

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

ORES DMM Matter Number 23-02992 - Application of FLAT CREEK SOLAR NY, 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 300-Megawatt (MW) Solar Energy Facility Located in the TOWNS OF ROOT and CANAJOHARIE, MONTGOMERY COUNTY.

DECISION OF THE EXECUTIVE DIRECTOR

(Issued April 3, 2026)

ZERYAI HAGOS, Executive Director:

I. Introduction

Montgomery County (County), the Town of Canajoharie (Canajoharie), the Town of Root (Root), and Residents for the Preservation of the Mohawk Valley (RPMV) (collectively petitioners), appeal from a November 19, 2025, ruling on issues and party status, and order of disposition issued by Administrative Law Judges (ALJs) Anthony Belsito, John L. Favreau, Henry James Joseph, and Dawn MacKillop-Soller (Issues Ruling).¹ In the Issues Ruling, the ALJs denied party status to

¹ DMM Item No. 147, Ruling of the Administrative Law Judges on Issues and Party Status, and Order of Disposition, Nov. 19, 2025 (Issues Ruling).

all petitioners finding that no substantive and significant issues existed necessitating an adjudicatory hearing.

Staff of the Office of Renewable Energy Siting and Electric Transmission (Office or ORES) also appeals from the Issues Ruling. In the Issues Ruling, the ALJs declined to adopt ORES staff's position on the total preemption of certain local laws, instead determining that the laws contained substantive requirements to which Flat Creek Solar NY, LLC (applicant) must either demonstrate compliance or be granted a waiver therefrom.

For the reasons that follow, the Issues Ruling is affirmed.

II. Background and Proceedings

A full recitation of the factual and procedural background of this proceeding may be found in the Issues Ruling and will not be repeated here. The facts and procedural posture relevant to this decision are as follows.

Applicant applied pursuant to Executive Law former § 94-c (now Public Service Law [PSL] article VIII [Article VIII]) to the Office for a permit to construct and operate a 300-megawatt (MW) solar energy facility (facility or project) in the Towns of Root and Canajoharie, Montgomery County.² The proposed facility site is located south of New York Interstate I-90 and the Mohawk River, and would include solar photovoltaic (PV) arrays, inverters, access roads, electric collection lines, security fencing, temporary

² See DMM Item No. 31, letter from applicant to ORES filing application for a siting permit pursuant to Public Service Law (PSL) article VIII (Article VIII), and 16 NYCRR part 1100 (Part 1100).

laydown areas, a collection substation, a generation tie (gen-tie) line, and a point of interconnection (POI) switchyard. The facility would interconnect to the New York State (NYS) electric grid through the existing 345 kilovolt (kV) New York Power Authority (NYPA) Transmission Line #352.³ After receiving a number of supplemental filings from the applicant, on April 7, 2025, ORES staff issued a notice of complete application pursuant to 16 NYCRR 1100-4.1(g).⁴

On June 6, 2025, the Office issued an initial draft siting permit for the facility, and on June 9, 2025, issued a corrected draft siting permit, both of which were posted for public comment on ORES's website.⁵ On June 6, 2025, the Office also issued 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.⁶

Pursuant to the combined notice, petitions for party status to participate in the issues determination procedure and,

³ See DMM Item No. 72, application exhibit 2 rev. 1: Overview and Public Involvement; DMM Item No. 72, application exhibit 3 rev. 1: Location of Facility and Surrounding Land Use at 1-2.

⁴ See DMM Item No. 94, notice of complete application.

⁵ See DMM Item No. 101, draft siting permit; DMM Item No. 103, corrected draft siting permit. The corrected siting permit corrected applicant's name.

⁶ See 16 NYCRR 1100-8.2(d); DMM Item No. 102, combined notice of availability of draft permit conditions, public comment period and public comment hearing, and commencement of issues determination procedure.

if necessary, any adjudicatory hearing, were to be filed on or before August 25, 2025. In addition, the combined notice established August 25, 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. The combined notice further established September 15, 2025, as the date for submission of responses by applicant and ORES staff, and the submission of applicant's response to comments received during the public comment period.

On August 22, 2025, RPMV filed its petition for full party status and statement of issues for adjudication. On August 25, 2025, applicant filed its statement of issues, and the County and both Towns filed petitions for full party status and their respective statements of issues for adjudication. The County and Canajoharie also both filed statements challenging the applicant's compliance with local laws. On September 29, 2025, applicant filed its response to the issues statements, party status requests, municipal statements of compliance, and public comments on the draft siting permit, and ORES Staff filed its response to the petitions and statements of compliance and applicant's statement of issues.

III. Issues Ruling

In its August 25, 2025, issues statement, applicant accepted in full the Draft Permit conditions and stated its

position that no substantive and significant issues existed requiring a hearing in this matter.⁷

The County proposed nine issues for adjudication and sought full-party status, or amicus status should the ALJs not award full-party status.⁸ Root also proposed nine issues for adjudication and sought full party-status, or amicus status should the ALJs not award full-party status.⁹ Similarly, Canajoharie proposed nine issues for adjudication, and sought full-party status, or amicus status should the ALJs not award full-party status.¹⁰ Finally, RPMV proposed ten issues for adjudication and sought full-party status, or amicus status should the ALJs not award full-party status.¹¹

On consideration of the full record, the ALJs granted party status to the County, Root, Canajoharie, and RPMV for the purpose of determining legal issues regarding the application of certain substantive requirements of local and County laws with which the facility must comply. The ALJs additionally found

⁷ See DMM Item No. 135, applicant statement of issues.

⁸ See DMM Item No. 130, Montgomery County petition for party status, statement of non-compliance with local laws, and issues statement.

⁹ See DMM Item No. 134, Town of Root petition for party status and statement of issues for adjudication.

¹⁰ See DMM Item No. 132, Town of Canajoharie petition for party status and statement of issues for adjudication and statement of compliance.

¹¹ See DMM Item No. 120, Residents for Preservation of Mohawk Valley petition for full party status and statement of issues for adjudication.

that the petitioners did not otherwise raise any substantive and significant issues and otherwise denied full-party status on all other proposed issues.¹²

As for the proposed issues that the ALJs determined were properly before them as legal issues, they considered each issues in the Issues Ruling and made a determination thereto, finding that no dispute of fact existed necessitating any hearing.¹³ The ALJs also determined that the proposed project, together with any applicable provisions of the uniform 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

¹² See Issues Ruling at 228.

¹³ Issues Ruling at 228. See 16 NYCRR 1100-8.3(b)(2)(iv).

6) contributes to New York's CLCPA targets and provides the environmental benefits of reducing carbon emissions.¹⁴

On making the above findings, the ALJs then cancelled, pursuant to 16 NYCRR 1100-8.3(c)(5), all further proceedings in this matter and directed ORES staff to submit a final written summary and assessment of public comments received during the public comment period, noting that upon receipt of such, they would forward the Draft Permit as modified by the Issues Ruling to the Executive Director for execution as the final siting permit.¹⁵

On December 5, 2025, petitioners filed their joint appeal listing 21 issues with the ALJs disposition of issues and asserting that several of their proposed issues warranted a finding that they were substantive and significant and that a hearing was necessary.¹⁶ ORES staff also filed a timely notice and appeal of the Issues Ruling, challenging the ALJs' determination that provisions regarding certain provisions of the County's Cumulative Impacts Law (CIL) and Root's Solar

¹⁴ Issues Ruling at 229.

¹⁵ Issues Ruling at 229-230.

¹⁶ See DMM Item No. 152, Joint Appeal of Ruling of the Administrative Law Judges on Issues and Party Status, and Order of Disposition (joint appeal).

Energy Law contain substantive requirements with which the applicant must comply or receive a waiver.¹⁷

ORES staff filed a response to the joint appeal.¹⁸ Applicant filed a response to both the joint appeal and the ORES staff appeal.¹⁹ Petitioners filed a response to the ORES staff appeal.²⁰

IV. Standards of Review

A. Determining Issues for Adjudication

To issue a siting permit, the Office must make a finding that the proposed project, together with any applicable provisions of the uniform standards and conditions (USCs), necessary site-specific conditions, and applicable compliance filings:

- 1) complies with Public Service Law article VIII (Article VIII) and applicable provisions of the Office's regulations at 16 NYCRR part 1100 (Part 1100);
- 2) complies with substantive provisions of applicable State laws and regulations;

¹⁷ See DMM Item No. 153, Notice of Appeal and Appeal of the Office of Renewable Energy Siting and Electric Transmission (ORES staff appeal).

