

# **Proposed Stipulations**

Excelsior Energy Center

Case 19-F-0299

July 6, 2020

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NEW YORK STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

IN THE MATTER OF:

Case No.: 19-F-0299

Application of Excelsior Energy Center, 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 in the Town of Byron, Genesee County.

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**General Matters**

THE PARTIES HERETO stipulate and agree as follows:

- (1) The Excelsior Energy Center Project (“Project”) is discussed in an Article 10 Preliminary Scoping Statement (“PSS”) submitted to the New York State Board on Electric Generation and the Environment (“Siting Board”) on September 24, 2019 by Excelsior Energy Center, LLC (“Applicant”). The term “Project” as used herein includes the commercial-scale solar arrays, access roads, buried (and possibly overhead) electric collection lines, energy storage facilities, and temporary construction staging/laydown areas, as well as any other improvements subject to the Siting Board’s jurisdiction.
- (2) The term “Project” as used herein includes electric transmission facilities subject to review under the Siting Board’s jurisdiction pursuant to Article 10 of the N.Y. Public Service Law (“PSL”). The Project interconnection facilities will consist of a collection substation and point of interconnection (“POI”) switchyard, which will be transferred to the New York Power Authority (“NYPA”) to own, maintain, and operate. The Applicant has requested interconnection of the Project to the bulk New York electric transmission system connecting to NYPA’s 345 kV Line #NR2.
- (3) Unless relief is requested by the Applicant to the Siting Board, after consultation with the signatory parties, and the relief is granted by the Siting Board, the Applicant will present the studies, evaluations, and analyses as set forth in these stipulations to satisfy the application requirements of PSL Article 10. These stipulations are governed by Section 163 of the PSL and by any applicable requirements for federally delegated environmental permits issued by the New York State Department of Environmental Conservation (“NYSDEC”).

- (4) Parties hereto may limit their concurrence to one or more of the 41 specific subject area stipulations by so indicating in a notation next to their signature. A signature without this notation shall indicate concurrence with the entire stipulation.
- (5) Those signing these stipulations agree that, as of the date hereof, the studies outlined in these stipulations constitute all the necessary studies concerning the subject matter of these stipulations that the Applicant must provide to satisfy Section 164.1 of the PSL. Except as provided herein, and in accordance with 16 NYCRR § 1000.5(k), the signatories agree not to request that the Applicant provide additional studies concerning the subject matter of these stipulations in connection with the Article 10 proceeding. The Applicant recognizes that the results of studies may show that some limited level of additional analysis may be necessary to identify appropriate measures to avoid, minimize, mitigate, or offset impacts.
- (6) Under any of these following circumstances, the Applicant agrees to perform additional studies, evaluations, or analyses:
  - (a) A new statute, regulation, or final, non-reviewable judicial, federal, state or administrative regulation, ruling or order is adopted subsequent to the date of these stipulations which necessitates such additional studies, evaluations or analyses;
  - (b) The Applicant proposes a change in the Project or other inputs to the stipulated studies, evaluations, or analyses that will materially affect the results of the studies, evaluations or analyses;
  - (c) New information is discovered during the course of conducting, or as a result of, the stipulated studies, evaluations or analyses that materially affect the results thereof; or
  - (d) The chairman of the Siting Board, the Siting Board, or the presiding examiner, whose ruling will be appealable to the Siting Board, or associate examiner presiding with respect to any proceedings concerning federally delegated environmental permits to be issued by the NYSDEC, whose ruling will be appealable to the Commissioner of the NYSDEC or the Siting Board, as the case may be, requires an additional study, evaluation, or analysis pursuant to 16 NYCRR § 1000.9(a).
- (7) After the chairman of the Siting Board determines that the Article 10 Application (“Application”) complies with Section 164 of the PSL, if the signatories, in any of the circumstances listed above, reach agreement as to the implementation of any additional studies, evaluations, or analyses, such agreement may be set forth in a new stipulation, which may include the agreement of the Applicant

to extend the statutory deadline for completion of the certification proceeding, but only to the extent necessary to provide sufficient time to permit any such studies, evaluations, or analyses to be conducted and reviewed. Any of the signatories, in the circumstances listed in paragraph 5, who do not reach such an agreement, shall be free to submit the matter to the presiding examiner for resolution and shall not be restricted from pleading that the Applicant must provide additional studies, evaluations, or analyses related thereto during the Article 10 proceeding regarding the subject matter of these stipulations.

- (8) The Applicant will comply with Application filing requirements associated with:
- (a) Official notices are provided to each municipality, state legislature members, and persons having filed a statement with the Secretary within the past 12 months wishing to receive all such Facility notices, listed as necessary to serve the proposed and/or alternative Facility site locations. Official notices shall be served, filed, and support administrative matters outlined at 16 NYCRR § 1000.7;
  - (b) A discussion of water quality certification procedural steps is included as defined at 16 NYCRR § 1000.8, pursuant to Section 401 of the Clean Water Act;
  - (c) An intervenor funding fee in the amount specified at 16 NYCRR § 1000.10, is included as part of the pre-application provisions.

## **Stipulation 1 – 1001.1 Exhibit 1: General Requirements**

The following shall apply to each of the exhibits to the Application:

- (a) The application for a certificate shall contain the exhibits described by Part 1001 as relevant to the Project technology and site, and such additional exhibits and information as the Applicant may consider relevant or as may be required by the Siting Board or the Presiding Examiner. Exhibits that are not relevant to the particular application have been omitted.
- (b) Each exhibit shall contain a title page showing:
  - (1) The Applicant's name.
  - (2) The title of the exhibit.
  - (3) The proper designation of the exhibit.
- (c) Formatting:
  - (1) Each exhibit consisting of 10 or more pages of text shall contain a table of contents citing by page and section number or subdivision the component elements or matters contained in the exhibit.

Each exhibit which includes reference or supporting documents such as attachments or appendices shall contain a table of contents that indicates those supporting documents. The location of information within the Application (including exhibits, attachments and appendices, specifically addressing the relevant requirements of 16 NYCRR § 1001) will be clearly identified either in the table of contents or in the form of a matrix in order to ensure completeness and facilitate review. The Application will provide a list of acronyms as an appendix to the Table of Contents. All reference citations within the body of any exhibit will be fully cited at the relevant list of reference documents. Shapefiles shall depict:

The location of all Project components including (separately):

- Extent of the facility or Project area.
- All parcels under the Applicant's control.
- Proposed locations of panels, access roads, electric interconnections, fencing, storage areas, substations, etc.
- Solar array locations.
- New access and maintenance roads.

- Existing roads that will be widened/altered.
- Electric collection and transmission lines (specified above ground and/or underground).
- Security fence lines, if applicable.
- Laydown and storage area(s).
- Substation(s).
- Any other temporary or permanent infrastructure constructed in support of the Project.
- All areas to be cleared around solar arrays, access roads, electric lines, and all other Project components.

