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

ORES Permit Application Number 23-00046 – Application of FOOTHILLS SOLAR, LLC, for a Siting Permit for a Major Renewable Energy Facility Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 40-Megawatt (MW) Solar Energy Facility Located in the Town of Mayfield and Village of Mayfield, Fulton County.

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

(Issued December 26, 2024)

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

I. BACKGROUND AND PROCEEDINGS

On December 6, 2023, Foothills Solar, LLC (applicant), applied pursuant to Executive Law former § 94-c[1] to the former New

---

[1] Effective April 20, 2024, the Renewable Action through Project Interconnection and Deployment (RAPID) Act (L 2024, ch 58, part O) repealed Executive Law § 94-c, repealed the current Public Service Law article VIII, and enacted a new Public Service Law article VIII entitled "Siting of Renewable Energy and Electric Transmission" (Article VIII) (see RAPID Act §§ 2, 11). The RAPID Act also retitled the former Office of Renewable Energy Siting as the Office of Renewable Energy and Electric Transmission (ORES or Office), transferred the Office from the Department of State to the Department of

York State Office of Renewable Energy Siting, now the Office of Renewable Energy Siting and Electric Transmission (Office or ORES), for a permit to construct and operate a 40-megawatt (MW) solar energy facility (facility or project) in the Town of Mayfield (Town or Mayfield) and Village of Mayfield, Fulton County. The facility is also located within the boundaries of the Adirondack Park. The solar energy facility is proposed to include the following components: rows of photovoltaic panels, as well as associated inverters, electric collection lines, a point of interconnection (POI), an on-site collection substation, access roads, and fence lines. The facility would interconnect via a new

---

Public Service, continuing all existing functions, powers, duties, and obligations of the Office under Executive Law former § 94-c, and adding new functions, powers, duties, and obligations related to major electric transmission siting (see id. §§ 3, 4). Further, all applications pending before ORES on the effective date of the Act are considered and treated as applications filed pursuant to the RAPID Act as of the date of application filing (see id. § 4). Accordingly, the caption is hereby amended to reflect these changes.

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

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

substation to the existing National Grid-owned Mayfield to Northville 69-kilovolt (kV) transmission line #8.[2]

After ORES staff issued a notice of incomplete application on February 5, 2024, applicant supplemented its application on May 3, 2024, and June 20, 2024. On June 25, 2024, 2024, ORES staff issued a notice of complete application pursuant to NYCRR former 900-4.1(g).[3]

On August 26, 2024, the Office issued a draft siting permit for the facility, which was posted for public comment on ORES's website.[4] On that same date, the ORES Office of Hearings issued and posted on the ORES Permit Application Portal (ORES Portal) 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.[5]

The combined notice advised that a public comment hearing on the draft siting permit would be held at 6:00 p.m. on October 29,

---

[2] See ORES Portal Item No. 9, application exhibit 2: Overview and Public Involvement at 2-3.

[3] See ORES Portal Item No. 28, notice of incomplete application, Feb. 5, 2024; ORES Portal Item Nos. 34-38, applicant responses to notice of incomplete application, May 3, 2024, and June 20, 2024; ORES Portal Item No. 39, notice of complete application, June 25, 2024.

[4] See ORES Portal Item No. 41, draft siting permit.

[5] See 16 NYCRR 1100-8.2(d); ORES Portal Item No. 43, combined notice of availability of draft permit conditions, public comment period and public comment hearing, and commencement of issues determination procedure.

2024, at the Paul Nigra Center for Creative Arts, 2736 NY 30, Gloversville, NY 12078, with written comments accepted until November 1, 2024. Pursuant to the combined notice, petitions for party status to participate in the issues determination procedure and, if necessary, any adjudicatory hearing, were to be filed on or before November 4, 2024. In addition, the combined notice established November 4, 2024, 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 set November 25, 2024, as the deadline for responses by applicant and ORES staff.[6]

Applicant published the combined notice in the Daily Gazette on September 20, 2024, the Recorder on September 20, 2024, and the Leader Herald on September 20, 2024. Applicant served the combined notice on the party list, and persons and entities required to receive copies of the application pursuant to 16 NYCRR 1100-1.6(a) or notice of the application pursuant to 16 NYCRR 1100-1.6(c).[7]

II. Public Comment Hearing; Summary of Public Comments

In accordance with the combined notice, the public comment hearing convened as scheduled on Tuesday, October 29, 2024, at 6:00 p.m., at the Paul Nigra Center for Creative Arts,

---

[6] See 16 NYCRR 1100-8.2(d)(3), 1100-8.4(d), and 1100-8.4(b).

[7] See ORES Portal Item No. 46, affidavits of service and publication.