¹⁸ DMM Item No. 155, ORES Response to the Joint Appeal (ORES staff response).

¹⁹ DMM Item No. 156, Flat Creek Response to Joint Appeal and ORES Appeal (applicant response).

²⁰ DMM Item No. 154, Joint Reply to ORES Staff Appeal of Ruling on Issues and Party Status (joint response).

- 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; and
- 5) achieves a net conservation benefit with respect to any impacted threatened or endangered species.

In making the required finding, the Office is directed to consider the CLCPA targets and environmental benefits of the proposed major renewable energy facility.²¹

The Office's regulations at 16 NYCRR subpart 1100-8 provide for an issues determination process to define the scope of any disputes. Through the issues determination procedures, the ALJs determine whether any substantive and significant issues of fact related to the findings that the Office must make on an application require adjudication and, if not, resolve any legal issues related to the required findings. Specifically,

²¹ See ORES DMM Matter No. 23-02972, Matter of ConnectGen Montgomery County, LLC (Mill Point Solar I), Decision of the Executive Director, January 27, 2026, at 9-13; ORES DMM Matter No. 21-00026, Matter of Heritage Wind, LLC, Decision of the Executive Director, Jan. 13, 2022, at 8-9, citing Executive Law § 94-c(3)(b)-(d), (5)(e); see also Climate Leadership and Community Protection Act (CLCPA), L 2019, ch 106, § 7.

pursuant to 16 NYCRR 1100-8.3(b)(2), the purpose of the issues determination procedure is:

- (i) to narrow or resolve disputed issues of fact without resort to taking testimony;

- (ii) to receive argument on whether disputed issues of fact that are not resolved meet the standards for adjudicable issues as set forth in subdivision (c) of 1100-8.3;

- (iii) to receive argument on whether party status should be granted to any party status petitioner to participate in any adjudicatory hearing that is determined to be required;

- (iv) to determine whether legal issues exist whose resolution is not dependent on facts that are in substantial dispute and, if so, to receive argument on the merits of those issues; and

- (v) to decide any pending motions.

The procedure under 16 NYCRR 1100-8.3(b) is a form of summary judgment. The initial inquiry is whether a party challenging an application or draft siting permit is seeking to raise a substantive and significant factual issue requiring adjudication. A party seeking to litigate a factual dispute must demonstrate the existence of a triable issue of fact through a sufficient offer of proof, usually through the submission of expert evidence.²² If the ALJ determines that a

²² See 16 NYCRR 1100-8.4(c)(2)(ii); Mill Point Solar I, Decision at 11; ORES DMM Matter No. 21-01108, Matter of Hecate Energy Cider Solar LLC, Decision of the Executive Director, July 25, 2022, at 8; ORES DMM Matter No. 21-00026, Matter of Heritage

party has raised a triable issue of fact requiring adjudication, the ALJ will define the issue as precisely as possible, set the matter down for an evidentiary hearing, and determine which parties are granted party status for the hearing.²³

If it is determined that no triable issues of fact requiring adjudication are presented, legal issues raised by the parties whose resolution is not dependent on facts that are in substantial dispute are reviewed. Legal determinations made by ORES staff as reflected in the draft siting permit are examined for an error of law.²⁴ Exercises of discretion and policy decisions made by ORES staff are reviewed for an abuse of discretion.²⁵

With respect to a factual issue sought to be raised by a potential party, the issue is adjudicable if it is both substantive and significant.²⁶ An issue is substantive if there is sufficient doubt about the applicant's ability to meet

Wind, LLC, Interim Decision of the Executive Director, Sept. 27, 2021, at 5.

²³ See 16 NYCRR 1100-8.3(b)(5)(i), (ii).

²⁴ See Mill Point Solar I, Decision at 12; Cider Solar, Decision at 8; Heritage Wind, Interim Decision at 5-6 (citing Matter of Incorporated Vil. of Lynbrook v New York State Pub. Empl. Relations Bd., 48 NY2d 398, 404-405 [1979]).

²⁵ See Mill Point Solar I, Decision at 12; Cider Solar, Decision at 8; Heritage Wind, Interim Decision at 6 (citing Matter of Peckham v Calogero, 12 NY3d 424, 430-431 [2009]; Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]).

²⁶ See 16 NYCRR 1100-8.3(c)(1)(iv).

statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry.²⁷ 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 siting permit conditions in addition to those proposed in the draft siting permit, including uniform standards and conditions.²⁸

To participate as a party in any adjudication under 16 NYCRR subpart 1100-8, the potential party seeking full party status must file a petition in writing that, among other things, identifies an issue for adjudication that meets the criteria of 16 NYCRR 1100-8.3(c), and presents an offer of proof specifying the party's witnesses, the nature of the evidence the person expects to present, and the grounds upon which the assertion is made with respect to that issue.²⁹ Where ORES staff has reviewed an application and finds that a component of the applicant's project, as proposed or as conditioned by the draft siting permit, conforms to all applicable requirements of statute and regulation, the burden of persuasion is on the potential party proposing any issue related to that component to demonstrate that it is both substantive and significant.³⁰ 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

²⁷ See 16 NYCRR 1100-8.3(c) (2) .

²⁸ See 16 NYCRR 1100-8.3(c) (3) .

²⁹ See 16 NYCRR 1100-8.4(c) (2) (ii) .

³⁰ See 16 NYCRR 1100-8.3(c) (4); Cider Solar, Decision at 27-28.

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.³¹

To carry its burden of persuasion, a potential party need make its offer of proof through a qualified expert.³² Importantly, in determining whether a potential party has demonstrated an issue is substantive and significant, the party's offer of proof is evaluated in light of the application and related documents, the standards and conditions, or siting permit, the content of any petitions for party status, the record of the issues determination procedure, and any subsequent written or oral arguments authorized by the ALJ.³³ Any assertions a potential party makes in its offer of proof must have a factual or scientific foundation. Speculation,

³¹ See Mill Point Solar I, Decision at 13; Cider Solar, Decision at 10. At the issues determination stage of the proceeding, the applicable standard is similar to the standard on a CPLR 3212 motion for summary judgment - the party with the burden of persuasion must present an offer of proof "sufficient" to raise a triable issue of fact requiring adjudication. See ORES DMM Matter No. 21-00976, Matter of Homer Solar Energy Center, LLC, Decision of the Executive Director, Jan. 9, 2023, at 8 n 23 (citing Matter of Terry Hill South Field, First Interim Decision of the Commissioner, Dec. 21, 2004, at 9-10 [NYSDEC]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]; CPLR 3212[b]). See also Heritage Wind, Interim Decision at 8 (administrative decisions by DEC interpreting the corollary provisions of 6 NYCRR part 624 provide persuasive authority for the interpretation of 19 NYCRR former subpart 900-8, now 16 NYCRR subpart 1100-8).

³² See 16 NYCRR 1100-8.4(c)(2)(ii).

³³ See 16 NYCRR 1100-8.3(c)(2).

expressions of concern, general criticisms, or conclusory statements are insufficient to raise an adjudicable issue. Moreover, the qualifications of the expert witness that a petitioner identifies may also be examined, including the proposed expert's background and expertise with respect to the specific issue area concerned. Even where an offer of proof is supported by a factual or scientific foundation, it may be rebutted by the application, the draft siting permit and proposed conditions, Staff's analysis, or the record of the issues determination procedure, among other relevant materials and submissions. Where Staff has expertise in an area, its evaluation of the application and supporting documentation is important in determining the adjudicability of an issue.³⁴

Finally, in addition to issues raised by an applicant or other potential party, public comments, including comments provided by a municipality, on a draft siting permit condition published by the Office may also identify an adjudicable issue provided those comments meet the substantive and significant standard for adjudication.³⁵

³⁴ See Cider Solar, Decision at 11; Heritage Wind, Interim Decision at 8-9 (citing Matter of Roseton Generating LLC, Decision of the Commissioner, March 29, 2019, at 11-12 [NYSDEC]); see also Matter of Crossroads Ventures, LLC, Interim Decision of the Deputy Commissioner, Dec. 29, 2006, at 5-10 (NYSDEC).

³⁵ See 16 NYCRR 1100-8.3(c)(1)(ii).