All wildlife and habitat survey locations as applicable and labeled by year including (separately):

- Breeding bird survey locations including transects, points and driving routes, as applicable.
- Eagle/raptor survey locations.
- Winter raptor survey locations and driving routes.
- Viewsheds for eagle/raptor and winter raptor observation points, indicating the area visible from each point.
- Bat acoustic monitoring and/or mist net locations, if applicable.
- Aerial raptor nest survey area and transects.
- Boundaries of all delineated wetlands, adjacent areas, and streams.
- The location(s), observation date(s), species, and behavior(s) of all T&E and SSC individuals on the landscape observed during pre-construction surveys and incidentally within and adjacent to the facility; and any other survey information pertinent to the Project. Attributes should include the species, number of individuals, dates, flight path, behaviors and survey type.

All proposed impact areas including (separately):

- Areas to be removed, cleared or disturbed overlaid with approximate locations and extent of identified plant communities, including areas of invasive species concentrations.
- Limits of disturbance/vegetation clearing.
- Stream crossing locations.
- Wetland and stream impacts.



- Wetland delineations within 100 feet of limits of disturbance, including identification of vernal pools, if any.
- (d) In collecting, compiling and reporting data required by 16 NYCRR Part 1001, the Applicant shall establish a basis for statistical comparison with data which shall subsequently be obtained under any program of post-construction monitoring. In addition, the Applicant will provide the NYSDEC and the New York State Department of Public Service (“DPS”), contemporaneously with the filing of the Application, shapefiles suitable for use in Geographic Information System ("GIS") software via ESRI’s ArcGIS suite of software containing all applicable Project and survey components using NYSDEC’s *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects* (June 2016) as guidance. Applicable shapefiles will also be provided to accompany any applicable wildlife and habitat survey reports when they are ready to be submitted by the Applicant.
- (1) GIS shapefiles of Facility component and site locations, property lines, environmental data, visual and cultural resource locations, and related analyses derived from such data and utilized in development of the Application and mapping, will be provided directly to DPS and NYSDEC Staff, under confidential cover, at the time the Application is filed, and to all other Parties upon request, subject to confidentiality restrictions.
- (e) If the same information is required for more than one exhibit, it may be supplied in a single exhibit and referenced in other exhibit(s) where it is also required. Exhibit 1 shall also contain:
- (1) The name, address, telephone number, facsimile number and e-mail address of Excelsior Energy Center, LLC.
- (2) The address of the website established by the Applicant to disseminate information to the public regarding the Application.
- (3) The address, toll-free telephone number, facsimile number, and e-mail address of Keddy Chandran, who is the person that the public may contact for more information regarding the application.
- (4) The business address, telephone number, facsimile number, and e-mail address of the principal officer of the Applicant, John DiDonato, Vice President.

- (5) If the Applicant desires service of documents or other correspondence upon an agent, the name, business address, telephone number, facsimile number, and e-mail address of the agent.
- (6) A brief explanation of Excelsior Energy Center, LLC, a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC (“NextEra”), including its date and location of formation and the name and address of its parent.
- (7) A certified copy of the certificate of formation for Excelsior Energy Center, LLC.

## **Stipulation 2 – 1001.2 Exhibit 2: Overview and Public Involvement**

Exhibit 2 shall not exceed 15 pages of text, except that for good cause shown, the Secretary may increase the page limit. Exhibit 2 shall contain:

- (a) A brief description of the major components of the proposed Project, including the energy storage infrastructure, commercial-scale solar arrays, energy storage facilities, access roads, electric collection lines, collection substation, 345 kV switchyard, and the 345 kV line that taps into the existing NYPA transmission line. The proposed tap will be approximately several hundred feet long and within the Project Area. The Application will provide any Project component dimensions given in meters by the equivalent value in feet.
  - (1) In the description of the solar array the Applicant will provide the manufacturer's specification sheets and will indicate whether the panels will be solar tracking, as applicable. To the extent the proposed panel has been selected the information will be provided in the Application. If the precise panel has not been selected, typical information for the proposed panel will be presented.
- (b) A brief summary of the contents of the Application, except those Exhibits that do not apply to the proposed Project.
- (c) A brief description of the Public Involvement Program Plan ("PIP Plan") conducted by the Applicant prior to submission of the Application and an identification of significant issues raised by the public and affected agencies during such program and the response of the Applicant to those issues including a summary of changes made to the proposal as a result of the implementation of the PIP Plan (i.e., resulting from outreach efforts). Additionally:
  - (1) Specific components of the PIP Plan conducted to date and the topics addressed will be discussed, including: opportunities for public involvement; development and use of stakeholder list (including host and adjacent landowners); identification of any environmental justice areas; the use of document repositories; consultation with affected agencies and stakeholders, factsheets on the Article 10 process and intervenor funding and other outreach materials; use of meeting logs; and the establishment of a Project website ([www.excelsiorenergycenter.com](http://www.excelsiorenergycenter.com)), and local telephone number. Paper copies of major Project documents, except those subject to protective order, will be sent to the designated local repositories. The Project is not currently planned to have a local office.

- (2) The description shall include public involvement activities regarding the filing of the Project Application. Notice of the Application submittal will be mailed in accordance with 16 NYCRR § 1000.6 and § 1000.7. In addition, notice will be mailed to a Project mailing list consisting of the updated stakeholder list, including host and adjacent landowners, and additional addresses received through public outreach. The notice will include information on the Project generally and the Article 10 Application specifically. A copy of the mailing list and documentation indicating the dates and mailings that were made will be provided to the Secretary. The Application will include the updated stakeholder list.
  - (3) In addition to newspaper publication as required under 16 NYCRR 1000.7(a) the Applicant will publish notice about the Application in at least one free local community newspaper circulated in the Project and Study Area (as defined in the PSS), if available.
  - (4) Regarding the open house held on September 10, 2019, additional details will be listed, including when and to whom the informational flyers were mailed, when notification was placed in the newspaper and total number of attendees. Information on the types of comments that were received and whether the Applicant took any follow-up actions will be included in the Application. The same information will be provided for the Applicant's second open house.
  - (5) The Application will provide a summary of questions asked at outreach events and meetings. The Applicant will indicate how it addressed or plans to address the questions. Any further public involvement activities will be included in the Project's PIP Plan meeting log that can be found on the Project website and the DPS DMM website, which will be listed in this Exhibit. Further information will be provided in the Application.
- (d) A brief description of the PIP Plan with examples of outreach to be conducted by the Applicant after submission of the Application, such as open houses, informational mailers and notice of construction activities.
  - (e) A brief, clearly and concisely written analysis in plain language that presents the relevant and material facts regarding the proposed Project which the Applicant believes the Siting Board should use as the basis for its decision. The analysis shall be analytical and not encyclopedic and shall specifically address each required finding, determination and consideration the Siting Board must make or consider in its decision pursuant to Section 168 of the PSL and explain why the Applicant believes the requested Certificate should be granted.

- (f) Paper copies of major Project documents, except those subject to trade secret/confidential protection under the Siting Board's rules and any adopted protective order, will be sent to the designated local repositories and posted on the Project website throughout the Project's duration.

### **Stipulation 3 – 1001.3 Exhibit 3: Location of Facilities**

Exhibit 3 shall contain maps, drawings, and explanations showing the location of the proposed Project, all onsite interconnections, and any proposed ancillary facilities not located on the Facility site such as roads, railroads, switchyards, fuel or energy storage or regulation facilities, solid waste disposal areas, waste treatment and disposal facilities, and similar facilities, in relation to municipalities (county, city, town and village) and taxing jurisdictions associated with any part of the overall development proposal. Such maps, drawings and explanations shall include:

(a) The most recent USGS maps (1:24,000 topographic edition) reproduced at original scale showing:

- (1) The proposed location of the major electric generating facility (i.e., Project) and locations of Project components including commercial scale solar arrays, access roads, collection lines, on-site laydown/staging areas, collection substation, and 345 kV switchyard and tap line. Mapping will include the locations of roads, substations, and similar facilities, as applicable. The Project will not include an Operation and Maintenance (“O&M”) building. The Applicant will specify the location of the collection substation and POI switchyard and will provide a map detailing the location of access roads from public roadways to be utilized for construction and operation of these facilities.
- (2) The proposed location of any interconnections, water supply lines, communications lines, stormwater drainage lines, and appurtenances thereto, to be installed in New York State connecting to and servicing the site of the Project that are not subject to the Commission’s jurisdiction under PSL Article VII.
- (3) The location of all proposed ancillary features not located in the Project Area, if applicable, such as roads, railroads, switchyards, fuel or energy storage or regulation facilities, solid waste disposal areas, waste treatment and disposal facilities, and similar facilities, that are not subject to the Siting Board’s jurisdiction under PSL Article 10. At this time, no such facilities are proposed.
- (4) There are no proposed electric transmission line or fuel gas transmission line interconnections that are subject to review under Article VII of the PSL proposed as part of the Project; therefore, this information is not required to be included as part of the Application.
- (5) The Study Area for the Project generally related to the nature of the technology and the setting of the proposed Project Area. Based on the scale of the Project and the Project setting,

the Application will include the evaluation of a two-mile Study Area from all Project Area property boundaries unless stated otherwise in the Application for resource-specific surveys. The proposed Project is not located in areas of significant resource concerns that would justify expanding the Study Area.

- (b) Maps clearly showing the location of the proposed Project Area and Study Area, which will be a two-mile Study Area unless otherwise noted. Mapping will also show the interconnections, including electric collection lines, collection substation, the 345 kV switchyard and tap line in relation to municipal boundaries, taxing jurisdictions, and designated neighborhoods or community districts, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.
- (c) Written descriptions explaining the relation of the location of the proposed Project Area, the interconnections, including electric collection lines, collection substation, the 345 kV switchyard and tap line in relation to affected municipalities, taxing jurisdictions, designated neighborhoods or community districts.

#### **Stipulation 4 – 1001.4 Exhibit 4: Land Use**

Exhibit 4 shall contain:

- (a) A scaled map showing Project facilities in relation to existing land uses within the Study Area (area within a two-mile radius from the Project Area boundaries) using publicly available data from the Genesee Planning Department GIS Data and Mapping services. The “Genesee County Parcel Data” data set, derived from the Property Class attribute, will be utilized to produce the scaled map. The Study Area includes approximately 32,282 acres of land (inclusive of the 3,418-acre Project Area).
- (1) Land use classifications codes of the New York State Office of Real Property Services (“NYSORPS”) will be used to inventory existing land uses within the Study Area. For the Application, the land use will be further discussed and mapped based on site-specific investigations and documentation. Land use types will be identified as:
  - 100 – Agricultural;
  - 200 – Residential;
  - 300 – Vacant Land (Vacant Land that is identified for Project facility locations and directly adjacent properties will be further broken down by usage [i.e. timber, pasturing, hunting, etc.] based on input received from the participating landowners);
  - 400 – Commercial;
  - 500 – Recreation and Entertainment;
  - 600 – Community Services;
  - 700 – Industrial;
  - 800 – Public Services; and
  - 900 – Wild, Forested, or Conservation Lands and Public Parks.
- (b) In addition to land use maps, communications towers and existing overhead or underground lines for electric, gas or telecommunications companies will be mapped within the Study Area.
- (c) A scaled map of all properties upon which any component of the Project or the related facilities would be located, and all properties adjoining such properties that shows the current land use, tax parcel number and owner of record of each property, and any publicly known proposed land use plans for any of these parcels. The land use will be described and mapped based on site-specific



investigations and documentation. To further define land uses on land classified by the NYSORPS as Vacant Land within the Project Area, the Applicant will report regarding its efforts to inquire about current land uses of current vacant land through coordination with the participating landowners, and also provide information received in outreach efforts and open house events.

- (d) A scaled map of existing and proposed zoning districts within the Study Area will be created by data obtained from local governments; and will include a description of the permitted and prohibited uses within each zone.
- (e) A discussion of the Project's consistency with the Genesee County and Town of Byron comprehensive plans, dated 1997 (with monitoring reports from 2019) and 2019, respectively. If the Genesee County and Town of Byron's comprehensive plans are posted on a website, the exhibit shall contain the addresses of the internet sites where the plans are posted. If the comprehensive plans are not available online, a copy will be included as an appendix to the Application.
- (f) A map of all publicly known proposed land uses within the Study Area, gleaned from interviews/consultations with state and local planning officials including the Town of Byron Planning Board, from the public involvement process, or from other sources. A discussion of the cumulative impact of these publicly known existing and proposed land uses within the Study Area will be included. The Applicant will coordinate with the Town so that construction of the Project will not interfere with ongoing or future municipal construction projects, such as water district expansions.
- (g) Maps showing designated agricultural districts, current agricultural use, designated inland waterways, flood-prone zones and recreational/sensitive areas. Agricultural districts will be specified, as designated by New York State Department of Agricultural and Markets ("NYSDAM") regulations. The Agricultural District discussion in the Application will indicate date of current Agricultural District enrollment and expiration/renewal date pending for each applicable parcel. Additional discussion of agricultural land will be included in Exhibit 22. Flood hazard areas will be specified according to data from the Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Maps. There are no coastal areas, local waterfront revitalization program areas, State Environmental Quality Review Act ("SEQRA") designated critical environmental areas, or groundwater management zones within the Study Area of the Project. The Application will include an analysis of designated inland waterways, including Black Creek.
- (h) Scaled maps showing: (i) recreational and other land uses within the Study Area that might be affected by the sight, sound or odor of the construction or operation of the Facility, interconnections

and related facilities, including any wild, scenic and recreational river corridors, open space and any known archaeological, geologic, historical or scenic area, park, designated wilderness, forest preserve lands, scenic vistas, conservation easement lands, scenic byways designated by the federal or state governments, nature preserves, designated trails, and public-access fishing areas; (ii) major communication and utility uses and infrastructure, including the Empire Pipeline; (iii) institutional, community and municipal uses and facilities; and (iv) a statement, including a summary, describing the nature of the probable environmental impacts and of construction and operation of the Project on such uses, including an identification of how such impacts are avoided or, if unavoidable, minimized or mitigated. Given the provisions of § 304 of the National Historic Preservation Act (“NHPA”), 9 NYCRR § 427.8, and § 15 of the PSL, information about the location, character, or ownership of a cultural resource shall not be disclosed to the public, and shall only be disclosed to the parties to a proceeding pursuant to an appropriate protective order if a determination is made that disclosure may (1) cause a significant invasion of privacy, (2) risk harm to the affected cultural resource, or (3) impede the use of a traditional religious site by practitioners.

- (i) A qualitative assessment of the compatibility of the Project and any interconnection, with existing, proposed and allowed land uses, and local and regional land use plans within a one-mile radius of the Project Area and any interconnection route. The qualitative assessment shall include an evaluation of the short- and long-term effects of facility-generated noise, odor, traffic and visual impacts on the use and enjoyment of areas within one mile of Project facilities. The assessment will specifically address impacts to nearby land uses that may be of particular concern to the community, such as farms and agricultural facilities, residential areas, schools, civic facilities, recreational facilities, and commercial areas. If any known offsite staging and/or storage areas will be used for Project construction, a qualitative assessment of the compatibility of the proposed offsite staging and/or storage areas with existing, proposed and allowed land-uses will also be provided. Final locations of any offsite staging areas will be confirmed in any required Compliance Filing, or filing with the Secretary, as applicable.
- (j) A qualitative assessment of the compatibility of proposed aboveground interconnections and related facilities with existing, potential, and proposed land uses within the Study Area.
- (k) A qualitative assessment of the compatibility of underground interconnections and related facilities with existing, potential, and proposed land uses within 300 feet from the centerline of such interconnections or related facilities.

- (l) The Project is not within a designated coastal area. Therefore, a demonstration of conformance with the Coastal Zone Management Act (“CZMA”) is not applicable and will not be included in the Application.
- (m) Aerial photographs will reflect the current situation and specify the source and date of the photography. To the extent that any material changes in land use have occurred since those photos were taken, the Applicant shall identify those changes in this Exhibit.
- (n) Overlays on aerial photographs which clearly identify the Project Area with all proposed Project facilities and interconnection route, access roads, and limits of clearing or other changes to topography, vegetation or man-made structures, in order to show the relationships with existing structures and vegetation cover types field-verified by the Applicant.
- (o) Aerial photographs of all properties within the Study Area of such scale to provide detail, discrimination and identification of natural and cultural features. All aerial photographs shall indicate the photographer and the date photographs were taken.
- (p) A description of community character within the Study Area, an analysis of impacts of Facility construction and operation on community character, and identification of avoidance or mitigation measures that will minimize adverse impacts on community character to the maximum extent practicable. For the purposes of this paragraph, community character includes defining features and interactions of the natural, built and social environment, and how those features are used and appreciated in the community based on information in the Town of Byron and Genesee County Comprehensive Plans, as well as information obtained through PIP Plan activities. PIP Plan activities will continue after submission of the Application.
- (q) Photographic representations of the Project Area and the two-mile Study Area, as applicable, for the Project, will be included to depict existing characteristics of the Project and surrounding area setting.
- (r) Mapping of the Project Area with farmland classifications (e.g., all areas of Prime Farmland, Prime Farmland if Drained, Farmland of Statewide Importance, etc.). Also, a discussion of how the Project will avoid or minimize, or mitigate, to the maximum extent practicable, impacts to agricultural soils with the Prime Farmland, Prime Farmland if Drained, and Farmland of Statewide Importance classifications will be included. An analysis of the Prime Farmland, Prime Farmland if Drained, and Farmland of Statewide Importance to be occupied by solar components and the effects it would have on use of that land for future farming operations will also be included, as applicable.

The location and depth of any Applicant-proposed buried conduits and a discussion of the potential for these to prevent otherwise accessible agricultural land from being worked by farmers will be provided in the Application.

- (s) Identification of farmland classifications located within the Project's proposed limits of disturbance.
- (t) The Application will include a map of all publicly known proposed land uses within the Study Area, for which required permit applications have been filed with the appropriate permitting authority, from interviews/consultations with state and local planning officials including the Town of Byron Planning Board, from the public involvement process, or from other sources. The potential cumulative impact of these identified publicly known proposed land uses within the Study Area along with the Project on farmland will be discussed, as will farmland conversion trends over the past 20 years within the Study Area.
- (u) Agricultural impacts will be discussed relative to the goals of the Genesee County Farmland and Agricultural Protection Plan, the construction and lifespan of the Project, and agricultural viability in the Project's Study Area. Other potential impacts of the Project on Project Area agricultural operations, especially during construction, such as road closures and utility outages, will be discussed in the Application, as applicable.
- (v) The Application will include a discussion describing how the Facility layout, and construction and operation of the Project will avoid or otherwise minimize impacts, to the maximum extent practicable, to natural resources and existing land uses, including, without limitation, to Prime Farmland, Prime Farmland if Drained, and Farmland of State Importance, including a discussion as to why it was not possible to avoid the Prime Farmland, Prime Farmland if Drained, and Farmland of State Importance designated areas, a description of the proposed methods for soil stripping, storage and replacement upon the completion of construction, where disturbance to such areas cannot be avoided, as applicable.
- (w) The Application will include a discussion describing how the Facility layout, and construction and operation of the Project will avoid or otherwise minimize impacts, to the maximum extent practicable, to natural resources and existing land uses, including, without limitation, to Prime Farmland, including a discussion as to why it was not possible to avoid the Prime Farmland designated areas, a description of the proposed methods for soil stripping, storage and replacement upon the completion of construction, where disturbance to such areas cannot be avoided, as applicable. The Application will address consideration of offset measures and co-location

accommodation of solar arrays with alternative agricultural uses, as applicable. The Project's long-term impacts on agricultural soils and potential for the Project areas to be returned back to agriculture in the future will be included in the Application. These will be specific to each component of the project (i.e. driveways, equipment pads including batteries, as well as panel fields).

## **Stipulation 5 – 1001.5 Exhibit 5: Electric Systems Effects**

Exhibit 5 shall contain:

- (a) A System Reliability Impact Study (“SRIS”), performed in accordance with the open access transmission tariff of the New York State Independent System Operator (“NYISO”) approved by the Federal Energy Regulatory Commission (“FERC”), that shows expected flows on the system under normal, peak and emergency conditions and effects on stability of the interconnected system, including the necessary technical analyses (Thermal, Voltage, Short Circuit and Stability) to evaluate the impact of the interconnection. The study shall include proposed collection substation and interconnection facilities, as well as any other system upgrades required.
- (b) An evaluation of the potential significant impacts of the Project and its interconnection to transmission system reliability at a level of detail that reflects the magnitude of the impacts.
- (c) A discussion of the benefits and detriments of the Project on ancillary services and the electric transmission system, including impacts associated with reinforcements and new construction necessary as a result of the Facility.
- (d) An analysis of any reasonable alternatives that would mitigate adverse reliability impacts and maintain voltage, stability, thermal limitations, and short circuit capability at adequate levels.
- (e) An estimate of the increase or decrease in the total transfer capacity across each affected interface, and if a forecasted reduction in transfer capability across affected interfaces violates reliability requirements, an evaluation of reasonable corrective measures that could be employed to mitigate or eliminate said reduction.
- (f) A description of criteria, plans, and protocols for generation and ancillary facilities design, construction, commissioning, and operation, including as appropriate to generation technology:
  - (1) Engineering codes, standards, guidelines and practices that may apply, including consideration of the Uniform Fire Prevention and Building Code (Uniform Code) and State Energy Conservation Construction Code (Energy Code);
  - (2) Generation facility type certification;
  - (3) Procedures and controls for facility inspection, testing and commissioning;

- (4) Maintenance and management plans, procedures and criteria, including information on maintaining/mowing grasses under and between the panels and invasive species control measures.
- (g) The Project will not have a thermal component, and therefore, heat balance diagrams are not applicable and will not be included in the Application.
- (h) As part of the Project, the 345 kV switchyard and tap line will be transferred to NYPA to own, maintain and operate. Therefore, the Application will include:
  - (1) A statement concerning 345 kV switchyard ownership. At this time, the Applicant anticipates the 345 kV switchyard will be transferred to NYPA to own, maintain, and operate. NYPA, the transmission owner, will control the operational and maintenance responsibilities of the 345 kV switchyard;
  - (2) A statement that the substation-interconnection design will meet the transmission owner's requirements;
  - (3) A statement that the operational and maintenance responsibilities for the 345 kV switchyard will be performed by NYPA.
- (i) Facility maintenance and management plans, procedures and criteria, specifically addressing the following topics:
  - (1) Solar photovoltaic panel and energy storage maintenance, safety inspections, and racking and mounting post integrity;
  - (2) The proposed collection substation, collection system, line inspections, maintenance, and repairs, including:
    - (i) vegetation clearance requirements;
    - (ii) vegetation management plans and procedures;
    - (iii) inspection and maintenance schedules;
    - (iv) notification and public relations for work in public right-of-way (ROW); and
    - (v) minimization of interference with electric and communications distribution systems.
- (j) Vegetation management practices for the Project facilities, including collection lines, the collection substation, and the switchyard, will be included in the Application, including management practices

for danger trees (i.e., trees that, due to location and condition, are a particular threat to fall on and damage electrical equipment) around the collection substation, specifications for clearances, inspection and treatment schedules, and environmental controls to avoid off-site effects. The Application will address vegetation management throughout the Project Area, including PV racking and panels, fence line, etc.

- (k) A list of the criteria and procedures by which proposals for sharing above ground facilities with other utilities will be reviewed, if applicable.
- (l) A status report on equipment availability and expected delivery dates for major components including solar arrays, collection lines, collection substation, transformers, energy storage infrastructure, and related major equipment.
- (m) Solar energy generation facilities do not have blackstart capabilities; therefore, a description of the Project's blackstart capabilities is not applicable and will not be included in the Application.
- (n) An identification and demonstration of the degree of compliance with all relevant applicable reliability criteria of the Northeast Power Coordinating Council Inc., New York State Reliability Council, and the local interconnecting transmission utility. These appropriate criteria will be identified in the SRIS or through consultation with DPS, NYISO, and the local transmission owner.
- (o) A log form indicating the proposed maintenance and inspection schedule for the proposed collection substation will be included in the Application to the extent available at the time the Application is filed.



**Stipulation 6 – 1001.6 Exhibit 6: Wind Power Facilities**

This requirement is not applicable to the Excelsior Energy Center, as there are no wind power facilities included in the proposed Project.

**Stipulation 7 – 1001.7 Exhibit 7: Natural Gas Power Facilities**

This requirement is not applicable to the Excelsior Energy Center, as there are no natural gas power facilities included in the proposed Project.

### **Stipulation 8 – 1001.8 Exhibit 8: Electric System Production Modeling**

The Applicant will contact DPS and NYSDEC Staff prior to starting its production modeling analysis to discuss the choice of Production Stimulation Software, database assumptions, study time period, and other relevant factors.

Exhibit 8 shall contain:

- (a) The following analyses will be developed using GEMAPS, PROMOD or a similar computer-based modeling tool:
  - (1) Estimated statewide and regional levels of SO<sub>2</sub>, NO<sub>x</sub> and CO<sub>2</sub> emissions, both with and without the proposed Project.
  - (2) Estimated minimum, maximum, and average annual spot prices representative of all NYISO Zones within the New York Control Area, both with and without the proposed Project.
  - (3) An estimated capacity factor for the Project.
  - (4) Estimated annual and monthly, on-peak, shoulder and off-peak MW output capability factors for the Project.
  - (5) Estimated average annual and monthly production output for the Project in MWhs.
  - (6) An estimated production curve for the Project over an average year.
  - (7) An estimated production duration curve for the Project over an average year.
  - (8) Estimated effects of the proposed Project on the energy dispatch of existing must-run resources, defined for this purpose as existing wind, hydroelectric and nuclear facilities, as well as co-generation facilities to the extent they are obligated to output their available energy because of their steam hosts.
- (b) The Application will include digital copies of the inputs used in the simulations required in subdivision (a) of this Exhibit. The Applicant will seek the requisite protections for confidential information provided in this Exhibit as necessary.

## **Stipulation 9 – 1001.9 Exhibit 9: Alternatives**

Alternatives analysis shall be limited to sites owned or leased by, or under option to, the Applicant.

Exhibit 9 shall contain:

- (a) Given that the Applicant proposes to operate a private facility, the identification and description of applicable, reasonable and available alternative location sites for the proposed Project, if any, will be limited to sites under option to the Applicant for the solar energy Project, as authorized by 16 NYCRR § 1001.9(a).
- (b) For each applicable, reasonable, and available alternative location identified, if any, the Applicant will provide an evaluation of the comparative advantages and disadvantages of the proposed and alternative locations at a level of detail sufficient to permit a comparative assessment of the alternatives discussed considering:
  - (1) The environmental setting;
  - (2) The recreational, cultural and other concurrent uses that the site may serve;
  - (3) Engineering feasibility and interconnections;
  - (4) Reliability and electric system effects;
  - (5) Environmental impacts, including but not necessarily limited to an assessment of climate change impacts (whether proposed energy use contributes to global temperature increase) potential wildlife habitat, wetland, stream, visual, and agricultural resource impacts;
  - (6) Economic considerations;
  - (7) Environmental justice considerations;
  - (8) Security, public safety and emergency planning considerations;
  - (9) Public health considerations;
  - (10) The site's vulnerability to potential seismic disturbances and current and anticipated climate change impacts, such as sea-level rise, precipitation changes, and extreme weather events;
  - (11) The objectives and capabilities of the Applicant; and
  - (12) Agricultural use of land.

