



July 14, 2025

Via Electronic Filing

Hon. Henry James Joseph, ALJ

Hon. John Favreau, ALJ

New York State Office of Renewable Energy Siting and Electric Transmission

Harriman Campus, Building 9, 4th Floor

1220 Washington Avenue

Albany, NY 12226

Re: Matter No. 23-02990 - Application of Fort Covington Solar, LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 250-Megawatt (MW) Solar Energy Facility Located in the Town of Fort Covington, Franklin County.

Dear Judge Joseph and Judge Favreau:

Pursuant to the Combined Notice of Availability of Draft Permit Conditions, Public Comment Period and Public Comment Hearing, and Commencement of Issues Determination Procedure issued April 14, 2025 (Combined Notice), Staff of the Office of Renewable Energy Siting and Electric Transmission (ORES or Office) respectfully submits this letter brief in the above-captioned matter.

I. BACKGROUND: PERMIT APPLICATION AND DRAFT PERMIT

Pursuant to Article VIII of the Public Service Law (PSL) and its implementing regulations at 16 NYCRR Part 1100, Fort Covington Solar, LLC (Fort Covington Solar or Applicant) filed a permit application with the Office on July 16, 2024, requesting a permit for the siting, design, construction, operation, maintenance, and decommissioning of a 250 megawatt (MW) solar facility (Facility or Solar Facility) located in the Town of Fort Covington, Franklin County (Application).¹ A Notice of Incomplete Application (NOIA) was issued on September 16, 2024.² The Applicant supplemented the Application in response to the NOIA.³ The Office found the Application complete on February 11, 2025.⁴

¹ Records 29 - 89.

² Record 100, Notice of Incomplete Application.

³ Records 101-102, 106 - 123, 126, 128 - 129.

⁴ Record 130, Notice of Complete Application.

On April 14, 2025, the Office issued a Draft Permit for a Major Renewable Energy Facility (Draft Permit).⁵ The Draft Permit was posted for public comment on the Office’s official public website at <https://dps.ny.gov/ores-permit-applications>, under Case Number 23-02990. Also on April 14, 2025, the assigned Administrative Law Judges (ALJs) issued the Combined Notice, which set June 23, 2025, as the date for submission of all petitions for party status, municipal statements of compliance with local laws and regulations, and the Applicant’s statement of issues.⁶ The Combined Notice set the date for a public comment hearing on the Draft Permit for June 17, 2025, and established a public comment period extending through June 20, 2025.⁷

II. STAFF’S FINDINGS REGARDING LOCAL LAW COMPLIANCE AND WAIVERS

PSL Article VIII consolidates the permitting of major renewable energy facilities into a single state entity – ORES. Pursuant to PSL § 144(2), local procedural requirements for the “development, design, construction, operation, or decommissioning” of such facilities are preempted unless expressly authorized under the PSL or ORES regulations. Further, PSL § 142(5) provides that a final siting permit may only be issued if ORES makes a finding that the proposed project, together with any applicable uniform standards and conditions and site-specific conditions, would comply with applicable laws and regulations. In making this determination as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed facility.⁸

The Applicant represents, and Staff agrees, that the Town of Fort Covington (the Town) does not have local substantive laws, codes, or ordinances applicable to the Facility⁹ nor has the Town established any zoning districts and it does not have a zoning code.¹⁰ Thus, the Applicant did not submit any local law waiver requests.¹¹

Staff also considered that the proposed Facility will contribute meaningfully to the achievement of the CLCPA targets by producing up to 250 MW of renewable solar energy directly to New York’s energy market; reduce greenhouse gas emissions (GHG) by over 130,130 U.S. tons of carbon dioxide per year while at the same time powering approximately 64,000 homes; and create job opportunities, support economic growth, and protect public health, safety, and the environment.¹²

⁵ Record 131, Draft Permit.

⁶ Record 132, Combined Notice of Availability of Draft Permit Conditions, Public Comment Period and Public Comment Hearing, and Commencement of Issues Determination Procedure (Combined Notice) at 3; see 16 NYCRR §§ 1100-8.2, 1100-8.4(b), 1100-8.4(d).

⁷ Record 132, Combined Notice at 2; see 16 NYCRR §§ 1100-8.29(d)(1), 1100-8.3(a) & (b)

⁸ PSL § 142(5); see *also* 16 NYCRR §§ 1100-2.25, 6.3(a).

⁹ Record 77, Exhibit 24: Local Laws and Ordinances.

¹⁰ Record 138, Statement of Compliance with Local Laws (Statement of Compliance); Record 77, Exhibit 24: Local Laws and Ordinances at 2.

¹¹ See Record 77, Exhibit 24: Local Laws and Ordinances.

¹² Record 69, Exhibit 6: Public Health, Safety and Security at 2; Record 131, Draft Permit at 3-4.

III. TOWN'S STATEMENT OF COMPLIANCE AND APPLICANT'S LETTER

On June 23, 2025, the Town timely filed a Statement of Compliance with local laws which found that "the Project currently complies with applicable Local laws, regulations, and ordinances."¹³ The Town did not file a petition for party status.

Also on June 23, 2025, the Applicant timely filed a letter in lieu of a Statement of Issues indicating no substantive or significant issues have been identified requiring litigation, and that the terms of the Draft Permit are acceptable.¹⁴

No issues have been raised for adjudication.

IV. CONCLUSION

Based on the foregoing, Staff finds that no substantive and significant issues have been raised requiring adjudication under 16 NYCRR § 1100-8.3(c). Please be advised that in their Letter in Lieu of Issues Statement, Applicant raised the possibility of entering into a bilateral stipulation with the Office to modify Site Specific Condition 5(d), which would allow for the option for compliance through either the submission of an Agricultural Co-Utilization Plan or the payment of an agricultural mitigation fee to another state or Federal agency or authority.¹⁵ Although no such stipulation has been submitted by the Applicant to date, the Office will consider proposals that are consistent with ORES precedent.

Staff finds that the proposed Facility, together with the uniform standards and conditions, site specific conditions, and required compliance filings in the Draft Permit, would comply with PSL Article VIII, the Office's regulations at 16 NYCRR part 1100, and will avoid, minimize and mitigate, to the maximum extent practicable, potential adverse environmental impacts of the Facility. Accordingly, Staff recommends issuance of a final siting permit.

Respectfully submitted,



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New York State Office of Renewable
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¹³ Record 138, Statement of Compliance at 3.

¹⁴ Record 139, Applicant Letter in Lieu of Issues Statement (Applicant Letter).

¹⁵ Record 139, Applicant Letter at 2