B. Review on Appeal

The issues determination procedure results in a ruling by the ALJ that (i) determines which persons will be granted party status; (ii) determines which factual issues satisfy the requirements for being adjudicable issues as set forth in 16 NYCRR 1100-8.3(c), and defines those issues as precisely as possible; (iii) rules on the merits of any legal issue where ruling does not depend on the resolution of disputed issues of fact; (iv) decides any pending motions to the extent practicable; and (v) summarizes comments received on the application and draft siting permit conditions or intent to deny.³⁶ On administrative appeal from an issues ruling, the Executive Director reviews the ruling for any errors of law or fact, or abuses of discretion by the ALJs. However, the Executive Director may review the record of the issues determination procedure, including the public comments filed, to determine that all adjudicable issues have been identified, and to offer guidance on legal and policy issues to optimize the permitting process and focus any hearing, if such is warranted.³⁷

³⁶ See 16 NYCRR 1100-8.3(b) (5) .

³⁷ See Mill Point Solar I, Decision at 16; Bear Ridge Solar, Decision at 16; Horseshoe Solar, Decision at 14; Cider Solar, Decision at 12-13; Heritage Wind, Interim Decision at 9-10, citing Matter of Crossroads Ventures, Interim Decision at 10-11.

V. Discussion

Petitioners challenge the Issues Ruling on 21 points in their joint appeal. In addition, the ORES staff appeal contains challenges to the Issues Ruling on topics that coincide with some of the joint appeal's topics. To most concisely address all the challenges, this decision will consider the preemption arguments of ORES staff together with the general arguments of petitioners on local laws.

A. Cumulative Impacts Law - Scope of Preemption, Waiver Authority, Substantive Provisions

ORES staff challenges the ALJs' determination that the County's Cumulative Impacts Law (CIL) contains substantive requirements with which applicant must either be found to have demonstrated compliance or from which applicant has been granted a waiver. ORES staff submits that the CIL is a procedural law in total that has been preempted either expressly by Public Service Law § 144(2) or by implication of that section's express intent to be the sole source of permitting for major renewable energy facilities. To support its position, ORES staff maintains that Article VIII expressly limits the scope of environmental assessment to the individual facility under consideration and that Article VIII did not include, nor expressly allow for, a cumulative impacts analysis as part of its prescribed program.

In the view of ORES staff, the CIL imposes an impermissible condition for the development, design, construction, operation, or decommissioning of a major renewable

energy facility in contravention of Article VIII. ORES staff argues that the CIL contains an inseparable additional procedural requirement for Article VIII applicants to conduct an analysis of the cumulative impact of all existing and proposed industrial solar arrays on a number of categories to demonstrate that the facility is designed to avoid, minimize, or mitigate the impacts of the facility to the maximum extent practicable.³⁸ ORES staff observes that the Issues Ruling even refers to the CIL's requirements as an assessment or analysis creating confusion as to what the ALJs believed was substantive and required about the local law.³⁹

ORES staff maintains that even if the CIL is not expressly preempted, the Office was correct in its assessment that the local law is preempted by implication because the legislature so occupied the field of major renewable energy permitting and the impact analysis required under Article VIII that no local law requiring additional analyses on impacts is permissible. In support, ORES staff cites a 1983 Court of Appeals decision in the case of Consolidated Edison Co. of New York, Inc. v Town of Red Hook.⁴⁰

Petitioners contest the claim that local laws are preempted by noting that contrary to ORES staff's assertion, Article VIII specifically recognizes the validity of local laws. Petitioners cite to Article VIII's requirement that before

³⁸ ORES Staff appeal at 6-7.

³⁹ ORES Staff appeal at 7.

⁴⁰ Consolidated Edison Co. of New York, Inc. v Town of Red Hook, 60 NY2d 99 (1983) (Consolidated Edison).

granting a permit, the Office is expressly required to find compliance with every impacted municipality's local substantive laws and that the Office's only other option is to waive such laws under the Article VIII criteria for waiver. Petitioners note that nothing in Article VIII allows the Office to ignore local laws on any other grounds and that allowing the Office to deem a law preempted effectively allows an applicant and ORES staff to avoid having to do the required waiver analysis.⁴¹ Petitioners argue that their interpretation is the only one consistent with the "Home Rule" provisions of Article IX of the State Constitution.⁴² Finally, petitioners submit that the Office's regulations contradict ORES staff's position that the CIL is procedural rather than substantive.⁴³

I agree and note that the Executive Director's decision in Matter of ConnectGen Montgomery County, LLC (Mill Point Solar I) already considered the applicability of the CIL and provided guidance to the Office as to how it should be applied.⁴⁴ While that decision did not address the question of preemption, it did support the ALJs' determination that at least portions of the law were substantive and therefore required a demonstration of compliance or entitlement to a waiver

⁴¹ Joint appeal at 4-5.

⁴² Joint appeal at 5-6.

⁴³ Joint appeal at 6-7 (citing 16 NYCRR 1000.2[t], [u]).

⁴⁴ Mill Point Solar I, Decision at 27-34.

consistent with Article VIII's different treatment of substantive and procedural laws.⁴⁵

My determination here is not only consistent with that distinction, but also consistent with ORES staff's Consolidated Edison case citation. In Consolidated Edison, the Court of Appeals was considering the applicability of a local law under the former Article VIII siting statute, which contained Article VIII's predecessor preemption and local compliance provisions.⁴⁶ The local law at issue created a condition precedent to the filing of an application with the State Board on Electric Generation and Siting. The law specified that "no person can begin or allow a site study for a power plant within the Town of Red Hook without first obtaining a license from the town board."⁴⁷ The Court concluded that this requirement was impliedly preempted by former Article VIII's comprehensive regulatory scheme and otherwise inconsistent with State law.⁴⁸ That this requirement was decisive in that case is supported by the Court of Appeals observation that the local law at issue "would enable local communities to keep applications for major

⁴⁵ See id.; see also ORES DMM Matter No. 23-03002, Matter of Agricola Wind, LLC, Decision of the Executive Director, April 1, 2026, at 52-57 (discussing preemption under Article VIII).

⁴⁶ See PSL §§ 146(2)(d) (local law compliance) and 149-a (preemption).

⁴⁷ Consolidated Edison, 60 NY2d at 103 (emphasis added).

⁴⁸ See Consolidated Edison, 60 NY2d at 106-108.

steam electric generating facilities from ever being filed with the Siting Board.”⁴⁹

Here, the CIL requires no similar license or approval. While it requires some analysis of impacts, nothing in the law requires such analysis be done prior to filing an application with the Office, nor could it. However, it does require that the impacts of the proposed facility on certain characteristics of the community be considered during the review of the application and creation of the draft permit, and that such impacts be avoided, minimized, and mitigated to the maximum extent practicable.⁵⁰ That the CIL may be considered to overlap the Office’s required impacts analysis does not render the parts of the law that do not overlap inapplicable. Rather, as demonstrated by the Mill Point Solar I decision, those non-overlapping sections must either be found to be complied with or waived.⁵¹ I also agree with petitioners that this determination is the one most consistent both with Article VIII’s construction and with Article IX’s home rule provisions of the State Constitution.

⁴⁹ Consolidated Edison, 60 NY2d at 108 (stating that “[o]nce the Legislature has set down the factors to be considered in determining the siting of proposed major steam electric generating facilities and the forum where such determinations are to be made, defendants cannot by local law abort that plan”) (emphasis added).

⁵⁰ Compare PSL § 144(2) with PSL § 142(3), (5).

⁵¹ See Mill Point Solar I, Decision at 27-34; see also Agricola Wind, Decision at 52-57, 62-63 (avoidance, minimization, and mitigation measures are substantive requirements of local law that must be complied with).

Having made that determination, I will address one issue raised by applicant in its response to the ORES appeal. As framed by applicant, ORES staff appears to contend that my conclusion that the ALJs correctly determined in the Issues Ruling that the CIL was not preempted requires a remand to allow ORES staff to make a compliance determination or waiver recommendation, alleging that the ALJs lack authority to make any determinations in the absence of such an ORES recommendation. As the applicant demonstrates thoroughly, such a position not only discounts the role of an Administrative Law Judge in the ORES process, but it is inconsistent with the history of ORES precedent in issues rulings and Executive Director decisions.⁵² Having determined that the CIL applies and that the ALJs in the Issues Ruling are properly empowered to determine the proposed issues submitted by petitioners, I turn to petitioners' claim.

As explained, the ALJs are vested with the authority to review the entire record and independently determine compliance or entitlement to waiver as delegated through the Executive Director.⁵³ Likewise, the Executive Director is charged with issuing a final decision on all issues raised.⁵⁴ As

⁵² See applicant response at 11-14 (noting that "[n]othing in Article VIII limits the ALJs' role to a purely ministerial review of Staff determinations, nor does the statute condition the ALJs' ability to resolve local law issues on the existence of a prior Staff compliance or waiver recommendation").

⁵³ See 16 NYCRR 1100-8.7(b); 1100-8.12(a)(1).

⁵⁴ 16 NYCRR 1100-8.12(c).

such, it is proper for the Executive Director to assess the record and make a superseding determination on all issues, including local law compliance and entitlement to waiver. Thus, it is not enough for petitioners to allege that the applicant and the Office failed to apply the CIL and therefore no finding of compliance can be made. It is incumbent on petitioners to make specific allegations about what information is missing from the record because the analyses required by the ORES-approved studies were fatally deficient and that the absence of such information raises sufficient doubt about the applicant's ability to meet the statutory or regulatory criteria applicable to the project that has the potential to result in the denial of a siting permit, a major modification to the proposed project, or the imposition of significant siting permit conditions in addition to those proposed in the draft siting permit, including uniform standards and conditions.⁵⁵

Petitioners failed to demonstrate the foregoing, notwithstanding applicant's or ORES staff's belief that the law was preempted. This was proper given that applicant permissibly prepared the record for alternative determinations that the CIL was inapplicable; that if it was applicable, the facility was in compliance; and that in any event a waiver was warranted.⁵⁶ That ORES staff in its application review and construction of the Draft Permit and the ALJs in their review during the issues determination phase arrived at different conclusions as to the law's application is not evidence of the proposed facility's

⁵⁵ See Mill Point Solar I, Decision at 28-29.

⁵⁶ See applicant response at 28-29.

inconsistency with Article VIII. Petitioners were under an obligation to demonstrate the specific cumulative impacts that were not addressed relative to the insufficiency of the uniform and site specific standards and conditions.⁵⁷

B. Root Solar Law

ORES staff's argument regarding the preemption of Root's Solar Law and its screening provisions is incorrect for the same reasons that I did not adopt their position on the County's CIL. ORES staff maintains that because the laws at issue require the submission of documentation in sections referencing Permits and Approvals Required and Permitting Requirements, respectively, that the laws are impermissible exercises of local authority under Article VIII's express purpose of consolidating permitting and review for major renewable generating facilities in New York. As noted previously in this decision, I am not persuaded that such a position is correct inasmuch as Article VIII expressly preserves local authority to impose substantive requirements. As recognized by the ALJs, that preservation of rights requires the Office to parse out from a local law any preempted procedural requirements and apply the permissible substantive requirements.⁵⁸ Such finding of the ALJs is consistent with ORES

⁵⁷ See Mill Point Solar I, Decision at 31-33.

⁵⁸ See Issues Ruling at 120-125.

precedent, as noted by petitioners, as well as Article 10 precedent.⁵⁹

As to petitioners' claims regarding Root's law, as an initial matter, a finding that certain laws apply notwithstanding ORES staff's contrary position in creating the Draft Permit, does not result in a fatal deficiency if the record is sufficient to demonstrate compliance through proper permit conditions or an entitlement to waiver. To the extent that petitioners claim they are being deprived of an opportunity to present evidence on the substance because they focused their presentation in the issues determination process on the preemption determination, such a claim is not proper and contrary to the burden of persuasion at the issues determination phase.⁶⁰ Petitioners not only need to dispute the question of applying a law, but the substantive impact of the failure to apply the law particularly where, as here, the application made a demonstration of compliance with the local law and, in the alternative, a request for a waiver pursuant to 16 NYCRR 1100-

⁵⁹ See joint response at 16-18 (citing ORES DMM Matter No. 21-00962, Matter of Tracy Solar Energy Center, LLC, Ruling on Issues and Party Status, and Order of Disposition, Dec. 1, 2022, at 58-59); see also DPS Case 17-F-0619, Matter of Hecate Energy Greene 1 LLC, Order Granting Certificate of Environmental Compatibility and Public Need, Sept. 28, 2021, at 31-32 (NYS Siting Board) (requirement for submission of a habitat protection plan demonstrating compliance with the town's 1:1 mitigation ratio for grassland habitat preservation was a substantive local law requirement applicant was required to comply with).

⁶⁰ See joint appeal at 57-58.

2.25(c).⁶¹ A hearing is only held if a substantive and significant issue exists, and in its absence the ALJs are charged with determining legal disputes on the record and issues submissions.⁶² Moreover, the record contains numerous submissions from each of petitioners including expert affidavits and reports, detailed issues statements, and statements on local law compliance. Petitioners are, by virtue of their participation in this matter, on notice of the regulations' allowance for an ALJ determination on the record as it exists at the time of the issues determination.⁶³

Petitioners contest the Issues Ruling determination on compliance with the Root Solar Law in four specific areas: noise, landscape screening, fencing, and setbacks.⁶⁴ In each case, petitioners challenge the ALJs' finding that no substantive and significant issue exists warranting a hearing. On review, I find no errors were committed and agree that no adjudicatory hearing was required.

Concerning noise, petitioners assert that it is impermissible for the ALJs to provide a waiver of Root's 45-dBA 1-hour noise requirement because applicant did not specifically request a waiver from that requirement. The ALJs gave

⁶¹ See 16 NYCRR 1100-8.3(b), (c); see DMM Item No. 91, application appendix 24-6 rev. 2: Statement of Justification for Local Law Waiver Requests at 38-39.

⁶² 16 NYCRR 1100-8.3(b)(2)(iv) and (b)(5)(iii).

⁶³ See 16 NYCRR 1100-8.3(c)(5).

⁶⁴ See Root Solar Law §§ 7.1(F)(15) (noise), 7.2(D) (landscape screening), 7.2(D)(7) (fencing), and 7.2(Q) (setbacks).

petitioners' argument due consideration. In the Issues Ruling, the ALJs correctly noted that ORES may determine that Root's local noise standard is unreasonably burdensome based on the record evidence even absent a separate explicit request under PSL § 142(5), which grants ORES broad discretion to waive local laws it deems unreasonably burdensome as applied to the facility considering CLCPA goals and associated environmental benefits without stating that the Office may only waive laws where a request exists.⁶⁵ Moreover, the ALJs correctly noted that Root's 45 dBA (1-hour) standards "is without any 'accompanying methodology or guidance' for compliance and enforcement purposes. In any event, applicant already complies with the ORES sound standards under 16 NYCRR 1100-2.8, which comport to Root's '45dBA' standard. We agree with applicant that ORES's sound standards are 'already protective of nearby residents' and 'there is no legal or technical basis for applying separate local standards in addition to those adopted by ORES,' rendering application of Root's 45dBA standard unnecessary."⁶⁶ It is worth noting that applicant's noise modeling study did not identify sound levels at residential receptors above "40 dBA," well below the 45 dBA design goal applicable to non-participating residences.⁶⁷ Under these facts, and based on ORES's broad discretion under PSL § 142(5), the ALJs properly determined that

⁶⁵ See Issues Ruling at 109-110.

⁶⁶ Issues Ruling at 113.

⁶⁷ DMM Item No. 45, application exhibit 7: Noise and Vibration at 18.

a waiver was warranted irrespective of any waiver request from applicant in its application materials.

Concerning Root's landscape screening requirements, petitioners' contest the adequacy of applicant's landscaping plan stating that it ignores the local law's requirements for avoiding visual impacts from public roadways intended to maintain the rural character of the area. The ALJs reviewed Root's claims through its proffered expert Adam Yagelski and the County's visual impact analysis.

Based on their review, the ALJs determined that the substantive portions of the law required applicant to either receive a waiver from, or compliance with, the law's requirement that screening be provided year-round to the maximum extent practicable to eliminate adverse visual impacts on roadways and adjacent properties.⁶⁸ The ALJs held that to the extent Root's standards were considered stricter than Article VIII's requirement that visual screening be provided to the maximum extent practicable, applicant sufficiently demonstrated an entitlement to a waiver inasmuch as its visual screening plan was determined to provide screening to comply with Article VIII's requirements rendering additional screening requirements beyond practicable.⁶⁹ In making their determination, the ALJs were within their authority to credit applicant's uncontested evidence that the additional screening would result in approximately 8.5 additional miles at an approximate additional cost of \$1.8 million to an ORES-approved visual mitigation plan

⁶⁸ See Issues Ruling at 123.