- (c) A description and evaluation of reasonable alternatives to the proposed Facility at the primary proposed location including applicable, reasonable, and available alternatives regarding:
  - (1) General arrangement and design;
    - (i) consideration of arrangements/design options that would enable some continued agricultural use of the Project Area;
    - (ii) consideration of alternative sites, designs or arrangements that would avoid or minimize impacts to wildlife and wildlife habitat, to the maximum extent practicable, including but not limited to habitat fragmentation, disturbance and loss, and the displacement of wildlife from preferred habitat;
    - (iii) arrangements that would avoid or minimize impacts to waterbodies, wetlands, and streams, to the maximum extent practicable;
    - (iv) arrangement of inverters away from site property lines;
    - (v) consideration of alternative perimeter fencing designs that would minimize, to the maximum extent practicable, contrasts with adjacent land uses and visual character;
    - (vi) alternative design and arrangement options for accommodating existing, or participating landowner, planned, alternative agricultural production projects, of all or parts of the Project Area, to the extent practicable.
  - (2) Technology;
  - (3) Scale or magnitude;
  - (4) As the Project does not involve wind power facilities, alternative turbine layouts are not applicable to the Project; and
  - (5) Timing of the proposed in-service date for the Project in relation to other planned additions, withdrawals, or other capacity, transmission or demand reduction changes to the electric system that would reasonably affect the Project.
- (d) A statement of the reasons why the proposed Project location is best suited, among other applicable, reasonable, and available alternative locations, if any, and measures to be submitted as part of the Application, to promote public health and welfare, including recreational, cultural and other concurrent uses which the site and affected areas may serve.

- (e) A statement of the advantages and disadvantages of the applicable, reasonable, and available alternatives and the reasons why the primary proposed design technology, scale or magnitude, and timing are best suited, among the applicable, reasonable, and available alternatives, to promote public health and welfare, including recreational, cultural and other concurrent uses that the site may serve.
- (f) A description and evaluation of the no action/no build alternative at the proposed Project location, including the reason why the proposed Project is better suited to promote public health and welfare, including recreational, cultural and other concurrent uses that the site may serve.
- (g) An identification and description of reasonable alternate energy supplies will be limited to those that are feasible based on the objectives and capabilities of the Applicant (i.e., solar powered electric generation with energy storage). Accordingly, other fuel sources will not be addressed in the Application.
- (h) Due to the private nature of the Facility, and the objectives and capabilities of the Applicant, (i.e., solar powered electric generation), transmission and demand-reducing alternatives will not be evaluated in the Application.
- (i) A statement of the reasons why the proposed Project is best suited, among the applicable, reasonable and available alternatives to promote public health and welfare, including the recreational, cultural, and other concurrent uses which the site and affected areas may serve.
- (j) A discussion of potential impacts to vegetation associated with alternative arrangements considered, and information regarding why proposed alternative arrangements were not selected. Vegetation discussed will include, but not necessarily be limited to, trees (saplings to mature), food and livestock feed producing crops, graze lands, and soil erosion prevention cover, as applicable.

## **Stipulation 10 – 1001.10 Exhibit 10: Consistency with Energy Planning Objectives**

Exhibit 10 shall contain:

- (a) A statement demonstrating the degree of consistency of the construction and operation of the Project with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan, the Clean Energy Standard, the 2019 Climate Leadership and Community Protection Act, and any publicly available draft new state energy plan including consideration of the information required by subdivisions (b) through (i) of §1001.10.
- (b) A description of the impact the proposed Project would have on reliability in the state based upon the results of the SRIS; provided, however, this description may be submitted when the SRIS (being prepared as part of the Exhibit 5) is submitted.
- (c) A description of the impact the proposed Project would have on fuel diversity in the State.
- (d) A description of the impact the proposed Project would have on regional requirements for capacity.
- (e) A description of the impact the proposed Project would have on electric transmission constraints.
- (f) The proposed Project will generate electricity without the use of fuel. Therefore, there will be no adverse fuel delivery impacts and this topic will not be addressed in the Application.
- (g) A description of the impact the proposed Project would have in relation to any other energy policy or long-range energy planning objective or strategy contained in the most recent State Energy Plan.
- (h) An analysis of the comparative advantages and disadvantages of applicable, reasonable and available alternative locations or properties identified, if any, of which analysis will be limited to sites under option to the Applicant for the solar energy Project, as authorized by 16 NYCRR § 1001.9(a).
- (i) A statement of the reasons why the proposed Project location and source is best suited, among the applicable, reasonable, and available alternatives identified, if any, to promote public health and welfare, including minimizing, to the maximum extent practicable, the public health and environmental impacts related to climate change.

### **Stipulation 11 – 1001.11 Exhibit 11: Preliminary Design Drawings**

All drawings prepared in support of Exhibit 11 of the Article 10 Application will be prepared using computer software (e.g., AutoCAD, etc.), will be labeled “preliminary” and “not for construction purposes,” and will be prepared under the direction of a professional engineer, who is licensed and registered in New York State.

Exhibit 11 shall contain:

- (a) A site plan showing all structures, driveways, parking areas, emergency access lanes, access ways and other improvements at the Project Area, depicting the proposed site in relation to adjoining properties, and depicting the layout of onsite facilities and ancillary features, as applicable. The plan will also include the number of circuits per proposed collection system route, the tap on New York Power Authority (“NYPA”)’s 345 kV Line #NR2 between Niagara and N. Rochester substations, and any known existing transmission utilities and associated rights-of-way within the Project Area as well as laydown, staging, and equipment storage areas with associated access, setbacks, and parking. The proposed tap will be approximately several hundred feet long and within the Project Area. Additional drawings shall be included depicting the layout of all offsite facilities and ancillary features, if applicable. There are currently no buildings, offsite facilities, or sidewalks proposed. Site plans will also provide indication of property lines. Four full size copies of the preliminary design drawing set (utilizing a common engineering scale) will be provided to DPS at the time of Application submittal, as applicable. Additionally, the Applicant will provide a Flash Drive Memory Stick containing AutoCAD drawing files, as applicable. The Applicant will incorporate and apply DPS staff guidelines regarding drawing size to maps and drawings as applicable and appropriate, unless otherwise specified in these stipulations. The following specific features will be included on the Project Site plans and will be submitted with the Application:
  - (1) Proposed solar panels and associated mounting features (outline of any concrete pads, foundations, etc.), any energy storage system(s), low-medium transformers, inverters and any meteorological stations;
  - (2) Access road travel lanes, including estimated linear distances;
  - (3) Proposed grading (temporary grading for construction purposes and permanent contours for final grading);



- (4) Electric collection lines, including estimated linear distances, and number of circuits per proposed electric cable route; overhead and underground cable routes will be differentiated with specific line-types;
- (5) The existing electric transmission line (which the Project will interconnect to) and any known existing utilities and associated rights-of-way within the Facility site;
- (6) Approximate limits of disturbance for all Facility components (panels, access roads, buildings, electric lines, substations, etc.);
- (7) Clearing limits for all Project components (panels, access roads, buildings, electric lines, shading vegetation, etc.);
- (8) Indication of off-site permanent ROW and road crossings for all electric cable installations;
- (9) Outline of collection and interconnection switchyard/substations, including access driveway, setbacks and fence line;
- (10) Proposed locations of electric cable installations for crossing of streams, waterbodies, roads, etc. and, where proposed, any proposed locations of such crossings that will utilize trenchless methods of installation, including the approximate laydown area (outline of approximate work space needed) and approximate trenchless installation distances;
- (11) Laydown, staging, and equipment storage areas including designated parking areas;
- (12) O&M facilities (if applicable) including access, parking areas, equipment storage areas, and the location of any proposed water supply and septic system(s);
- (13) Fencing and gates, including clearing associated with fencing;
- (14) Property lines and zoning setbacks;
- (15) Existing utility equipment locations and easement limits of those existing locations, including electric transmission and distribution lines, cable and telecommunication lines, gas pipelines, municipal water, municipal sewer lines, and other features as applicable;
- (16) Site security features, including perimeter fencing; and
- (17) Planted screening locations, if applicable.