2736 NY 30, Gloversville, NY 12078. Approximately twenty-five (25) individuals were in attendance, including staff from ORES. Five individuals provided comments in support of the project. Commenters in support emphasized the positive effects of supporting local dairy farmers through financial payments, while providing benefits from agrivoltaics (sheep, pollinators, and low-growth vegetables), and the continuation of providing recreational and tourism opportunities (snowmobile trails) on lower quality soil without effecting the watershed. Commenters asserted that this project should be the example of how to integrate dual use solar and farming viability for utility scale solar facilities. There were no oral comments opposing the project.[8]

By the close of the public comment period on November 1, 2024, ORES received a total of fifty-two (52) written comments from forty-eight (48) individuals or entities posted to the project's ORES Portal site or sent by email to the ORES hearings or the ORES general mailboxes, via U.S. mail, or by other delivery service. Comments were submitted by the Adirondack Park Agency (APA), Fulton County Planning Board and Fulton County Regional Chamber of Commerce (Chamber of Commerce), Adirondack Council, New Yorkers for Clean Power, and the Town of Mayfield, as well as approximately forty-one (41) individuals. The APA requested that the clearing of forestland and placement of infrastructure on prime agricultural soils and soils of statewide importance (mineral soil groups 1-4) be avoided, and that further information be provided concerning visibility impacts, waterway impacts, glare

---

[8] See ORES Portal Item No. 47, public comment hearing transcript.

analysis, and proper maintenance of grasslands to curb erosion. The Fulton County Planning Board commented on the need for emergency access to the facility, project visual impacts, and the need to fully screen the facilities from the viewshed of the Great Sacandaga Lake. Likewise, the Chamber of Commerce noted the importance of the project's infrastructure to not be visible from the Great Sacandaga Lake. The Adirondack Council submitted a 2019 board memorandum detailing the Council's conditional support of renewable energy projects within the Adirondack Park. New Yorkers for Clean Energy supported the project while noting applicant's willingness to modify the project to address stakeholder concerns and further noting that approximately 1-3% of "farmland and open land" would be impacted with full statewide solar, wind and hydropower generation build out.

Individual commenters similarly expressed the importance of negating the visual impacts of the project from the Great Sacandaga Lake, as well as the potential negative impacts on wildlife, forestland, drinking well water, waterways, and possible PFAS chemical pollution. Additionally, comments requested that the APA guidelines and regulations be followed, expressed concerns with decommissioning, and requested that alternatives to large scale solar facilities in rural and agricultural areas be evaluated and considered.

The Town of Mayfield submitted comments separately from its petition for party status and statement of compliance with local laws and regulations noting that it and applicant have not had substantive discussions concerning a payment in lieu of taxes (PILOT) agreement or a host community agreement (HCA). Further, the Town stated that: best management practices for construction

noise should be incorporated in the draft permit; it continues to work with applicant to develop an agreeable landscaping mitigation planting plan to satisfactorily screen the project from the Great Sacandaga Lake; vehicle traffic impacts have not been satisfactorily included in applicant's traffic control plan and that substantive discussions resulting in a road use agreement should begin; it has concerns with the proposed decommissioning and site restoration plan; has questions related to the project's energy generation calculation; and, expresses concern and seeks clarifications of several application exhibits.[9]

Comments in support of the facility focused on the benefits of the project to allow for the continuation of farming, the benefits of renewables as compared to fossil fuels, neutral impact on the watershed, positive benefits of agrivoltaics, and limited impact on agricultural land.

III. Petition for Party Status and Proposed Issues for Adjudication

• Applicant

In accordance with the deadline in the combined notice, applicant timely filed a letter in lieu of a statement of issues on November 1, 2024.[10] Applicant states its general acceptance of the conditions of the draft siting permit, that no substantive

---

[9] See ORES Portal Item No. 48, Town of Mayfield comments on the application and draft permit (Town comment statement).

[10] See ORES Portal Item No. 49, applicant letter statement of issues (applicant statement).

and significant issues requiring litigation exist, and requested the final permit be issued as soon as possible.

• Town of Mayfield

On November 1, 2024, the Town timely filed its combined petition for party status, issue statement, and statement of compliance with local laws, in addition to comments.[11] In its petition, the Town identified various issues of non-compliance with local laws, including non-compliance with the Zoning Law of Town of Mayfield (Zoning Law) and the Amended Mayfield Zoning Law as it pertains to solar farms (Amended Zoning Law).[12] The Town does not propose the following provisions of the Zoning Law as a substantive and significant issue for adjudication: (1) Zoning Law § 401, which provides that the maximum height of structures be 40 feet while several components of the collection substation and point of interconnection switchyard are in excess of 40 feet; (2) Amended Zoning Law § 508-3(J), which requires a 500-foot setback from solar energy system components and a 800-foot setback from residences measured from the property lines; (3) Zoning Law § 508-3(K) prohibiting solar panels to contain hazardous materials; (4) Zoning Law § 508-5(B), (C) and, (F)

---

[11] See ORES Portal Item No. 48, Town of Mayfield combined petition for party status, issue statement, and statement of compliance with local laws (Town petition).

[12] See ORES Portal Item No. 16, application appendix 24-1, Town of Mayfield 2017 Compilation Zoning Regulations (Zoning Law); id., Local Law No. 1 of 2022 Amending the Zoning Law of the Town of Mayfield as it Pertains to Solar Farm Construction and Development (Amended Zoning Law).

concerning the length of time to decommission the facility, the triggering point of time when a facility should be deemed as decommissioned, and the removal of underground components; and (5) Zoning Law § 905-1, which provides for certain substantive design standards for "business development" and "commercial uses." While not stating non-compliance as a substantive and significant issue, the Town does contend that "applicant should have addressed these substantive design standards, to the extent they apply to the Facility."[13]

The Town raises non-compliance with Zoning Law § 508-3(A) (12 feet solar panel height limitation) and § 508-3(D) (vegetative screening requirements), and Amended Zoning Law § 508-3(P) (agricultural land development limitation) as substantive and significant issues requiring adjudication and, thus, the bases for its petition for full-party status. In the alternative to full-party status, the Town requests amicus status to raise these issues it deems substantive and significant.[14]

. Village of Mayfield

The Village did not submit a statement of compliance with local laws or regulations or petition for party status.

---

[13] Town petition at 13.

[14] See Town petition at 18-27. The Town claims mandatory full-party status as a responding municipality pursuant to 16 NYCRR 1100-8.4(b). See id. at 15. In the alternative, the Town seeks party status pursuant to 16 NYCRR 1100-8.4(c). See id. at 15-16.

· Applicant and ORES Staff Responses

On November 25, 2024, applicant filed its response to the Town's petition for party status and statement of compliance with local laws, along with exhibits including applicant's response to comments.[15] Also on that day, ORES staff filed its response to petition for party status, statement of issues by applicant, and the statement of compliance with local laws and regulations.[16]

In its response, applicant argues that no substantive or significant issues were raised in the Town's petition or in public comments. Accordingly, applicant asserts that the Town is not entitled to full-party or amicus status, and an adjudicatory hearing on the issues raised by the Town is not required.[17] In its response, ORES staff likewise recommends a finding that there are no substantive and significant issues requiring adjudication.[18]

IV. Issues Determination Procedure

This ruling addresses issues that are raised by the parties or potential parties during the issues determination

---

[15] See ORES Portal Item No. 51, applicant response to Town's petition for party status, statement of compliance, and statement of issues for adjudication (applicant response).

[16] See ORES Portal Item No. 50, ORES staff response to petition for party status, statement of issues by applicant, and statement of compliance with local laws and regulations (ORES staff response).

[17] See applicant response at 1, 22.

[18] See ORES staff response at 2, 19, 31-32, 37.

procedure under 16 NYCRR 1100-8.3(b). To issue a final siting permit pursuant to Public Service Law article VIII, ORES must make a finding 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; 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 the environmental benefits of the proposed major renewable energy facility.[19]

---

[19] See Public Service Law §§ 138(1), 142(5); Climate Leadership and Community Protection Act (CLCPA), L 2019, ch 106, § 7; see also ORES DMM Matter No. 21-02104, Matter of Bear Ridge Solar, LLC, Decision of the Executive Director, July 31, 2023,

An initial step in the hearing process on an application and draft siting permit pursuant to 16 NYCRR subpart 1100-8 is the issues determination procedure. The purpose of the issues determination procedure is to determine whether substantive and significant issues of fact related to the findings that the Office must make on an application require adjudication and, if not, to resolve legal issues related to those findings. Pursuant to 16 NYCRR 1100-8.3(b)(2), the specific purposes of the issues determination procedure are:

(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 section 1100-8.3;

(iii) to receive argument on whether party status should be granted to any party status petitioner on disputed issues of fact;

(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.

---

at 9-10; ORES DMM Matter No. 21-00976, Matter of Homer Solar Energy Center, LLC, Decision of the Executive Director, Jan. 9, 2023, at 6-7; ORES DMM Matter No. 21-02480, Matter of Horseshoe Solar Energy LLC, Decision of the Executive Director, Dec. 9, 2022, at 7-8; 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 former § 94-c(3)(b)-(d), (5)(e).

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 proffer of expert evidence.[20] Unlike summary judgment, the offer of proof need not be made under oath by a person having personal knowledge of the facts alleged. As discussed further below, however, similar to summary judgment, the offer of proof must raise specific fact issues; conclusory statements and generalized beliefs are insufficient.[21]

If the ALJ determines that a 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.[22] If the ALJ determines that no triable issues of fact

---

[20] See 16 NYCRR 1100-8.4(c)(2)(ii); Bear Ridge Solar, Decision at 11; Homer Solar, Decision at 7-8; 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 Wind, LLC, Interim Decision of the Executive Director, Sept. 27, 2021, at 5.

[21] See 16 NYCRR 1100-8.4(c)(2)(ii); Homer Solar, Decision at 8; Horseshoe Solar, Decision at 9, 12-13; Cider Solar, Decision at 9, 12; Heritage Wind, Interim Decision at 5, 8.

[22] See 16 NYCRR 1100-8.3(b)(5)(i), (ii).

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.[23] Exercises of discretion and policy decisions made by ORES staff are reviewed for an abuse of discretion.[24]

With respect to factual disputes between an applicant and ORES staff, an issue is adjudicable if it relates to a substantive and significant dispute over a proposed term or condition of the draft siting permit, including the USCs, or relates to a matter cited by ORES staff as a basis to deny the siting permit and is contested by the applicant.[25]

With respect to a factual issue sought to be raised by a potential party, including municipalities,[26] the issue is

---

[23] See Bear Ridge Solar, Decision at 12; Homer Solar, Decision at 9; Horseshoe Solar, Decision at 10; 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]).

[24] See Bear Ridge Solar, Decision at 12; Homer Solar, Decision at 9; Horseshoe Solar, Decision at 10; 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]).

[25] See 16 NYCRR 1100-8.3(c)(1)(i), (iii); see Bear Ridge Solar, Decision at 12; Horseshoe Solar, Decision at 10.

[26] See 16 NYCRR 1100-8.4(d).

adjudicable if it is both substantive and significant.[27] An issue is substantive if it raises sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry.[28] 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.[29]

To participate as a party in any adjudication under 16 NYCRR subpart 1100-8, the potential party seeking full party status, including municipalities,[30] 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 grounds upon which the assertion is made with respect to that issue.[31] Where, as here, ORES staff has reviewed an application and finds that 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

---

[27] See 16 NYCRR 1100-8.3(c)(1)(iv).

[28] See 16 NYCRR 1100-8.3(c)(2).

[29] See 16 NYCRR 1100-8.3(c)(3).

[30] See 16 NYCRR 1100-8.4(d).

[31] See 16 NYCRR 1100-8.4(c)(2)(ii).

potential party proposing any issue related to the application or draft siting permit to demonstrate that it is both substantive and significant.[32] 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 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.[33]

As noted above, a potential party carries its burden of persuasion through a sufficient offer of proof by a qualified expert.[34] 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 draft permit, including its uniform or site-specific standards and conditions, the content of any petitions for party status, the record of the issues determination procedure, and any subsequent written or oral arguments authorized

---

[32] See 16 NYCRR 1100-8.3(c)(4); Bear Ridge Solar, Decision at 13; Homer Solar, Decision at 10; Horseshoe Solar, Decision at 11; Cider Solar, Decision at 27-28. A potential party's burden of persuasion at the issues determination stage of the proceeding is only temporary. If a potential party's issue is joined for adjudication, the burden of proof shifts back to the applicant, who bears the ultimate burden of proof at the hearing. See 16 NYCRR 1100-8.8(b)(1).

[33] See Bear Ridge Solar, Decision at 13-14; Homer Solar, Decision at 10; Horseshoe Solar, Decision at 11-12; Cider Solar, Decision at 10.

[34] See 16 NYCRR 1100-8.4(c)(2)(ii).

by the ALJ.[35] Any assertions a potential party makes in its offer of proof must have a factual or scientific foundation.

Speculation, 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 at this stage, 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, ORES staff's analysis, or the record of the issues determination procedure, among other relevant materials and submissions. In the areas of ORES staff's expertise, its evaluation of the application and supporting documentation is important in determining the adjudicability of an issue.[36]

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

---

[35] See 16 NYCRR 1100-8.3(c)(2).

[36] See Bear Ridge Solar, Decision at 14-15; Homer Solar, Decision at 10-11; Horseshoe Solar, Decision at 12-13; 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).

comments meet the substantive and significant standard for adjudication.[37]

V. Rulings on Issues

A. Town of Mayfield Statement of Compliance with Local Laws

In its statement of compliance with local laws, the Town identified various issues of non-compliance with local laws. As stated above these include: (1) Zoning Law § 401, which provides that the maximum height of structures be 40 feet while several components of the collection substation and point of interconnection switchyard are in excess of 40 feet; (2) Amended Zoning Law § 508-3(J), which requires a 500-foot setback from solar energy system components and a 800-foot setback from residences measured from the property lines; (3) Zoning Law § 508-3(K) prohibiting solar panels to contain hazardous materials; (4) Zoning Law § 508-5(B), (C), and (F) concerning the length of time to decommission the facility, the triggering point of time when a facility should be deemed as decommissioned, and the removal of underground components; and (5) Zoning Law § 905-1 which provides for certain substantive design standards.

Concerning non-compliance with Zoning Law § 905-1, the Town contends this local law should have been considered by applicant and a waiver sought for the substantive provisions. Applicant contends it addressed these provisions in application exhibit 24, revision 1, stating that these provisions were either procedural or, where substantive, superseded by more specific

---

[37] See 16 NYCRR 1100-8.3(c)(1)(ii).

solar facility use requirements of the Town's later adopted Zoning Law.[38] Likewise, ORES staff states these provisions are inapplicable because they apply to "business development" and "commercial" uses and are superseded by lighting and landscaping provisions applicable to solar farms in the Zoning Law. ORES staff notes that the Town only contends that applicant should address these substantive standards "to the extent they apply to the Facility," and that these standards do not apply.[39]

Notably, the Town did not raise these issues, including alleged non-compliance with Zoning Law § 905-1, as issues for adjudication. Therefore, the issues of alleged non-compliance not raised as bases for adjudication, together with the Town's comments separately filed with the petition, the comments at the public comment hearing, and written public comments, constitute comments on the draft siting permit.