⁶⁹ See Issues Ruling at 124-125.

the total estimated cost of which was only \$1.23 million, more than doubling the cost of the approved plan.⁷⁰ The ALJs further supported their determination noting that ORES staff determined that applicant's landscape plan includes year-round screening and evergreen species and that Root failed in its burden of persuasion in that it did not explain how the vegetation provided for by applicant and the Draft Permit failed to comply with local law requirements.⁷¹ I agree and find no error of fact or law or abuse of discretion occurred.

Likewise, the ALJs were correct in their determination that applicant's fencing complied with Article VIII's standards and that applicant was entitled to a limited waiver where Root's local law would require fencing in contravention of the National Electric Code safety standards.⁷² The ALJs also correctly determined that applicant sufficiently demonstrated that the setback requirements of Root's local law would result in the loss of 45.5% of the proposed total array area, essentially prohibiting the project.⁷³

C. Scenic Byways Law

Petitioners contest the Issue Ruling's treatment of the County's Scenic Byways Law (SBL). The County was among the parties that raised on appeal a similar issue in the recently

⁷⁰ See Issues Ruling at 125.

⁷¹ See Issues Ruling at 127-128.

⁷² See Issues Ruling at 140-142.

⁷³ See Issues Ruling at 161-163.

decided Mill Point Solar I matter. As with that previous case, here, the County submitted its Visual Impact Report prepared by T.J. Boyle Associates & Planning to demonstrate applicant's non-compliance with the SBL. After considering the Issues Ruling in the Mill Point Solar I matter, the ALJs noted that the County failed to provide any legal argument that would lead to a different determination in this matter.⁷⁴

In the Mill Point Solar I decision, I stated that the ALJs determined that the law was not applicable to the facility and that any significance the SBL had to the Mill Point Solar project was served by the findings that visual impacts have been avoided, minimized, or mitigated to the maximum extent practicable.⁷⁵ Nothing new has been raised in the submissions in this matter by petitioners and I have no basis for a different conclusion here. Therefore, I determine that no error of law or fact occurred and that there was no abuse of discretion.

D. State Uniform Fire Prevention and Building Code

Petitioners assert that the ALJs erred in not finding that the project was not in compliance with the State Uniform Fire Prevention and Building Code (Fire Code) for which the Towns are the administrators. Petitioners claim the project design plans provide insufficient access in the event of an emergency. Petitioners note that while the Fire Code does allow for discretionary modifications to the Code's requirements,

⁷⁴ See Issues Ruling at 225.

⁷⁵ Mill Point Solar I, Decision at 35-36.

applicant has made no such request. Petitioners submit correspondence from three County Fire Departments to support their claims of inadequacy.⁷⁶

ORES staff responds to petitioners' claims noting that applicant acknowledges that the Towns are responsible for insuring compliance and that applicant is aware it will need review and approval of its building plans and certification of Fire Code compliance prior to construction.⁷⁷ Applicant acknowledges that such compliance is necessary prior to construction but that compliance determinations are properly made after permit issuance during the local code compliance stage, not as part of the issues determination as there is no dispute that the Fire Code applies.⁷⁸

The ALJs note that there exists no actual dispute as to the applicability of the Fire Code. Holding that no issue existed requiring a hearing, the ALJs observed that applicant's road access design includes coordination with the Towns' fire code officials to accommodate fire access for emergency responders and comply with fire access road requirements to the maximum extent practicable.⁷⁹ I agree that because the Towns are responsible for certifying compliance, no permit denial or modification can result. Thus, no error of law or fact occurred and there was no abuse of discretion.

⁷⁶ Joint appeal at 64-66.

⁷⁷ ORES staff response at 25.

⁷⁸ See applicant response at 39-40.

⁷⁹ See Issues Ruling at 179-183.

E. Canajoharie Solar Law

Petitioners claim the Issues Ruling wrongly determined that no substantive and significant issues existed regarding applicant's entitlement to a waiver of portions of Canajoharie's Solar Law. As an initial matter, the Canajoharie's Solar Law § 8(B)(5)(b), requiring compliance with the State Fire Code, offers nothing different than the discussion in the preceding section. Solar Law § (11)(E) allows the fire district in which a facility is built to require funds to be used for training emergency responders prior to providing a building permit.⁸⁰ Petitioners acknowledge that applicant has identified the law and expressed that it will cooperate with local emergency response as needed, but that the ALJs should have found that such assurance of future cooperation is insufficient and should result in the denial of the permit.⁸¹ As with the foregoing section, there is no dispute here that the law applies and that compliance is necessary. There is no specific allegation that the application or draft permit prevent compliance or any demonstration that that applicant will not be able to comply. Thus, there is no error or abuse of discretion.

Petitioners take issue with applicant's glare study in application exhibit 8, stating that it does not comply with Canajoharie Solar Law § 8(B)(5)(d). Petitioners contest that the study was insufficient to demonstrate compliance because it was limited in its analysis and because it demonstrates that

⁸⁰ See joint appeal at 83.

⁸¹ See joint appeal at 84.

glare will occur at two residences and portions of three roads.⁸² Applicant responds by noting that petitioners fail to take into account mitigation measures that have been achieved elsewhere in the application by providing preventative screening and requiring additional operational and landscaping measures to address any glare that occurs.⁸³ Petitioners have not raised a substantive and significant issue. Although they use applicant's glare analysis to demonstrate glare exists, they fail to account for mitigation both prior to operation and post-construction, and operation intervention measures if a problem is identified.

Petitioners, citing Canajoharie Solar Law § 8(B)(5)(1), contest applicant's ability to comply with a provision requiring the use of self-locking gates based on the lack of a designation on one design drawing in the application.⁸⁴ In its response, applicant demonstrates that the application affirmatively states that the facility will use self-locking gates and that the lack of detail on one design drawing is insufficient to raise a substantive and significant issue where such an affirmation is made. I agree and note that the Draft Permit requires compliance with all local substantive provisions that are not waived regardless of the design drawings. Thus, no new or modified permit condition is necessary.

⁸² See joint appeal at 84-85.

⁸³ See applicant response at 49-50.

⁸⁴ See joint appeal at 85-86.

Petitioners contest applicant's compliance with provisions of the Canajoharie Solar Law addressing screening and visibility and vegetation management.⁸⁵ Applicant contends that its Visual Impact Assessment and associated Landscape Plan provide sufficient detail for ORES Staff to have found compliance exists with the local law provisions. Applicant maintains that the Landscape Plan provides for the use of native perennial vegetation and pollinator friendly plant species and uses non-invasive, native tree and shrub species.⁸⁶ Petitioners fail to provide detail as to why the Landscape Plan is insufficient or otherwise not in compliance. Without such detail, there is no substantive and significant issue presented.

Finally, petitioners contest applicant's compliance with Canajoharie Solar Law § (8) (B) (5) (o) (iii) concerning the avoidance of steep and very steep slopes to the maximum extent practicable. In support of their position, petitioners note that the application defines steep slopes as up to 25% grade and very steep slopes as between 25% and 35% demonstrating noncompliance.⁸⁷ Applicant counters by noting that it avoided approximately 80% of steep and very steep slopes in Canajoharie and provided documentation demonstrating its efforts.⁸⁸ I agree with applicant that with its information in the record,

⁸⁵ Canajoharie Solar Law §§ 8(B) (5) (m) (ii), 8(B) (5) (m) (v), and 8(B) (5) (o) (ii).

⁸⁶ See applicant response at 50.

⁸⁷ See joint appeal at 87.

⁸⁸ See applicant response at 50.

petitioner was required to explain why applicant's efforts were insufficient to achieve the law's maximum extent practicable standard. No error of law or fact exists and there was no abuse of discretion.

F. Process Issues

1. Reasonable Person Standard

Petitioners assert that the ALJs improperly applied the reasonable person standard in determining whether an issue was substantive and significant for the purposes of granting party status and scheduling an adjudicatory hearing.⁸⁹

Petitioners arguments are essentially the same as those raised in the Mill Point Solar I matter. Petitioners claim that the language of 16 NYCRR 1100-8.3(c)(2) defines "substantive" as whether "a reasonable person would require further inquiry."