- (b) A construction operations plan indicating all on-site materials lay-down areas, construction preparation areas, major excavation and soil storage areas, as applicable, and construction equipment and worker parking areas.
- (c) Grading and erosion control plans indicating soil types, depth to bedrock, areas of cut and fill, retaining walls, initial and proposed contours, and permanent stormwater retention areas, as applicable (will address both construction-phase and permanent installations)(information for grading and erosion control plans may be included in site plans or provided as a stand-alone drawing set).
- (d) A landscaping plan indicating areas of trees to be retained, removed, or restored; berms, walls, fences and other landscaping improvements, and areas for snow removal storage (this information may be presented in the site plans or as a stand-alone mapping set).
- (e) A lighting plan detailing the type, number, location, and elevation of exterior lighting fixtures and indicating measures to be taken to prevent unnecessary light trespass beyond the Project property line. Representative manufacturers cut-sheets for lighting fixtures will be included in the Application.
- (f) Architectural drawings, as applicable, including structure arrangements and exterior elevations for all structures (including collection substation and 345 kV switchyard tap line and interconnection equipment, energy storage system, and site security features, such as CCTV or other monitoring equipment support structures, as well as any O&M or other operational support buildings and structures, including retaining walls, and fences), indicating the length, width, height, material of construction, color, and finish of all buildings, structures, and fixed equipment and the type(s) of site perimeter fencing (including access gate(s)) to be installed extensively around the Project.
- (g) Typical design detail drawings of all underground facilities indicating proposed width of typical trench, depth and level of cover, and all overhead facilities indicating height above grade, including descriptions and specifications of all major components.
  - (1) Plan and sections for all proposed layout schemes concerning underground collection line installations, as applicable, including:
    - (i) Single and multiple-circuit layouts;
    - (ii) Co-located installations with dimensions of proposed depth and level of cover;
    - (iii) Separation requirements between circuits;

- (iv) Clearing width limits for construction; and
  - (v) Operation of the facility, limits of disturbance, and required permanent ROW.
- (2) If overhead collection lines are deemed necessary, the following applicable information will be included on drawings submitted with the Application:
  - (i) Elevation plans for overhead facilities (collection and transmission lines) including height above grade, structure layouts, clearing width limits for construction and operation of the facility, and permanent ROW widths;
  - (ii) Average span lengths for each proposed layout; and
  - (iii) Structure separation requirements (for installations containing more than one pole, etc.) for all single and multiple-circuit layouts.
- (3) Foundations (piers, any other installation, including dimensions) to be used for solar panel installations;
- (4) A circuit map indicating overhead and underground installations, and number of required circuits proposed per collection line run (may be indicated on site plans, or provided as a stand-alone map);
- (5) Typical details associated with trenchless installations, including typical staging areas, construction machinery arrangements, and bore pits;
- (6) Technical data sheets associated with solar panels to be used for this Project;
- (7) Elevation plans including foundation details for any energy storage system(s), including length, width, and height details; and
- (8) Preliminary typical details of seismic protection for energy storage systems.
- (h) For interconnection facilities, the plans and drawings required by subsections (a) through (g) of this exhibit for the proposed interconnection facilities and a profile of the centerline of the interconnection facilities at exaggerated vertical scale.
- (i) A list of engineering codes, standards (including the National Electrical Safety Code (NESC)), guidelines and practices with which the Applicant intends to conform with when planning, designing, constructing, operating and maintaining the Project, electric collection system, substation, 345 kV switchyard and tap line, and associated structures, as applicable. These standards will include those of the American Concrete Institute (ACI) and the Building Code of

New York State applicable to the Project. This shall also include code references and descriptions for any proposed electrical energy storage system(s); and a summary of correspondence with the local fire department regarding potential installation of any electrical energy storage system(s).

- (j) All wetland boundaries will be included in the Application on maps, site plans, and shapefiles. Interpolated and adjacent area boundaries will be differentiated from field-delineated boundaries when displayed on maps, site plans, and shapefiles.
- (k) Site plan drawings, referenced in 11(a) above, at a scale of 1":100' (scale may be greater: such as 1"=60', 1"=40', etc.) and will depict all Facility components; proposed grade changes; the limits of ground disturbance and vegetative clearing; and all field-delineated wetlands, predicted wetland boundaries and state-regulated 100-foot adjacent areas and state-regulated wetlands located within 100 feet of all areas to be disturbed by construction.

## **Stipulation 12 – 1001.12 Exhibit 12: Construction**

Exhibit 12 shall contain:

- (a) Preliminary quality assurance and control procedures, including staffing positions and qualifications necessary and demonstrating how the Applicant will monitor and assure conformance of facility installation with all applicable design, engineering and installation standards and criteria.
- (b) A statement from a responsible company official that:
  - (1) The Applicant and its contractor(s) will conform to the requirements for protection of underground facilities contained in PSL §119-b, as implemented by 16 NYCRR Part 753.
  - (2) The Applicant will comply with pole numbering and marking requirements, as implemented by 16 NYCRR Part 217 (if determined to be required).
- (c) Preliminary plans and descriptions indicating design, location and construction controls to avoid interference with existing utility transmission and distribution systems, indicating locations and typical separations of proposed facilities from existing electric, gas infrastructure (production or storage wells, pipelines, and related components), and communications infrastructure and measures to minimize interferences where avoidances cannot be reasonably achieved. The Applicant will consult with the owner of the existing pipelines that traverse the Project Area to request specific information, and the following will be provided, to the extent available:
  - (1) A review of publicly recorded easements associated with the pipelines;
  - (2) An indication of any publicly recorded restrictions associated with the easement for crossing and setbacks;
  - (3) Results of consultations with the owners of the pipelines requesting specific information regarding crossings of or Project component installations nearby the existing utility;
  - (4) To the extent provided upon written request of the Applicant, utility owner criteria for installations of Facility components near the existing pipelines;
  - (5) Descriptions of any potential studies required or recommended by the pipeline owners (along with an indication of timing of the studies);
  - (6) Specific separation requirements or recommendations regarding specific Project components (collection lines, panels, etc.) in relation to the existing pipelines;

- (7) Descriptions and typical details of any required or recommended protective features to be placed at crossings of or nearby the existing pipelines; and
  - (8) Communications and coordination requirements of the pipelines Project owner-operators for construction within the pipeline right-of-way.
- (d) Specification of commitments for addressing public complaints, and procedures for dispute resolution during facility construction and operation and reporting to the Town. The Complaint Resolution Plan will include steps for informing the public and the Town of Byron about the Complaint Plan and the process to file a complaint (i.e. written, electronic, telephone). The Complaint Resolution Plan shall identify and include any procedures or protocols that may be unique to each phase of the Project (e.g., construction, operation, decommissioning) or complaint type (e.g., noise) and the steps the Applicant will take if a complaint remains unresolved. The Application will include a plan for maintaining a complaint log listing all complaints and resolutions during construction and operations of the Project and will include a procedure for review and transmittal of the complaint log to DPS staff.
- (e) A statement regarding how and when the Applicant will communicate with the stakeholder list about construction activities, schedule and applicable safety and security measures.

