's Run I]).

development" or otherwise not utilize the parcel.[4] Applicant further states that if the parcel is not available, it will modify the final design of plans in a compliance filing after it receives a final siting permit. Applicant also provided a figure of the new facility layout if the parcel is omitted from the final design.[5]

On September 22, 2025, Applicant and ORES Staff responded to the Town's motion. Staff argues that the Town's submission constitutes a prima facie showing that Applicant "has irrevocably lost" control of a portion of the facility site, and "absent a meaningful rebuttal by the Applicant," the Application should be dismissed because the Town has established Applicant's inability to satisfy all of the regulatory requirements for issuance of a final siting permit.[6]

In responding to the Town's motion, Applicant again acknowledges that it does not currently have control of the parcel but argues that pursuant to 16 NYCRR 1100-2.5(c), it is only obligated to demonstrate that it "can" obtain site control at this stage of the proceeding and is only required to demonstrate actual control as part of a compliance filing pursuant to 16 NYCRR 1100-10.2(h).[7] Applicant argues that because development of a data center is not certain, there remains a possibility that it will obtain control over the parcel. Applicant notes that the Town has not yet approved the data center, the existing State-wide temporary moratorium on data center projects, pending legislation regarding data

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[4] DMM Item No. 93, Applicant's issue statement.

[5] Id. Applicant's issue statement is mentioned here for clarity of the timeline. However, this ruling only addresses the Town's motion pursuant to 16 NYCRR 1100-8.5(c).

[6] DMM Item No. 95, ORES Staff response to motion.

[7] DMM Item No. 94, Applicant response to motion, pp. 4-5.

centers, and a Public Service Commission proceeding regarding large load interconnections in support of its claim that the data center may not be developed "for a myriad of reasons," "thereby allowing the solar arrays to be located as proposed."[8]

Applicant also argues that because the parcel "can simply be dropped," final facility design and demonstration of final site control can be accomplished via compliance filings.[9] Applicant submitted a map showing the areas it has leased from Cayuga Operating Company LLC and an alternative project layout including different configuration for some collection lines. Applicant claims the figures demonstrate that it can develop a 60 MW facility without utilizing the parcel if it remains unavailable.[10]

Finally, Applicant argues that the Town's request to vacate the NOCA and/or the Draft Permit should be rejected because the applicable regulations do not provide for such relief. Applicant notes that the applicable regulations are 16 NYCRR Chapter XI (Part 1100), which were filed with the Secretary of State and became effective July 17, 2024, and that pursuant to those regulations, amending a pending application is only allowed prior to issuance of a NOCA.[11]

Discussion

As noted by Applicant and Staff, because the application was filed before the effective date of the new 16 NYCRR parts 1100, 1101, and 1102 (effective March 9, 2026), the version of part 1100 effective July 17, 2024, is applicable to

[8] Id., p. 9.

[9] Id., p. 2.

[10] Id., Exhibits A and B.

[11] Id., p. 10.

this proceeding.[12] The applicable regulations require as part of the application materials:

> "[a] demonstration that the applicant has obtained title to or a leasehold interest in the facility site, including ingress and egress access to a public street, or is under binding contract or option to obtain such title or leasehold interest, or can obtain such title or leasehold interest,"[13]

and

> "[a] statement that the applicant has obtained, or can obtain (with commercially reasonable certainty), such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility site."[14]

There is no dispute that Applicant does not have site control over the parcel in question. Although Applicant is correct that there is no requirement that it controls the parcel at the time an application is filed, the regulations do require that such control "can" be obtained with "commercially reasonable certainty."[15] Here, the Town has demonstrated that there is no reasonable certainty for the Applicant to obtain control of the parcel. The property is currently leased to TeraWulf for a term of 80-years and TeraWulf and the property owner, Cayuga Operating Company LLC, have both stated that the parcel will be used for development of a data center and is not available for Applicant's solar project.[16] Applicant makes no effort to rebut this demonstration and offers only speculation that the data center may not be developed and that if it is not

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[12] See DMM Item No. 84, Combined notice. Unless otherwise noted, the references in this ruling to the provisions of 16 NYCRR part 1100 are those effective July 17, 2024.

