

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 22, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 17-F-0617 - Application of Hecate Energy Albany 1 LLC
 and Hecate Energy Albany 2 LLC for a
 Certificate of Environmental Compatibility
 and Public Need Pursuant to Article 10 of
 the Public Service Law for Construction of a
 Solar Electric Generating Facility Located
 in the Town of Coeymans, Albany County.

ORDER APPROVING COMPLIANCE FILING 50
SUBJECT TO CONDITIONS

(Issued and Effective June 26, 2023)

BY THE COMMISSION:

INTRODUCTION

On January 7, 2021, the New York State Board on
Electric Generation Siting and the Environment (Siting Board)
granted a Certificate of Environmental Compatibility and Public

Need, With Conditions (Certificate Order)¹ to Hecate Albany 1 LLC and Hecate Energy Albany 2 LLC (Hecate Albany or Certificate Holder) pursuant to Public Service Law (PSL) §168. The Certificate Order authorizes Hecate Albany to construct and operate a utility-scale solar electric generating facility (the Project) in the Town of Coeymans, Albany County, New York. The Certificate Order contains Certificate Conditions that require several compliance filings by the Certificate Holder, including conditions for construction and operational impact mitigation, to be approved by the Siting Board, or the Public Service Commission (Commission) once the Siting Board's jurisdiction has ceased.²

As detailed in this Order, the Certificate Holder submitted Compliance Filing 50 on March 4, 2022, for the purpose of construction. However, because the Certificate Order only requires filing and approval of Compliance Filing 50 for the operational phase of the Project, no approval or other action was taken at the time of that filing. Subsequently, the

¹ Case 17-F-0617, Application of Hecate Energy Albany 1 LLC and Hecate Energy Albany 2 LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility Located in the Town of Coeymans, Albany County, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued January 7, 2021).

² Under 16 NYCRR §1002.2, "[t]he applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

Certificate Holder supplemented Compliance Filing 50 on May 22, 2023, for the Operation Phase.

Through this Order, the Commission approves Compliance Filing 50 for the Operation Phase.

BACKGROUND

Condition 50

Certificate Condition 50 requires the Certificate Holder to submit the following:

Prior to the commercial operation date, the Certificate Holders shall file with the Secretary, updated Operation and Maintenance Plan(s) for the Facility. The plan(s) shall demonstrate conformance with manufacturer's required maintenance schedules, the SWPPP, SPCC, and good utility practice.

PUBLIC NOTICE AND COMMENT

As detailed in this Order, the Certificate Holder submitted Compliance Filing 50 on March 4, 2022, for the purpose of construction, and supplemented Compliance Filing 50 on May 22, 2023, for the Operation Phase. Pursuant to 16 NYCRR §1002.2(d), "[a]ny interested person or party may file comments regarding any compliance filing within 21 days of the filing and service of such compliance filing done in accordance with subdivision (c) of this section." No public comments regarding this Compliance Filing were filed during the required 21-day comment period or thereafter.

LEGAL AUTHORITY

Under PSL §168(7), "[f]ollowing any rehearing and any judicial review of the Board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent Board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate."

For purposes of the subject compliance filings described here, the Siting Board's jurisdiction has ceased, as such, pursuant to 16 NYCRR §1002.2(f)³ the Commission has the jurisdiction to approve these compliance filings.⁴

Public Service Law §168(5) includes a delegation of authority to the Commission for compliance administration. That section states "[t]he department [of Public Service] or the [Public Service] Commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the [Siting] board's order [Order Granting Certificate of Environmental Compatibility and Public Need]."

The Siting Board's regulation at 16 NYCRR §1002(1), establishes procedures and requirements for a certificate holder to comply with the "terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the certificate." The regulation at 16 NYCRR §1002.2 describes the procedures that a certificate holder must comply with, including filing requirements and notice procedures, and outlines the jurisdiction of the Siting Board and the Commission in approving compliance filings. The regulation at 16 NYCRR §1002.2(b) establishes that a phased approach to compliance filings can occur so long as the "applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the

³ "Compliance filings will not be effective until approved by the Board or by the Commission after the Board's jurisdiction has ceased."

⁴ Specifically, PSL §168(7) states that "[f]ollowing any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate."

Board, or by the Commission after the Board's jurisdiction has ceased."

Pursuant to 16 NYCRR §1002.3 a certificate holder is required to submit "(a) a description of and citation to the requirement in a certificate or an order for which compliance is to be demonstrated; (b) a description of how the applicant will comply with the requirements of the certificate or order; and (c) final maps, plans, diagrams, drawings, studies, reports or other documents demonstrating compliance." Under 16 NYCRR §1002.2(g), the Siting Board, or the Commission if the Siting Board's jurisdiction has ceased, may approve compliance filings subject to specified terms, conditions, limitations, or modifications. Finally, pursuant to 16 NYCRR §1002.2(i), the standard of review for compliance filings shall be whether the "compliance filing reasonably assures compliance with the Certificate."

DISCUSSION

Condition 50

Pursuant to Certificate Condition 50, the Certificate Holder's Compliance Filing 50, as filed on March 4, 2022, and supplemented on May 22, 2023, includes the Updated Operation and Maintenance (O&M) Plan as required for the Operation Phase of the Project. Department of Public Service (DPS) Staff reviewed the Updated O&M Plan and determined that the plan includes all the information required by Certificate Condition 50 of the Certificate Order for the Operation Phase.

The Certificate Holder further reported to DPS Staff that the vegetative management of the Facility will be completed using both mechanical and grazing methods. DPS, Department of Environmental Conservation (DEC), and Department of Agriculture and Markets (AGM) Staff have no objection to this proposal.

However, DPS Staff have requested that the Certificate Holder relay this proposal to the Army Corp of Engineers (ACOE) and provide DPS Staff with any necessary approvals or letter of no objection regarding this matter.

Accordingly, the Commission finds that the Updated O&M Plan, as filed and supplemented, reasonably assures compliance with Certificate Condition 50 of the Certificate Order for the Operation Phase; however, as explained above, the Certificate Holder shall ensure that the ACOE is notified of the proposal to utilize grazing as a vegetative management method and provide DPS Staff with any necessary approvals or letter of no objection regarding this matter prior to the use of grazing within the Facility.

CONCLUSION

The Commission finds that Compliance Filing 50, as filed and supplemented, reasonably assures compliance with the corresponding Certificate Condition in the Certificate Order, and is approved, for the purposes detailed below.

The Commission orders:

1. The Updated Operation and Maintenance Plan filed by Hecate Albany 1 LLC and Hecate Energy Albany 2 LLC (Hecate Albany) on March 4, 2022, and supplemented on May 22, 2023, pursuant to Certificate Condition 50, is approved for the Operation Phase.

2. Hecate Albany shall provide Department of Public Service Staff with any necessary approvals or letter of no objection from the Army Corp of Engineers prior to use of grazing within the Facility.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary