

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

ORES DMM Matter No. 23-02987 - Application of YORK RUN SOLAR, LLC, for a Siting Permit for a Major Renewable Energy Facility Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 90-Megawatt (MW) Solar Energy Facility Located in the Towns of Busti and Kiantone, Chautauqua County.<sup>1</sup>

RULING OF THE ADMINISTRATIVE LAW JUDGES ON ISSUES  
AND PARTY STATUS, AND ORDER OF DISPOSITION

(Issued April 2, 2025)

JOHN L. FAVREAU and CHRISTOPHER McENENEY CHAN, Administrative Law Judges:

I. BACKGROUND AND PROCEEDINGS

On January 22, 2024, York Run Solar, LLC (applicant), applied pursuant to former Executive Law § 94-c (now Public

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<sup>1</sup> See DMM Item No. 89, Ruling Amending Caption, Jan. 27, 2025. As a result of the migration of the electronic case file in this matter from the Office of Renewable Energy Siting and Electric Transmission's Permit Application Portal to the Department of Public Service's (DPS) Document and Matter Management (DMM) system, the case number has been changed from ORES Permit Application No. 23-00049 to ORES DMM Matter No. 23-02987.

Service Law article VIII)<sup>2</sup> to the former New York State Office of Renewable Energy Siting, now the Office of Renewable Energy Siting and Electric Transmission (Office or ORES), for a permit to construct and operate a 90-megawatt (MW) solar energy facility (facility or project) in the Town of Busti (Busti) and Town of

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<sup>2</sup> Effective April 20, 2024, the Renewable Action through Project Interconnection and Deployment (RAPID) Act (L 2024, ch 58, part O) repealed Executive Law § 94-c, repealed the current Public Service Law article VIII, and enacted a new Public Service Law article VIII entitled "Siting of Renewable Energy and Electric Transmission" (Article VIII) (see RAPID Act §§ 2, 11). The RAPID Act also retitled the former Office of Renewable Energy Siting as the Office of Renewable Energy Siting and Electric Transmission (ORES or Office), transferred the Office from the Department of State to the Department of Public Service, continued all existing functions, powers, duties, and obligations of the Office under Executive Law former § 94-c, and added new functions, powers, duties, and obligations related to major electric transmission siting (see id. §§ 3, 4). Further, all applications pending before ORES on the effective date of the Act are considered and treated as applications filed pursuant to the RAPID Act as of the date of application filing (see id. § 4).

With respect to ORES's regulations at 19 NYCRR part 900 (Part 900), the RAPID Act transferred Part 900 to 16 NYCRR chapter XI, and continued Part 900 in full force and effect subject to conforming changes, such as the substitution of numbering, names, titles, citations, and other non-substantive changes to be filed with the Secretary of State (see RAPID Act § 7). The conforming changes were filed with the Secretary of State and became effective July 17, 2024. Accordingly, this ruling uses the numbering of the new 16 NYCRR part 1100 (Part 1100).

Finally, in light of the continuation of ORES, all administrative precedent issued under Executive Law former § 94-c remains applicable to proceedings under Article VIII.

Kiantone (Kiantone) (collectively referred to as "Towns"), Chautauqua County. The solar energy facility is proposed to include the following components: photovoltaic bifacial solar panels on a single-axis tracking racking system installed on steel driven posts; 8-foot tall agricultural style solar array fencing with self-locking gates; underground direct current (DC) electrical cables and communication cables that connect the panels to decentralized inverters; skid mounted medium voltage power station inverters and their foundations; underground medium voltage alternating current (AC) 34.5 kV collection cables connecting the inverters to the collection substation; a 115/34.5 kV collection substation and associated equipment; a 115 kV point of interconnection (POI) switchyard substation and associated equipment; access roads; temporary construction laydown areas; and planting modules. The solar facility will interconnect to National Grid's existing 115kV transmission line #171 between the Falconer and Warren substations, via a new 115 kV transmission line connecting the POI switchyard station and the existing offsite transmission line.<sup>3</sup>

After ORES staff issued a notice of incomplete application on March 22, 2024, applicant supplemented its application on August 13, 2024, September 5, 2024, September 30,

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<sup>3</sup> See DMM Item No. 8, application exhibit 2, Overview and Public Involvement.