The Mill Point Solar I decision explained that even were petitioners' position correct, it only applies to a substantive finding on a proposed issue and not to significance. To be an issue requiring adjudication, the resolution of the issue must rely on a factual dispute where credibility and cross-examination can assist in determining the truth of the factual dispute, and the issue must be both substantive and significant such that its resolution could result in the modification of the draft permit and its conditions or the denial of any permit.⁹⁰ However, the Mill Point Solar I decision noted that petitioners argument is not correct in that the ALJ

⁸⁹ See joint appeal at 7-12.

⁹⁰ See Mill Point Solar I, Decision at 17-18.

is charged, not as applying the reasonable person standard to determine whether two sides are disputing an issue, but with acting as a reasonable person who has access to the entire panoply of the Office's rules and regulations and precedent, as well as all of the pleadings, analyses, and other documents and evidence specific to the matter available to them.⁹¹

With respect to petitioners' argument that ORES's application of the reasonable person standard is inconsistent with the legislative intent underlying Article VIII, this argument, including petitioners' reliance on the affirmation of a New York State Senator for the proposition that application of a reasonable person standard "should result in the liberal award of party status and hearings,"⁹² was also addressed in the Mill Point Solar I decision. As discussed in Mill Point Solar I, petitioners' argument and the assertions made in the supporting affirmation are inconsistent with the plain language of Article VIII and its legislative history. As noted in that case:

Public Service Law § 142(4) expressly requires adjudication only "[i]f public comments on a draft permit condition published by ORES pursuant to this section, including comments provided by a municipality or political subdivision or agency thereof, landowners, or members of the public, raise a substantive and significant issue, as defined in regulations adopted pursuant to this article" (emphasis added). Thus, the assertion that the Legislature intended for ORES to award party status and conduct adjudicatory hearings in all contested proceedings ignores the express statutory language limiting adjudicatory hearings to only substantive and significant issues.

⁹¹ See Mill Point Solar I, Decision at 18-19.

⁹² Joint appeal at 11-12.

Petitioners' argument is also inconsistent with the legislative history of Article VIII. Article VIII's predecessor statute, former Executive Law § 94-c, contained the same limitation on adjudication at section 94-c(5)(d) as is contained in Public Service Law § 142(4). Moreover, the current Part 1100 definition of "substantive and significant" issues was originally enacted in ORES's regulations at 19 NYCRR former part 900, and were based on NYSDEC's definition of "substantive and significant" issues in its permit hearing procedures at 6 NYCRR part 624. When the Legislature enacted Article VIII, it both retained the statutory limitation on adjudicable issues, and transferred and continued the Part 900 definition of substantive and significant issues in the new 16 NYCRR part 1100. If the Legislature was of the view that ORES was misapplying statutory mandates for the identification of adjudicable issues under former section 94-c, it would not have continued both the statutory limitation and the regulations implementing the substantive and significant standard when enacting Article VIII. Accordingly, the ALJs' application of the substantive and significant standard does not violate the mandates of the Public Service Law and the CLCPA.⁹³

As to the affirmation of the legislator offered in support of petitioners' arguments, "the affirmation of a single Senator provided after the law was enacted does not properly speak to legislative intent"⁹⁴ and, in any event, the opinions expressed in the affirmation are inconsistent with the legislative language and history discussed above.

In this case, the ALJs reviewed the record, cited to precedent, and provided clear and reasonable rationales to their

⁹³ Mill Point Solar I, Decision at 21-22.

⁹⁴ Id. at 21, citing e.g. Ruth v Elderwood at Amherst, 209 AD3d 1281, 175 NYS3d 811, 822 (4th Dept 2022); Civil Serv. Empls. Assn. v County of Onieda, 78 AD2d 1004, 1005 (4th Dept 1980).

determinations. There was no misapplication of the reasonable person standard in the Issues Ruling.

2. State Constitution Article IX

Petitioners assert that the waiver authority exercised by the ALJs violates Article IX of the New York State Constitution, the "Home Rule" provision. Petitioners argue that because the Home Rule provision vests municipalities with the power to enact local laws governing public health and safety, and land use, the State Legislature may only interfere with a specific municipality's powers in certain circumstances and prohibits the State Legislature itself from overriding a specific municipality's local laws absent special circumstances. After acknowledging that Article IX does allow for some overriding action by the Legislature including delegating to ORES the ability to not require compliance with otherwise preempted local laws in certain narrow circumstances, petitioners assert that ORES effectively violated Article IX of the State Constitution by "not applying" local laws for reasons other than those specified in the regulations and statute.⁹⁵

Initially, I note that, notwithstanding their general statements I just summarized, petitioners fail to cite to or explain in the joint appeal any specific example where the ALJs took such alleged unconstitutional action. Regardless, even assuming that raising such an issue in the administrative appeal of a single permit application context is proper, as both applicant and ORES staff explain in their respective responses,

⁹⁵ Joint appeal at 13-14.

such waiver authority has been upheld by the Courts and does not violate the Home Rule provisions of Article IX.⁹⁶

3. Public Participation

Petitioners raise four specific issues with public notice and participation in this matter: an allegation that applicant was directly involved in a participating landowner's action regarding public comments and activities; the listing of an incorrect address in a press release notice of a public hearing; applicant's and ORES's engagement with the Amish community; and the redaction of record documents.

The relevant facts underlying the allegation against applicant with regard to communications from a participating landowner are contained in the Issues Ruling. In summary, RPMV claimed that applicant attempted to chill and inhibit public comments and requests for discovery through a proxy relying on correspondence from a participating landowner to local community members.⁹⁷ As the ALJs explained, they addressed RPMV's concerns

⁹⁶ See ORES staff response at 9-10; applicant response at 16-17, citing Matter of Citizens for the Hudson Val. v New York State Bd. on Elec. Generation Siting & Env't., 281 AD2d 89, 95-96 (3d Dept 2001); Matter of Coalition of Concerned Citizens v New York State Bd. on Electric Generation Siting & Env't., 199 AD3d 1310 (4th Dept 2021), appeal on constitutional grounds dismissed 37 NY3d 1168 (2022); Matter of Broome County Concerned Residents v New York State Bd. on Electric Generation Siting & Env't., 200 AD3d 26 (3d Dept 2021); Matter of Town of Copake v New York State Off. of Renewable Energy Siting, 216 AD3d 93 (3d Dept 2023), appeal on constitutional grounds dismissed 41 NY3d 990 (2024).

⁹⁷ See Issues Ruling at 17-19.

and encouraged public comment in their opening statement at the public comment hearing held on August 20, 2025, and that in the course of conducting the hearing, they similarly encouraged and accepted without restriction all comments, demonstrating that opportunities for participating were not impaired. The ALJs held that at issue was a private matter between a participating landowner and a member of RPMV, that the ultimate issue was unrelated to this project, and that applicant was not involved.⁹⁸ Nothing in the record suggests otherwise.

As for the press release containing the wrong address, there is no dispute that the press release contained an incorrect address for the public comment hearing. However, the record fully demonstrates that the incorrect address did not materially impact public participation in that over 100 speakers attended the hearing at the correct address⁹⁹ and that other means for submitting comments were available throughout the proceeding and were used, including the submission of 634 public comments on the Office's Document and Matter Management page for this application at the time of drafting this decision. There simply is no demonstration of harm for the ministerial error that occurred.

Petitioners' claims regarding outreach to the Amish community are not new. In the Mill Point Solar I matter, petitioners relied on similar proposed evidence, including the investigation conducted by technical consultant, Steven M. Nolt, Ph.D. (Nolt Report), to claim that applicant's outreach was

⁹⁸ See Issues Ruling at 19-22.

⁹⁹ See Issues Ruling at 22-23.

ineffective and insufficient.¹⁰⁰ As with my decision in the Mill Point Solar I matter, I have reviewed the Issues Ruling and determine that the ALJs correctly concluded that petitioners' claims fail to identify specific 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 that was fatal to any finding of a substantive and significant factual issue.¹⁰¹ Furthermore, nothing has been raised that contests applicant's assertion that it has fully complied with the public participation requirements of 16 NYCRR 1100-1.3, both in general and to the Amish specifically, including the distribution of notices, providing hard copies of the application at local repositories, establishment of a project website, and multiple local community meetings, including a question and answer session to solicit feedback.¹⁰²

Finally, the redaction of documents is not an issue that impacts public participation. Redactions of documents occur in administrative proceedings through the application of various laws and regulations. The amount of redacted material is based on the amount of permissible confidential material provided. However, there are various means for both parties and the public to obtain rulings on the legitimacy of such

¹⁰⁰ See Mill Point Solar I, Decisions at 46-47.