[13] 16 NYCRR 1100-2.5(c).

[14] 16 NYCRR 1100-2.5(d).

[15] Id.

[16] Town's petition, Exhibits B, F, G and H.

developed, Applicant may be able to obtain the appropriate property rights.[17] Applicant's reliance on the Administrative Law Judges' order of disposition in Matter of Oxbow Hill Solar, LLC[18] is unavailing. In that proceeding, although leases to locate collection lines had not been finalized, there was nothing demonstrating such leases could not be acquired.[19] Here, there is a clear demonstration that the parcel is unavailable to Applicant and Applicant offers only conjecture based on various contingencies in opposition.

Applicant's argument that it can simply amend the facility to eliminate the parcel once it receives its final permit is without merit. Applicant acknowledges that without use of the parcel, the facility would need to be redesigned to eliminate the arrays proposed for that area, to relocate collection lines, and to make other undefined "slight changes" to compensate for the "approximately 5 MW" of capacity lost by eliminating the parcel from the project.[20] The figures Applicant submitted with its response demonstrate that the required changes are significant enough to warrant amended submissions and sufficient opportunity for Staff and other stakeholders to assess such submissions prior to issuance of a final permit.[21] Staff also concludes that without the parcel, amendment to the project would be necessary.[22]

We agree with Applicant that the applicable

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[17] Applicant's response, p. 9.

[18] Matter No. 23-02998, Matter of Oxbow Hill Solar, LLC, Ruling of the Administrative Law Judges on Issues and Party Status, and Order of Disposition, May 21, 2025.

[19] Id., pp. 76-80.

[20] Applicant's response, pp. 6-7.

[21] Applicant's response, Exhibits A and B.

[22] ORES Staff response, p. 3.

regulations do not authorize us to direct vacatur of the NOCA.[23] We also agree with Staff that after a draft permit has been issued, if it becomes apparent that Applicant cannot satisfy all the regulatory requirements for issuance of a final siting permit, dismissal of the Application may be appropriate.[24] Here, as explained above, we conclude that Applicant has not demonstrated that it can obtain site control with any reasonable certainty as required and therefore, dismissal of the Application is appropriate.

However, in our view, there is nothing in former 16 NYCRR 1100-7.1(a) that prohibits Applicant from consenting to vacatur of the NOCA and draft permit, and requesting permission to submit an application amendment.[25] Here, the Town does not oppose an opportunity for Applicant to amend the Application.[26] Moreover, the current version of the regulations indicate support for such an approach under similar circumstances.[27]

Therefore, although we are ruling to dismiss the application here, we will hold the ruling in abeyance until October 5, 2026, to provide Applicant an opportunity to consider whether to consent to vacatur of the NOCA and draft siting permit, and submit a request to amend its Application pursuant to 16 NYCRR 1100-7.1. In either event, the deadline for responsive briefing and response to comments is no longer

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[23] See 16 NYCRR 1100-7.1.

[24] ORES Staff response, pp. 3-5.

[25] 16 NYCRR 1100-7.1.

[26] Town's petition, pp. 21-22. Cf. Shepherd's Run I, Decision of the Executive Director, Feb. 6, 2024, p. 33 (noting the Town opposed a similar process for allowing an application amendment).

[27] See 16 NYCRR 1100-7.1(b)(2)(iii) (effective March 9, 2026) (providing for submission of application amendments to ORES staff after the draft permit or NOCA have been issued).

applicable. Consistent with the new Part 1100, the statutory and regulatory time frames for completeness review of a major application amendment will be applicable to any application amendments Applicant may file.[28]

We have also considered the Town's request that we direct Applicant to provide additional local agency account funding. However, we reserve our decision on that issue unless and until such additional filings are made.

(SIGNED)

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[28] 16 NYCRR 1100-7.1(e); see also 16 NYCRR 1100-7.1(b)(2)(iii) (effective March 9, 2026).