Public comments on a draft siting permit are first responded to by applicant and finally by ORES staff before a final siting permit may be issued.[40] In addition, the ALJs have the discretion to review public comments, including comments by a municipality, to determine whether substantive and significant issues are presented.[41] Here, applicant and ORES staff have duly

---

[38] See applicant response at 5; ORES Portal Item No. 36, application exhibit 24 (revised May 2024) at 6.

[39] See ORES staff response at 30-31.

[40] See 16 NYCRR 1100-8.3(b)(4)(ii), 16 NYCRR 1100-8.3(b)(5), 16 NYCRR 1100-8.12(a)(3).

[41] See 16 NYCRR 1100-8.3(c)(1)(ii).

responded to the comments raised by the Town and public to the extent warranted at this stage of the proceeding.[42] ORES staff's final response to all comments will be filed when, and if, a final permit is issued. Further, the statements in the Town's statement of compliance of local laws and comments statement are conclusory and are not supported by an offer of proof.

Upon review of the public and municipal comments and responses thereto, we find that no substantive and significant issues have been raised in the Town's local law compliance statement, its separately filed comments, or its comments made at the public comment hearing. To the extent that the Town's allegations of non-compliance with local laws are raised in its petition for party status as bases for adjudication, those issues will be further addressed below.

B. Town of Mayfield Petition for Party Status

Pursuant to 16 NYCRR 1100-8.3(b)(2), the purpose of the issues conference is to determine party status for any person or individual that has filed a petition, and to narrow and define those issues, if any, that require adjudication. In its petition, the Town identified three issues it sought to adjudicate and upon which it sought full-party, or amicus status: i) non-compliance with Zoning Law § 508-3(A) (12-foot solar panel height limitation), ii) non-compliance with Zoning Law § 508-3(D) (vegetative screening requirements), and non-compliance with

---

[42] See applicant response at 11-21 and exhibit 1, response to public comments; ORES staff response at 32-37.

Amended Zoning Law § 508-3(P) (prime agricultural land development limitation).

i) Zoning Law § 508-3(A) (Solar Panel 12-foot Height Limitation)

Zoning Law § 508-3(A) mandates a maximum height limit of twelve feet for ground-mounted solar panels. In the draft siting permit, ORES staff recommended granting a limited waiver of this provision pursuant to 16 NYCRR 1100-2.25(c) to the extent of limiting panel height to a maximum of fifteen feet at full tilt as described in the record.[43]

The Town alleges that applicant did not sufficiently justify its waiver request of this provision and ORES staff erred in recommending that the request be granted. The Town contends compliance would reduce generation capacity by only 3 MW, and that an alternative single portrait panel system was not reasonably considered. In essence, the Town alleges that a loss of 3 MW is not unduly burdensome given the alleged additional visual impacts of 15-foot panels, and that, therefore, applicant did not satisfy its burden under § 1100-2.25(c). The Town states that its local law compliance statement is its offer of proof and testimony by Town officials and engineering experts "as to the Town's intention of limiting panel height for Solar Farms and the impact to this area from Applicant's non-compliance" will be presented at an adjudicatory hearing.[44]

Applicant contends that the proposed double portrait

---

[43] See draft siting permit required findings 4(a)(2) at 6.

[44] Town petition at 19-21.

solar panel system reaches a maximum height of fifteen feet at full tilt only during short periods of time during daylight. If a single portrait system is used, applicant asserts that the project would need to be re-designed resulting in a loss of 6% of generating capacity or an expansion of the project by an additional 14 acres. Applicant states that additional land is not available because the lease agreement with the landowner preserves certain areas for agricultural use, and would "increase the overall impact of the Facility and jeopardize the Facility's complete avoidance of wetland areas."[45] Applicant notes the proposed maximum panel height is below the twenty-foot maximum panel height allowed in the draft siting permit USCs.[46] Addressing the Town's visual impact concerns from the Great Sacandaga Lake, applicant notes the distance from the Lake to the solar panels and components and opines that the "human eye cannot discern the difference between twelve feet and fifteen feet from hundreds and thousands of feet." In support of this proposition, applicant provided additional photo simulations and viewsheds to demonstrate the negligible visual impact using fifteen-foot solar panels.[47]

ORES staff, in response, states that the Town has failed to make any offer of proof to raise a substantive or significant issue requiring adjudication. According to ORES staff, in absence of any offer of proof to counter applicant's support for a waiver,

---

[45] Applicant response at 7.

[46] See id.