¹⁰¹ See Mill Point Solar I, Decision at 47-48; Issues Ruling at 27-29.

¹⁰² See applicant response at 20-21.

redactions, as well as appeals that each group may take in the event of an adverse determination. As explained in the Issues Ruling, "the proper venue for determining the confidentiality of information to protect the rights of parties and potential parties is through the protective order's process."¹⁰³ Members of the public may challenge confidentiality through the Freedom of Information Law (FOIL).¹⁰⁴ No error or abuse occurred in the Issues Ruling.

G. Amish Community Impacts

Petitioners' claims as to the potential impacts to the local Amish community are virtually identical in this matter to those raised about the very same Amish community in the Mill Point Solar I matter also located in Montgomery County. As the ALJs indicated, the ultimate issue presented is whether "the record contains sufficient evidence for a finding that the draft and final siting permits avoid, minimize, or mitigate to the maximum extent practicable adverse environmental impacts of the project on the Amish community."¹⁰⁵ Here, as in Mill Point Solar I, petitioners primarily rely on the Nolt Report and its conclusion that the project has a high likelihood of profoundly altering the rural way of life that drew the Amish to the area which could cause outward migration of community members.¹⁰⁶

¹⁰³ Issues Ruling at 33.

¹⁰⁴ Public Officers Law article 6.

¹⁰⁵ Issues Ruling at 89.

¹⁰⁶ See Issues Ruling at 89-90; Mill Point Solar I, Decision at 46-47.

Here, after considering petitioners' submissions, the ALJs determined that the Nolt Report's findings do not establish 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. The ALJs observe that the report's main conclusions are that the project poses a serious threat to the Mohawk Valley Amish settlement, profoundly alters rural life that drew the Amish to the area, provides safety hazards, and threatens future viability of the Amish community by reducing available agricultural land. The ALJs determined that such general criticisms and concerns are insufficient to raise an issue for adjudication in light of applicant's efforts to identify and avoid, minimize or mitigate any potential adverse environmental impacts to the Amish community.¹⁰⁷ The ALJs determination is consistent with the outcome in the Mill Point Solar I matter and I see no reason to depart from my decision there, relying on the same reasoning.¹⁰⁸

H. Birds

Petitioners challenge the Issues Ruling's outcome that no substantive and significant issues were presented by RPMV with regard to impacts to birds. Petitioners base their claim on the report of Ecologist Kenneth Shawn Smallwood, Ph.D., (Smallwood Report). Petitioners assert that the Smallwood

¹⁰⁷ See Issues Ruling at 95-96.

¹⁰⁸ See Mill Point Solar I, Decision at 46-48.

Report demonstrates that the application contains: (a) an incomplete characterization of the wildlife community and an inaccurate characterization of the affected environment; (b) a grossly inaccurate prediction of collision mortality; (c) a scientifically indefensible prediction of the effects of the project on grassland bird habitat; and (d) a net conservation benefit plan that will not provide any conservation benefit.¹⁰⁹ Petitioners argue that the Smallwood Report is sufficient on its face to create a substantive and significant issue because it is provided by an expert, identifies numerous defects or omissions in the application, and runs counter to both applicant's and ORES's assertions.¹¹⁰ Petitioners' challenge is similar to issues raised surrounding a similar report by Dr. Smallwood in the Mill Point Solar I matter.¹¹¹

Here, petitioners assert that the issues raised are substantive presenting scientific evidence that the permit fails to quantify, mitigate, or avoid impacts to avian species, and are significant because the Smallwood Report counters assertions in the application that, if accepted, could result in the denial or modification of the Draft Permit.¹¹² However, petitioners argument misapplies the substantive and significant standard and ignores the ORES process and regulations for the scope and performance of studies. As explained in the Mill Point Solar I

¹⁰⁹ Joint appeal at 41.

¹¹⁰ See joint appeal at 42.

¹¹¹ See Mill Point Solar I, Decision at 42-46.

¹¹² See joint appeal at 42.

decision, charges of errors of omissions must go beyond expert review and criticism of an ORES and NYSDEC approved methodology and provide concrete evidence of an unanticipated site-specific condition not identified in applicant's studies.¹¹³ As observed by applicant, the Smallwood report provides a difference in professional judgment consisting of methodological disagreements rather than facts observed at the project site demonstrating that the ORES and NYSDEC approved methodology was inadequate because of the omission of unique, site-specific conditions.¹¹⁴ ORES precedent is clear that competing expert opinions without a demonstration of such omitted or overlooked site-specific information does not create an adjudicable issue.¹¹⁵ No error or abuse occurred here.

I. Water Resources

As an initial matter, petitioners claim that the Issues Ruling fails to protect water resources on the property of Claude Pietrowicz. In its issues statement, RPMV relied on a public comment whereby Claude Pietrowicz indicated that a pond and well located on Pietrowicz' property were used as a primary source of drinking water for humans and livestock, and that it is fed by surface runoff and so likely to be adversely impacted by the installation of solar panels and other facility infrastructure.¹¹⁶ RPMV challenged the Draft Permit's use of

¹¹³ See Mill Point Solar I, Decision at 45-46.

¹¹⁴ See applicant response at 24-25.

¹¹⁵ See Mill Point Solar I, Decision at 45-46.

¹¹⁶ See Issues Ruling at 63.

uniform standard condition 4.4(n) on the basis that it was inadequate to protect the Pietrowicz water resources. RPMV urged the inclusion of a site-specific condition that prohibited any disruption to the water supply and made applicant responsible for any reduction in the quantity or quality of the water on the Pietrowicz property.¹¹⁷

The ALJs ruled that no substantive and significant issue existed and declined to require a site-specific condition. The ALJs determined that the application materials demonstrated that the facility was in compliance with regulations regarding the protection of drinking water and that the uniform standard conditions in the Draft Permit were sufficient, including the requirement for applicant to comply with a Complaint Management Plan to be included in applicant's pre-construction filings and to address any complaints by residents pertaining to their well water due to the facility's construction or operation.¹¹⁸

In the joint appeal, petitioners claim that the result of the Issues Ruling is that "it is perfectly acceptable for a solar facility to destroy an adjacent non-participating property owner's water sources as long as the well is more than 100-feet from the facility, and that the adverse impact is consistent with Uniform Standard Conditions in the permit."¹¹⁹ Such characterization is incorrect.

¹¹⁷ See Issues Ruling at 63-64.

¹¹⁸ See Issues Ruling at 66-67.

¹¹⁹ Joint appeal at 52.

As applicant explains in its response, the Issues Ruling not only finds that there are no water wells located within 100 feet but that any ground water impacts are addressed through the Department of Environmental Conservation issued State Pollutant Discharge Elimination System (SPDES) General Permit and the Draft Permit's stormwater control measures for construction and operation of the facility.¹²⁰ Applicant also argues that petitioners complaint against the Draft Permit's uniform standard conditions constitutes an improper collateral attack against the Office's regulations, which have been upheld by the Appellate Division, Third Department.¹²¹

I agree that no error or abuse occurred in the Issues Ruling. As noted by ORES staff, the application exhibits demonstrate that no impacts to downstream drinking water are anticipated and there will be no grading changes that will affect water flow for the Pietrowicz property.¹²² Moreover, I agree with the ALJs' statement that the Pietrowicz public comment and attached photographs "regarding a pond and single well used as drinking water by humans and livestock fed by surface runoff stormwater does not present a substantive and significant issue requiring adjudication"¹²³ inasmuch as they do not present facts premised on an adequate foundation but amount

¹²⁰ See applicant response at 26.

¹²¹ See Applicant response at 27-28.

¹²² See ORES Staff response at 18.

¹²³ Issues Ruling at 68.

to speculation from a lay person as opposed to an expert technical analysis.

For similar reasons, contrary to petitioners' further water concerns, I conclude that the Draft Permit adequately avoids, minimizes, or mitigates adverse stormwater runoff impacts.¹²⁴ Based on the affirmation of petitioner's stormwater consultant Andrew Millspaugh, P.E., petitioners assert that the Draft Permit fails to include any conditions to address stormwater, soil erosion, and the other hydrogeologic concerns.¹²⁵ As explained in the Mill Point Solar I decision, the Office's regulations require the application to include a draft Stormwater Pollution Prevention Plan (SWPPP) that must be updated in the compliance phase before construction begins and that applicant will have to obtain coverage under the SPDES general permit that governs stormwater discharges from construction activities.¹²⁶ As such, the application and draft permit conditions contain substantial and adequate hydrological protections. No error of fact or law or abuse of discretion occurred in the Issues Ruling.