2024, and October 4, 2024. On October 9, 2024, ORES staff issued a notice of complete application pursuant to 16 NYCRR 1100-4.1(g).<sup>4</sup>

On December 6, 2024, the Office issued a draft siting permit for the facility, which was posted for public comment on ORES's website.<sup>5</sup> On that same date, the ORES Office of Hearings issued and posted on the New York State Department of Public Service (DPS) document and matter management (DMM) system a combined notice of availability of draft permit conditions, public comment period and public comment hearing, and commencement of the issues determination procedure (combined notice) for this matter.<sup>6</sup>

The combined notice advised that a public comment hearing on the draft siting permit would be held at 6:00 p.m. on February 5, 2025, at the Kiantone Fire Department, 2318 Foote Avenue Ext., Jamestown, New York 14701, with written comments accepted until February 7, 2025. Pursuant to the combined notice, petitions for party status to participate in the issues determination procedure

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<sup>4</sup> See DMM Item No. 35, notice of incomplete application, Mar. 22, 2024; DMM Item Nos. 64-74, applicant responses to notice of incomplete application, Aug. 13, 2024, DMM Item Nos. 75-76, applicant additional responses to notice of incomplete application, Sept. 5, 2024, DMM Item Nos. 77-78, applicant additional responses to notice of incomplete application, Sept. 30, 2024, DMM Item No. 79, applicant additional responses to notice of incomplete application, Oct. 4, 2024; DMM Item No. 80, notice of complete application, Oct. 9, 2024.

<sup>5</sup> See DMM Item No. 82, draft siting permit.

<sup>6</sup> See 16 NYCRR 1100-8.2(d); DMM Item No. 83, combined notice of availability of draft permit conditions, public comment period and public comment hearing, and commencement of issues determination procedure.

and, if necessary, any adjudicatory hearing, were to be filed on or before February 10, 2025. In addition, the combined notice established February 10, 2025, as the date for submission of applicant's issues statement, and the municipal statements of facility compliance with applicable local laws and regulations regarding the environment, or public health and safety, and March 3, 2025, as the deadline for responses.<sup>7</sup>

Applicant published the combined notice in the Jamestown Post-Journal on December 24, 2024, the Dunkirk Observer on December 20, 2024, and the Chautauqua Gazette on January 20, 2025. Applicant served the combined notice on the party list, and persons and entities required to receive copies of the application pursuant to 19 NYCRR former 900-1.6(a) (now 16 NYCRR 1100-1.6[a]) or notice of the application pursuant to 19 NYCRR former 900-1.6(c) (now 16 NYCRR 1100-1.6[c]).<sup>8</sup>

## II. Public Comment Hearing; Summary of Public Comments

In accordance with the combined notice, the public comment hearing convened as scheduled on Wednesday, February 5, 2025, at 6:00 p.m., at the Kiantone Fire Department, 2318 Foote Avenue Ext., Jamestown, New York 14701. Approximately thirty individuals were in attendance, including staff from ORES. Only one speaker who opposed to the proposed project provided an oral comment. This commenter questioned the benefits of solar and wind

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<sup>7</sup> See 16 NYCRR 1100-8.2(d)(3), 1100-8.4(d), and 1100-8.4(b).

<sup>8</sup> See DMM Item Nos. 90 and 91, affidavits of service and publication.

projects generally, noted that natural gas and small nuclear projects are necessary as transition energy generation sources, that upstate should not subsidize downstate to resolve energy issues, that the CLCPA generally does not make common sense, and that electric-powered school bus use in upstate should be re-evaluated.<sup>9</sup>

By the close of the public comment period on February 7, 2025, ORES received a total of three written comments posted to the project's DMM site, or sent by email to the ORES hearings or the ORES general mailboxes, via U.S. mail, or by other delivery service. The written comments opposed the proposed project, providing comments on: (1) the impact on property values; (2) the effectiveness and financial viability of the project given the location's weather conditions; (3) the impact utility costs have on residents; (4) the negative impact on community character and detrimental visual impacts; (5) the lack of positive benefits to the local community; (6) the impacts on electric generation and distribution; (7) noise impacts; and (8) the impacts on owls and native birds requesting a re-evaluation.<sup>10</sup>

The Town of Kiantone submitted comments separately from its statement of compliance with local laws and regulations by the engineering firm of the Laberge Group. The comments focused on applicant's decommissioning plan as stated in the draft siting permit and applicant's visual impact study prepared by Stantec, Inc. The comments note that the costs of

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<sup>9</sup>     See DMM Item No. 92, public comment hearing transcript.