[47] See applicant response at 7-9; id. exhibits 2-5.

the Town's claim that ORES staff erred in recommending that the waiver request be granted fails, and that general criticisms, expressions of concern, speculation, or conclusory statements are not sufficient to raise a substantive and significant issue. Further, ORES staff notes applicant conducted a visual impact assessment (VIA) to examine a two-mile study area from the facility fence line, and this analysis demonstrated that the facility will not be visible from a majority of the Lake. Further, given existing vegetation and topography the solar facility will be minimally visible and likely go unnoticed by users of Sacandaga Lake and Mayfield Lake. Therefore, the potential visual impact of the facility will be avoided, minimized, and mitigated to the greatest extent practicable, and the draft siting permit requires implementation of a final Visual Impacts Minimization and Mitigation Plan (VIMMP), which includes ORES-approved screen planting plans.[48]

Discussion

We hold that the Town of Mayfield has not raised a substantive and significant issue for adjudication regarding the draft siting permit's recommended waiver of the solar panel height limitations contained in Zoning Law § 508-3(A).

Initially, as stated above, to obtain a waiver, in whole or in part, of a substantive local law requirement, applicant bears the burden of establishing that, as applied to the facility, the local law requirement is "unreasonably burdensome in view of

---

[48] See ORES staff response at 20-24.

the CLCPA targets and the environmental benefits of the proposed facility."[49] Pursuant to 16 NYCRR 1100-2.25(c), the applicant has the burden of identifying all substantive local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the construction or operation of a major renewable energy facility, and those substantive local law requirements the applicant requests the Office elect not to apply to the facility. For those local law requirements for which applicant seeks a waiver from ORES, applicant must provide a statement of justification showing with facts and analysis: (1) the degree of burden caused by the requirement, (2) why the burden should not reasonably be borne by the applicant, (3) that the request cannot reasonably be obviated by design changes to the facility, (4) that the request is the minimum necessary, and (5) that the adverse impacts of granting the request shall be mitigated to the maximum extent practicable consistent with applicable requirements set forth in Part 1100.

Here, we find that applicant has satisfied its burden for a waiver as contemplated by § 1100-2.25(c). Applicant satisfied its burden by demonstrating that using single portrait 12-foot panels would reduce capacity by 6%, which is substantial and could result in project abandonment, and that this result should not be reasonably borne by applicant because the project design avoided and minimized environmental impacts, allows agricultural practices to continue, and reduced the project site to the minimum size economically feasible. Further, use of the

---

[49] 16 NYCRR 1100-2.25(c).

single portrait 12-foot solar system to maintain 40 MW of generation would require an additional 14 acres of land, which would prevent applicant from completely avoiding wetlands. Additionally, non-compliance cannot be obviated by design changes because applicant has used all available buildable land, excluding sensitive environmental areas and land for continued agricultural operation, while staying below the 20-foot maximum height limit set by § 1100-2.6. Finally, the waiver request is the minimum necessary because the proposed solar system is only three feet higher than the local limit and is still below that allowed by ORES regulations and draft siting permit while having a negligible additional visional impact.[50]

The Town's petition has not identified an error of law or abuse of discretion in ORES staff's recommendation to grant a waiver of Zoning Law § 508-3(A). Further, the Town has not provided any offer of proof to support its contentions that applicant did not satisfy it burden or that ORES staff erred. The Town has not satisfactorily provided an offer of proof supported by factual and technical analysis, but only expressed concern and conclusory statements in its petition concerning the visual impact of fifteen-foot solar panels compared to twelve-foot solar panels permitted under the Zoning Law § 508-3(A). Accordingly, the issues proposed by the Town regarding the recommended waiver of Zoning Law § 508-3(A) do not raise a substantive and significant issue requiring further adjudication.

---

[50] See application exhibit 24 at 10-14.

Ruling: Issues proposed by the Town of Mayfield concerning the recommended waiver of Zoning Law § 508-3(A) do not meet the standards for further adjudication.

ii. Zoning Law § 508-3(D) (Vegetative Screening Requirements)

Zoning Law § 508-3(D) requires the "installation of a vegetated perimeter buffer to provide year-round screening of the [solar] system from adjacent properties." In the draft siting permit, ORES staff recommended granting a limited waiver from this requirement subject to the USC at 16 NYCRR 1100-6.4(l)(2) and (3), and subpart 6(c) of the draft permit, which together require implementation of a final Visual Impacts Minimization and Mitigation Plan (VIMMP), with screen planting plans, to be submitted for approval at the compliance phase.[51]

According to the Town, applicant failed to satisfy its burden to demonstrate that the additional cost of compliance would outweigh the benefits of compliance. The Town states the primary concern is protecting the view of the Great Sacandaga Lake and states that non-compliance will presumably negatively impact tourism. It offers its statement of compliance as its offer of proof and claims Town officials and engineering experts will be produced at an adjudicatory hearing concerning the intention of requiring full year-round screening and impact of non-compliance. Finally, the Town notes it has discussed its concerns with applicant and will continue to do so.[52]

---

[51] See draft siting permit required findings 4(a)(3) at 6.