J. Visual and Economic Impacts

Concerning visual impacts, petitioners argue that because the County's visual impact assessment advances the conclusion that the facility will result in visual impacts incompatible and inconsistent with the local character of the

¹²⁴ See joint appeal at 75-77.

¹²⁵ See joint appeal at 76-77.

¹²⁶ See Mill Point Solar I, Decision at 55.

area that petitioners have raised substantive and significant issues requiring an adjudicatory hearing.¹²⁷ The joint appeal asserts that the facility will be "highly visible from the Town's scenic roadways and the Canajoharie school district's athletic fields" and includes a simulation photograph that purports to show the viewshed from the school's athletic fields with applicant's screening.¹²⁸ Petitioners state that according to application exhibits, panels are to be located 40 to 50 feet from highly traveled roads and only 20 feet from adjoining property lines impacting the agrarian community character.¹²⁹

ORES staff responds that the analysis and conclusions in petitioners visual impact assessment are flawed and inconsistent with the intent of the BLM Resource Management System used by petitioners, and that petitioners analysis also omitted key parts of the ORES review process.¹³⁰ Applicant echoes ORES staff's concerns and further notes that petitioners' BLM Resource Management System is entirely different than the visual impact analysis required by the Office's regulations.¹³¹ Applicant maintains that the ALJs' ruling of no substantive and significant issue is correct because petitioners failed to identify any error or omission in applicant's ORES-approved visual impact assessment, which is the correct standard to apply

¹²⁷ See joint appeal at 66-67.

¹²⁸ See joint appeal at 67-68.

¹²⁹ See joint appeal at 68.

¹³⁰ See ORES staff response at 15.

¹³¹ See applicant response at 40-41.

rather than whether petitioners submitted a study that differs in methodology and conclusions.¹³²

I agree and find no error of fact or law or abuse of discretion occurred. To create a substantive and significant issue, the proffered evidence must go beyond reaching a different conclusion or an alternative methodology. Rather it must show that applicant's ORES-approved visual impact analysis was technically deficient or demonstrate that applicant used incorrect inputs, omitted key resources, or misrepresented the visibility of the facility.¹³³

Petitioners also challenge the Issues Ruling with regard to its treatment of economic impacts. Petitioners assert that the Issues Ruling dismisses an analysis of economic impacts despite an analysis of economic impacts being required by the CIL, which the ALJs have determined applies to the project. Petitioners state that because the CIL applies, economic impacts must be addressed.¹³⁴

As ORES staff points out, however, the Issues Ruling does not simply dismiss economic impacts. Rather what the Issues Ruling correctly states is that the Office's regulations require an economic impacts analysis, which applicant supplied in application exhibits 15 and 18.¹³⁵ As applicant explains, the

¹³² See applicant response at 40-41.

¹³³ See Mill Point Solar I, Decision at 29.

¹³⁴ See joint appeal at 54.

¹³⁵ See ORES staff response at 21-22 (citing Issues Ruling at 88).

findings on which petitioners relied in proposing substantive and significant issues on economic impacts go well beyond what is required by the Office's regulations, including discussions of real estate, taxes, tourism, and agritourism. Applicant also notes that, in any event, petitioners' analysis also can be seen to conclude that the project will produce economic outcomes greater than proposed hypothetical alternatives.¹³⁶

I agree that no substantive and significant issue concerning economic impacts was raised by petitioners. For the issues determination phase, petitioners relied on a report prepared by the MRB Group (MRB report).¹³⁷ However, the MRB report includes topics beyond the scope of a proper analysis under Article VIII and the Office's regulations which, notwithstanding the CIL, define the relevant economic analysis required for an application.

A similar MRB report and analysis were performed in the Mill Point Solar I matter. In my decision there, I observed that the CIL contains no definition and the ALJs applied a definition of economic impacts to the CIL for what would be required under the State Environmental Quality Review Act (SEQRA) in Article 8 of the Environmental Conservation Law. SEQRA requires an environmental impact analysis to economic development which, as the Mill Point Solar I decision explains is covered by application exhibits 15 and 18. Because the MRB report provides analysis and conclusions beyond the scope of the regulations, rather than demonstrating deficiencies in the

¹³⁶ See applicant response at 32.

¹³⁷ See Issues Ruling at 83-84.

application exhibits for the relevant economic development analysis, no substantive and significant issues were raised by petitioners.¹³⁸ No error of law or fact or abuse of discretion occurred.

K. Land Rights

Petitioners challenge the Issue Ruling determination that no adjudicable issue exists based on an allegation that the project would impact two Montgomery County property interests, an option and a recorded easement, and that any authorization to use the land requires the County legislature's approval.¹³⁹ I agree that no substantive and significant issue exists on this allegation. As applicant states, Article VIII expressly provides that issuance of a siting permit does not convey any rights or interests in real property.¹⁴⁰ Irrespective of being provided an Article VIII permit, applicant will have to obtain any necessary property interests required for the construction and operation of the facility. Applicant has satisfied its Article VIII burden of demonstrating sufficiently held interests by providing executed lease and easement agreements consistent with the Office's requirements. Any additional discussion of potential property interests is speculative and insufficient to raise an issue for adjudication.

¹³⁸ See Mill Point Solar I, Decision at 32-34.

¹³⁹ See joint appeal at 56.

¹⁴⁰ See applicant response at 31.

L. Local Road Impacts

Relying on the affirmation of Scott Gallerie of GSM Solutions Group, LLC, and Road Impact Statement (RIS), petitioners claim that they uncovered an omission in the application materials and draft siting permit sufficient to create an adjudicable issue. Petitioners assert that the RIS concludes that construction of the project will result in accelerated deterioration of roadways and will cause damage from heavy axle loading during non-traditional construction seasons. Petitioners note that such damage may result in unusability of the roads and create operational issues for the Town's Highway Department.¹⁴¹ Petitioners support a condition that the applicant "adhere to seasonal construction limitations with respect to use of the Town's road network in order to avoid damage to roads during the spring thaw."¹⁴²

The Issues Ruling notes that the draft siting permit requires as a pre-construction compliance filing under 16 NYCRR 1100-10.2 a Traffic Control Plan. The Traffic Control Plan is designed to ensure traffic safety and minimize road use delays during construction. The Traffic Control Plan also requires applicant to provide all necessary permits and road use and restoration agreements.¹⁴³ As explained by the ALJs, petitioners have not established any omissions, errors or defective information in the application or draft siting permit in their

¹⁴¹ See joint appeal at 71-72.

¹⁴² Joint appeal at 71.

¹⁴³ See Issues Ruling at 79.

submissions. I agree that the Draft Permit conditions, particularly concerning the submission of road use agreements, is sufficiently protective of petitioners interests.¹⁴⁴ No error of fact or law occurred, nor any abuse of discretion.

M. Party Status

Given my determination herein that petitioners raised no substantive and significant issues, the ALJs properly denied full party status as there is no need for an adjudicatory hearing.

VI. Conclusion and Findings

In sum, petitioners identify no legal or factual error, or abuse of discretion in the Issues Ruling. Accordingly, the Issues Ruling insofar as appealed from is affirmed.

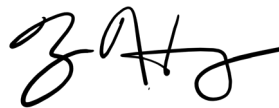
Accordingly, based upon the foregoing and the record of this proceeding and the issues ruling of Administrative Law Judges Anthony Belsito, John L. Favreau, Henry James Joseph, and Dawn MacKillop-Soller together with the comments made herein and attached final siting permit, I find that the proposed facility, together with applicable provisions of the uniform standards and conditions, necessary site-specific conditions, and applicable compliance filings:

- (1) complies with Article VIII and applicable provisions of the Office's regulations at 16 NYCRR part 1100;

¹⁴⁴ See Mill Point Solar I, Decision at 34-35.

- (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 by producing up to 300 MW of renewable solar energy.

In making the required findings, I considered the CLCPA targets and environmental benefits of the proposed facility. Accordingly, Flat Creek Solar NY, LLC's, application, as conditioned by the attached final siting permit, is granted.



Zeryai Hagos
Executive Director
Office of Renewable Energy Siting
and Electric Transmission
Department of Public Service

Dated: April 3, 2026
Albany, New York

cc: Party List - ORES DMM Matter No. 23-02992