<sup>10</sup>    See DMM Comment Nos. 1-3.

decommissioning should not be borne by other landowners or taxpayers and that this should be explicitly stated in the siting permit. The comments also state that the ORES regulations concerning the surety amount and subsequent review and updating should be stated in the decommissioning plan. Additionally, the comments request a description of how the facility land will be restored "as close as practicable to its previous condition" and the process for a permit renewal in lieu of decommissioning. Comments on the visual impact study generally agree with and support the proposed landscaping plan but recommend specific language to enforce the plan in the event of pre-mature significant damage to or loss of plantings.<sup>11</sup>

### III. Statement of Issues and Statements of Compliance with Local Laws and Regulations

- Applicant

In accordance with the deadline in the combined notice, applicant timely filed a statement of issues on February 10, 2025.<sup>12</sup> Applicant states its general acceptance of the conditions of the draft siting permit and asserts that no substantive and significant issues between applicant and ORES staff require adjudication.<sup>13</sup>

- Town of Kiantone

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<sup>11</sup> See DMM Item No. 93, Kiantone comment statement at 2.

<sup>12</sup> See DMM Item No. 94, applicant statement of issues (applicant statement).

<sup>13</sup> See 16 NYCRR 1100-8.3(c)(1)(i).

On February 10, 2025, the Town of Kiantone timely filed its statement of compliance with local laws and regulations. The Town of Kiantone did not submit a petition for party status. The Town indicated that the facility complies with all applicable local laws, except for the following provisions from which applicant seeks limited waivers: (1) setback restrictions mandated in Town of Kiantone Solar Law (Solar Law) § 9(2)(b); (2) height restrictions for solar systems stated in Solar Law § 9(2)(c); (3) minimum screening and landscaping requirements in Solar Law § 9(2)(p)(ii)(c)(2); and (4) decommissioning surety requirements mandated by Solar Law § 11(2)(f)(iii). The Town does not object to the limited waiver of these provisions as recommended by ORES staff in the draft siting permit, provided that applicant complies with applicable uniform standards and conditions, pre-construction compliance filing requirements, and site-specific conditions contained in the final siting permit. The Town also recommends that ORES require as a condition in the final siting permit that the final Visual Impact Minimization and Mitigation Plan "include plantings that, when mature, demonstrate the intended purpose of screening and mimic the native species and patterns in the environment, which, in this rural setting, should include a mix of deciduous trees and shrubs, as well as evergreens." In conclusion, the Town states that it does not believe non-compliance with the local laws creates a significant and substantive issue for adjudication, and therefore, elects not to submit a petition for party status or statement of issues for



adjudication.<sup>14</sup>

. Town of Busti

On February 10, 2025, the Town of Busti timely filed its statement of compliance with local laws and regulations and comments on the application and draft permit. The Town of Busti did not submit a petition for party status. The Town identified various issues of non-compliance with local laws, including non-compliance with certain sections of Local Law No. 4 of 2022 (Solar Law) adopted and codified as § 405-48.1. The Town noted non-compliance with several sections of the Solar Law from which applicant sought a waiver, including: (1) § 405-48.1(A)(7)(b)(1) concerning vehicle access road requirements within the project site related to impervious surfaces and soil compaction; (2) § 405-48.1(A)(7)(b)(6) concerning tree cutting and clearing limitations; (3) § 405-713(G)(2)(g)(ii)(a) and (G)(2)(h)(1) concerning decommissioning cost estimates, including salvage value estimates and surety requirements; (4) § 405-713(G)(2)(k) concerning maintenance of the project site, including mowing and debris removal; (5) § 405-713(J)(1)(e)(i)(1)(c) concerning landscaping and screening requirements of the project site; and (6) § 405-713(J)(1)(h) concerning prohibiting the use of hazardous materials.<sup>15</sup>

Notwithstanding the above non-compliance, the Town indicates that it is working with the State to ensure that

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<sup>14</sup> DMM Item No. 95, Kiantone statement of compliance with local laws and regulations.

<sup>15</sup> See DMM Item No. 96, Busti local law compliance statement.

drainage problems do not occur during construction or the life of the project, that applicant is working with the Town on a conservation easement to offset impacts of tree removal, and that applicant has worked with the Town to meet the Town's landscaping and screening requirements, subject to the Town's review of final plans. The Town also accepts ORES staff's proposed limited waiver of its hazardous materials requirements provided applicant meets its commitment to pre-construction soil testing, along with continued soil testing throughout the life of this project to ensure no harmful chemicals are leached or leaked into the soil.<sup>16</sup>

With respect to the local decommissioning plan requirement, the Town accepts ORES staff's conclusion that the plan is a procedural requirement pre-empted by Public Service Law § 144(2), except for the allowance of salvage value, which the Town asserts should not be allowed or should be greatly reduced. Although the Town notes that applicant would comply with ORES's decommissioning requirements in lieu of the Town's requirements, it raises several concerns regarding the adequacy of the ORES's requirements and reserves the right to comment on the final decommissioning plan. It also notes, without discussion, ORES staff's conclusion that the Town's maintenance plan is a pre-empted procedural requirement. Finally, the Town identified several provisions of the Solar Law it assumed would be complied with because the draft siting permit did not recommend a waiver of those provisions. The Town also reserved the right to review

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<sup>16</sup>     See id.

final plans to assure that they are in accordance with the New York State Uniform Fire Prevention and Building Code (Fire Code) and acceptable to the emergency service providers.<sup>17</sup>

•Applicant and ORES Staff Responses

On March 3, 2025, applicant filed its response to the Town of Kiantone and Town of Busti statements of compliance with local laws and regulations and comments.<sup>18</sup>

In its response, applicant argues that no substantive or significant issues were raised in either Towns' statements of local law compliance, or in comments submitted by the Towns and the public. Accordingly, applicant asserts that because no substantive and significant issues have been raised, an adjudicatory hearing is not required.<sup>19</sup> In its response, applicant addresses each of the comments raised in the Towns' statements. Concerning calculating decommissioning costs, particularly the salvage value of facility components, applicant notes that in accordance with ORES regulation, 16 NYCRR 1000-10.2(b)(2), decommissioning costs, including salvage value, will be reviewed and updated every five years. Applicant responds to the Towns' concern that the decommissioning cost security should be 125% of the removal cost noting that the ORES mandated 115% security amount is reasonable, complies with ORES regulations, and

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<sup>17</sup> See id.

<sup>18</sup> See DMM Item No. 98, applicant response to Town of Kiantone's and Town of Busti's statements of compliance with local laws and regulations and comments (applicant response).

<sup>19</sup> See applicant response at 1-2.

that the decommissioning costs will be updated every five years to ensure that the surety amount is accurate. Moreover, applicant contends that ORES, the Department of Public Service and the New York State Public Service Commission have the authority to enforce the siting permit, including the Decommissioning and Site Restoration Plan.<sup>20</sup> With respect to Busti's comments regarding local law provisions not addressed in the draft siting permit, applicant notes that because it will comply with each of the local requirements identified by Busti, there are no associated waivers in the draft siting permit and those provisions were not addressed.<sup>21</sup> Additionally, applicant submitted responses to the oral and written public comments submitted during the public comment period.<sup>22</sup>

In its response filed on March 3, 2025, ORES staff recommends a finding that no substantive and significant issues require adjudication, and notes that neither the Town of Kiantone nor the Town of Busti filed a petition for party status.<sup>23</sup> Further, ORES staff states many of the concerns expressed by the Towns will be resolved during the compliance phase, and through applicant's compliance with the provisions and conditions of the draft siting permit to be incorporated in the final siting permit. ORES staff encourages applicant and the Towns to continue to address the Towns' concerns, including issues regarding oil wells,

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<sup>20</sup> See id. at 8-10.

<sup>21</sup> See id. at 12.

<sup>22</sup> See applicant response, exhibit 1.

<sup>23</sup> See DMM Item No. 97, ORES staff response at 1-2.

conservation easements, and road use agreements. ORES staff also notes that Busti retains jurisdiction to implement the Fire Code pursuant to subpart 4.1(d)(3) of the draft siting permit and 16 NYCRR 1100-6.1(d)(3). Finally, staff identifies a typographical error in the draft siting permit and recommends that the site-specific condition (SSC) 5(b), "Well Protection Plan," be renumbered as SSC 5(c) and subsequent SSCs be renumbered accordingly.<sup>24</sup>

. Stipulation

On March 24, 2025, ORES, applicant and Kiantone filed a stipulation of settlement resolving facility height restrictions in Kiantone Solar Law §9(2)(c) limiting Tier 3 Solar energy Systems, such as York Run Solar, LLC, to a maximum of 20 feet. Pursuant to the stipulation, the Town waives compliance with this provision in so far as it applies to interconnection equipment and overhead distribution lines.<sup>25</sup>

. Revised Draft Siting Permit

On March 27, 2025, ORES staff filed and served on the parties a revised draft siting permit incorporating the terms and conditions of the stipulation, correcting typographical errors, and revising the matter's caption in accordance with the aforementioned Ruling Amending Caption.<sup>26</sup> No party filed objections

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<sup>24</sup> See ORES staff response at 5.