[52] See Town petition at 21-24.

In response, applicant states that the viewshed assessment determined that 0.80% of the solar facility would be visible and that percentage will be reduced by its proposed landscaping. Also, to fully screen the facility along the fence line perimeter, landscaping would need to be in excess of 50 feet high and in some cases impossible due to the inherent heights of some components and National Grid's siting restrictions for overhead electrical lines. Applicant also notes the continued discussions with the Town and has agreed to replace some tree species at the Town's request.[53]

ORES staff states that applicant requested a waiver because strict application would require it to landscape where vegetative screening already exists and where no existing sensitive receptors are proximate to the facility.[54] According to ORES staff, such a requirement would add a substantial financial burden and the proposed landscaping plan provides screening from sensitive receptors to the maximum extent practicable. ORES staff contends that no offer of proof was provided to support the Town's screening and visual impact issues and that the Town makes claims that testimony will be provided at a future adjudicatory hearing.[55]

Discussion

---

[53] See applicant response at 9-11.

[54] See ORES staff response at 14, 25-26.

[55] See ORES staff response at 25-27.

We conclude that the Town of Mayfield has not raised a substantive and significant issue for adjudication regarding the draft siting permit's recommended waiver of the vegetative screening requirements contained in Zoning Law § 508-3(D). Here again, we hold that applicant has satisfied its burden for a waiver as contemplated by § 1100-2.25(c), and that the Town failed to provide any offer of proof to support its allegations.

In support of its waiver request, applicant demonstrated that providing screening where existing screening already exists or where no sensitive receptors exist would substantially increase costs for "no added benefit in terms of visual impacts minimization and mitigation."[56] The VIA shows that facility visibility is very limited, and the topography and existing vegetation offer effective screening to be enhanced by applicant's landscaping plan.[57]

The Town's petition has not identified an error of law or abuse of discretion in ORES staff's recommendation to recommend a waiver of Zoning Law § 508-3(D). The Town has not provided any offer of proof to support its contentions that applicant did not satisfy it burden or that ORES staff erred. The Town has not satisfactorily provided an offer of proof supported by factual and technical analysis, but only expressed concern and conclusory statements in its petition concerning the need for vegetative year-round screening. Accordingly, the issues proposed by the

---

[56] See application exhibit 24 at 13.

[57] See id. at 14-17; ORES Item No. 34, application exhibit 8: Visual Impacts (revised May 2024).

Town regarding the waiver of Zoning Law § 508-3(D) do not raise a substantive and significant issue requiring further adjudication.

Ruling: Issues proposed by the Town of Mayfield concerning the recommended waiver of Zoning Law § 508-3(D) do not meet the standards for further adjudication.

iii. Amended Zoning Law § 508-3(P) (Agricultural Land Development Limitation)

Amended Zoning Law § 508-3(P) states that "[n]o solar farm equipment shall be located or installed on any soils labeled as 'Prime Agricultural Land' and, whenever possible, soils 'of State Importance' should be avoided." In the draft siting permit, ORES staff recommended a waiver of this provision "which, as applied, is unreasonably burdensome in light of the CLCPA targets and the environmental benefits of the proposed Facility."[58]

The Town states that approximately 59% of the facility's limit of disturbance (LOD) consists of active agricultural land and that 49% of the soils are considered prime farmland or soils of statewide importance. Further, 23.4 acres of temporarily impacted agricultural land are considered within mineral soil groups (MSGs) 1-4 and 4.13 of those acres will be permanently impacted. The Town notes that the APA commented that development on such soils should be avoided and applicant's statement that it is unreasonably burdensome to prevent siting as proposed does not satisfy its burden for the waiver request. Finally, the Town states its disbelief that "the disadvantage to the Town's vital agricultural land is clearly outweighed by the benefits of this

---

[58] Draft siting permit required findings 4(a)(6) at 7-8.

facility or its contribution to the State's renewable energy goals."[59]

Applicant, in response, states that to completely avoid prime agricultural land and soils of statewide importance, more than half of the project's LOD, or approximately 125 acres of the facility, would be eliminated and would result in project abandonment. Applicant notes that the project was designed to avoid prime agricultural farmland where possible, as well as avoiding visual impacts. Applicant further notes that portions of land were excluded from the project to allow continued farming, which was requested by the primary landowner, that project revenue would allow farming to continue on the landowner's farm, and that the project was sited to have "the least impact to active farming practices" and avoided the "best soil for agricultural operations."[60]

ORES staff notes that the terms "prime agricultural land" and "soils of 'State Importance'" are not defined in the Town Zoning Law. Nonetheless, applicant provided information showing that the facility site contains both USDA-classified "prime farmland" and "farmland of statewide importance" as well as New York State Department of Agriculture and Markets (NYSAGM)-classified Mineral Soil Groups (MSGs) 2 and 3. ORES staff notes there are no soils classified as MSGs 1 or 4 in the facility site, that MSGs 2 soils are avoided, and that less than 1.79 acres of active agricultural land identified as MSGs 1-4 will be

---

[59] Town petition at 24-27.