<sup>25</sup> See DMM Item No. 99, stipulation.

<sup>26</sup> See DMM Item No. 101, revised draft siting permit.

to ORES staff's proposed revisions.

#### IV. Ruling and Order of Disposition

Pursuant to 16 NYCRR 1100-8.3(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 require adjudication. Here, no petitions for party status were received and no party has identified substantive and significant issues requiring adjudication.

Neither the Town of Kiantone nor the Town of Busti submitted a petition for party status. A municipality proposing formal adjudication on matters concerning its local laws and regulations is required to submit a petition for party status. Because the Towns did not file such a petition, their statements of compliance and the comments submitted by Kiantone constitute comments on the draft siting permit.<sup>27</sup> As such, they will be considered similarly as other public comments in this matter.

Public comments on a draft siting permit are first responded to by applicant and finally by ORES staff before a final siting permit may be issued.<sup>28</sup> In addition, the ALJ has the discretion to review public comments, including comments by a municipality, to determine whether substantive and significant

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<sup>27</sup> See 16 NYCRR 1100-8.4(d); 16 NYCRR 1100-8.4(c)(1)(iv).

<sup>28</sup> See 16 NYCRR 1100-8.3(b)(4)(ii); 16 NYCRR 1100-8.3(c)(5); 16 NYCRR 1100-8.12(a)(3).

issues are presented.<sup>29</sup> Here, applicant and ORES staff have duly responded to the comments raised by the Towns and public to the extent warranted at this stage of the proceeding.<sup>30</sup> ORES staff's final response to all comments will be filed before a final permit is issued. Upon review of the public comments, the Towns' statements, the Town of Kiantone's comments, and applicant's and ORES staff's responses thereto, we find that no substantive and significant issues have been raised in the Towns' statements, in Kiantone's comments, or in public comments. The typographical errors in the draft siting permit will be corrected and the SCCs will be renumbered in the final siting permit as recommended by ORES staff.

Additionally, the Town of Kiantone, applicant, and ORES staff submitted a stipulation of settlement resolving height restrictions on the proposed solar facility. We have reviewed the stipulation of settlement and conclude that the above-referenced height restriction issues have been resolved. Therefore, we hold that no issues are joined for adjudication and an adjudicatory hearing in this matter is not necessary.

Further, based on the application and the record of the issues determination procedure, we conclude that the proposed project, together with any applicable provisions of the uniform

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<sup>29</sup> See 16 NYCRR 1100-8.3(c)(1)(ii).

<sup>30</sup> See DMM Item No. 71, applicant response, exhibit 1, response to public comments; DMM Item No. 73, applicant public comment matrix; DMM Item No. 72, staff response at 46-50.

standards and conditions (USCs), necessary site-specific conditions (SSCs), and applicable compliance filings:

- 1) complies with Public Service Law article VIII and applicable provisions of the Office's regulations at Part 1100.
- 2) complies with substantive provisions of applicable State laws and regulations;
- 3) complies with substantive provisions of applicable local laws and ordinances, except those provisions the Office has elected not to apply based on a finding that they are unreasonably burdensome in view of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the facility;
- 4) avoids, minimizes, or mitigates to the maximum extent practicable potential significant adverse environmental impacts of the facility;
- 5) achieves a net conservation benefit with respect to any impacted threatened or endangered species; and
- 6) contributes to New York's CLCPA targets and provides the environmental benefits of reducing carbon emissions.

Accordingly, pursuant to 16 NYCRR 1100-8.3(c)(5), further proceedings in this matter are canceled. ORES staff is hereby directed to serve and file a final written summary and assessment of public comments received during the public comment period not otherwise addressed in this ruling by close of business May 2, 2025. No party objected to the revised draft siting permit. Accordingly, once the summary and assessment of public comments is filed, the undersigned will forward the revised draft siting permit to the Executive Director for execution as the final



siting permit.

(SIGNED)

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