[60] Applicant response at 11-13.

permanently impacted. Further, applicant's Agricultural Plan adheres to NYSAGM guidelines and the project is designed to allow for agricultural co-utilization strategies, including crop production, sheep grazing, and pollinators and apiaries. Specifically, of the 459.77 acres of agricultural land within the project site, 281.25 acres (approximately 61.2%) will be retained for agricultural production. Additionally, site specific condition 6(d) of the draft siting permit requires applicant to finalize the Agricultural Co-Utilization Plan and provide an Implementation Plan. Finally, ORES staff contends that the Town does not adequately challenge that applicant's demonstration that the project, as designed, would be sited to avoid, minimize, and mitigate environmental impact to the maximum extent practicable and that the offer of proof is insufficient to raise a substantive and significant issue.[61]

Discussion

We conclude that the Town of Mayfield has not raised a substantive and significant issue for adjudication regarding the draft siting permit's recommended waiver of the agricultural land development limitations contained in Amended Zoning Law § 508-3(P). Here again, we hold that applicant has satisfied its burden for a waiver as contemplated by § 1100-2.25(c), and that the Town failed to provide any offer of proof to support its allegations.

In support of its waiver request, applicant stated that if prime agricultural soils or soils of statewide importance were

---

[61] See ORES staff response at 27-30.

avoided, over half of the buildable land would be eliminated resulting in a loss of 20 MW of generation or the facility would have to be redesigned impacting wetlands and other resources which are now avoided to the maximum extent practicable, that NYSAG guidelines are followed, and an agricultural co-utilization plan will be implemented. Further, compliance with this agricultural limitation would allow solar development on only 15% of Town land and that the project permanently impacts approximately 1% of the facility site.[62]

The Town's petition has not identified an error of law or abuse of discretion in ORES staff's recommendation to recommend a waiver of the Amended Zoning Law § 508-3(P). The Town has not provided any offer of proof to support its contentions that applicant did not satisfy its burden or that ORES staff erred. The Town has not satisfactorily provided an offer of proof supported by factual and technical analysis, but only expressed concern and conclusory statements in its petition concerning the limitation of development of prime agricultural farmland or soils of statewide importance. Accordingly, the issues proposed by the Town regarding the recommended waiver of Amended Zoning Law § 508-3(P) do not raise a substantive and significant issue requiring further adjudication.

---

[62] See application exhibit 24; ORES Portal Item No. 35, application exhibit 15: Agricultural Resources (revised May 2024); ORES Portal Item No. 15, application appendix 15-5: Agricultural Co-utilization Plan.

Ruling: Issues proposed by the Town of Mayfield concerning the recommended waiver of Amended Zoning Law § 508-3(P) do not meet the standards for further adjudication.

VI. Rulings On Party Status, Conclusion, and Order of Disposition

Among the purposes of the issues determination procedure is to determine party status for participation in any adjudicatory hearing held on an application.[63] We hold that there are no issues joined for adjudication. Therefore, an adjudicatory hearing in this matter is not necessary. We have also determined and resolved all legal arguments. Accordingly, the Town of Mayfield's petition for full party status, or in the alternative amicus status, is denied. Because no issues are joined for adjudication that implicate the Town's jurisdiction, the Town's alternative request for party status as a responding municipality pursuant to 16 NYCRR 1100-8.4(b) is denied.[64]

Further, based on the application and the record of the issues determination procedure, we find 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 16 NYCRR part 1100;

---

[63] See 16 NYCRR 1100-8.3(b)(5)(i).

[64] See Homer Solar, Decision at 53-55.

2) complies with substantive provisions of applicable State laws and regulations;

3) complies with substantive provisions of applicable local laws and ordinances, except those provisions the Office has elected not to apply based on a finding that they are unreasonably burdensome in view of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the facility;

4) avoids, minimizes, or mitigates to the maximum extent practicable potential significant adverse environmental impacts of the facility;

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

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

Accordingly, pursuant to 16 NYCRR 1100-8.3(c)(5), further proceedings in this matter are canceled, and the matter is remanded to ORES staff to continue processing the siting permit, including issuance of a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in this ruling.

(SIGNED)

JOHN L. FAVREAU
Administrative Law Judge
Office of Renewable Energy Siting
and Electric Transmission
W. A. Harriman Campus
Building 9, 4th Floor
1220 Washington Avenue
Albany, NY 12226
(518) 473-8694
john.favreau@dps.ny.gov

(SIGNED)

Christopher McEneney Chan
Administrative Law Judge
Office of Renewable Energy Siting
and Electric Transmission
W. A. Harriman Campus
Building 9, 4th Floor
1220 Washington Avenue
Albany, NY 12226
(518) 473-9849
christopher.mceneneychan@dps.ny.gov