### **Stipulation 13 – 1001.13 Exhibit 13: Real Property**

Exhibit 13 shall contain:

- (a) A survey of the Project Area, created by a licensed surveyor, showing property boundaries with tax map sheet, block and lot numbers; the owner of record of all parcels included in the Project Area and for all adjacent properties; land rights, easements, grants and related encumbrances on the Project Area parcels; public and private roads on or adjoining or planned for use as access to the Project Area; zoning and related designations applicable to the Project Area and adjoining properties.
- (b) A property/ROW map of all proposed interconnection facilities and off-property/ROW access drives and construction lay-down or preparation areas for such interconnections, as applicable.
- (c) A demonstration that the Applicant has obtained title to or a leasehold interest in the Project Area, including ingress and egress access to a public street, or is under binding contract or option to obtain such title or leasehold interest, or can obtain such title or leasehold interest. The Application will include a map and a table to indicate property rights under the Applicant's control or lease option for Project development.
- (d) A statement that the Applicant has obtained, or can obtain, such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the Project.
- (e) There are currently no improvement district extensions necessary for the Project. Therefore, this will not be included in the Application.

#### **Stipulation 14 – 1001.14 Exhibit 14: Cost of Facilities**

Exhibit 14 shall contain:

- (a) A detailed estimate, as explained in (b) below, of the total capital costs of the proposed Project, including the costs associated with development and permitting, solar arrays, energy storage, the balance of Project equipment and engineering, and other costs necessary for interconnecting the Project to the New York grid. However, this information is proprietary. Therefore, the Applicant will seek the requisite trade secret/confidential protection for this information pursuant to POL Section 87(2) (d) and 16 NYCRR § 6-1.3.
- (b) The cost estimate provided in subdivision (a) above will be based on the Applicant's experience in building solar energy projects in the United States and estimated prices from third-party vendors associated with the various solar components.
- (c) Upon the demand of any party or of the DPS, the Applicant shall supply the work papers from which the estimates required by subdivision (a) were made, provided that demand is made in the form of a written request. However, this information is proprietary and typically treated as trade secret and/or confidential commercial information. Therefore, the Applicant will seek the requisite trade secret and/or confidential commercial information protection for this information pursuant to POL Section 87(2) (d) and 16 NYCRR § 6-1.3.



## **Stipulation 15 – 1001.15 Exhibit 15: Public Health and Safety**

Exhibit 15 shall contain:

The Applicant will prepare a statement and evaluation in the Application that identifies, describes, and discusses potential significant adverse impacts of the construction and operation of the Project and related facilities on the environmental, public health, and safety, at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence and identifies the current applicable statutory and regulatory framework.

- (a) The anticipated gaseous, liquid and solid wastes to be produced at the Project during construction and under representative operating conditions of the Project, including their source, anticipated volumes, composition and temperature, and such meteorological, hydrological and other information needed to support such estimates. Studies referenced shall identify the author and date thereof, used in the foregoing analysis. This will also include consideration of wood waste generated during site clearing, including stumps and slash, and proposed methods to manage these materials.
- (b) The anticipated volumes of such wastes to be released to the environment during construction and under an operating condition of the Project. Thin-film solar cell technology is not being proposed. A manufacturer's specification sheet for the typical type of crystalline silicon solar panel to be used will be provided.
- (c) The treatment process to eliminate or minimize wastes to be released to the environment.
- (d) The manner of collection, handling, storage, transport and disposal for wastes retained and not released at the site, or to be disposed of.
- (e) Impacts specific to wind-powered facilities will not be addressed in the Application as they are not applicable to the Project.
- (f) Maps of the Study Area and analysis showing relation of the proposed Project Area to public water supply resources; community emergency response resources and facilities including police, fire and emergency medical response facilities and plans; emergency communications facilities; hospitals and emergency medical facilities; designated evacuation routes; existing known hazard risks including flood hazard zones, storm surge zones, landslide hazard areas, areas of geologic, geomorphic or hydrologic hazard; dams, bridges and related infrastructure; explosive or flammable materials transportation or storage facilities; contaminated sites; major natural gas facilities; and other local risk factors, should any be identified.

- (g) All significant impacts on the environment, public health, and safety associated with the information required to be identified pursuant to subdivisions (a) through (f) above, including all reasonably related short-term and long-term effects.
- (h) Any adverse impact on the environment, public health, and safety that cannot be avoided should the proposed Project be constructed and operated and measures for monitoring and measuring of such impacts, if applicable.
- (i) Any irreversible and irretrievable commitment of resources that would be involved in the construction and operation of the Project, if applicable.
- (j) Any measures proposed by the Applicant to minimize such impacts, as applicable.
- (k) Any measures proposed by the Applicant to mitigate or offset such impacts, if applicable.
- (l) Any monitoring of such impacts proposed by the Applicant, if applicable.
- (m) Should the Applicant choose to employ the use of herbicides or fertilizers, information will be provided in the Application identifying typical types utilized and the reasoning for their use.
- (n) In addition to the requirements outlined in subdivisions (a) through (l) above, the Applicant will perform receptor surveys using publicly available information and field visits to determine full-time and part-time residences in the vicinity of the Project Area property boundaries to document whether there will be operational sound impacts to such residences as a result of the Project that exceed any applicable state or local standards.
- (o) A glare analysis will be prepared in accordance with Stipulation 24 (a)(9).

**Stipulation 16 – 1001.16 Exhibit 16: Pollution Control Facilities**

The Project will not generate pollutants on any ongoing basis, nor require any pollution control facilities. Additionally, the Project will not use an emergency generator. Therefore, this requirement is not applicable to the Excelsior Energy Center Project.

**Stipulation 17 – 1001.17 Exhibit 17: Air Emissions**

Exhibit 17 of the Application will contain a discussion on potential temporary impacts to ambient air quality resulting from the construction of the Project, typical of a commercial construction project. Such impacts could occur as a result of emissions from engine exhaust and from the generation of fugitive dust during earth-moving activities and travel on unpaved roads. There will be no back-up generator installed for operation of the Project. An identification of appropriate control and mitigation measures to minimize potential adverse impacts will be provided.

Exhibit 17 shall contain:

- (a) A statement of the facility's compliance with any applicable federal, state, and substantive local regulatory requirements regarding air emissions.

## **Stipulation 18 – 1001.18 Exhibit 18: Safety and Security**

Exhibit 18 shall contain:

- (a) A preliminary plan for site security of the proposed Project during construction of such facility, including site plans and descriptions of the following site security features (if circumstances dictate their use):
  - (1) Access controls including fences, gates, bollards and other structural limitations;
  - (2) Electronic security and surveillance facilities;
  - (3) Security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass; and
  - (4) Setback considerations for Project components which may present hazards to public safety.
- (b) A preliminary plan for site security of the proposed Project during operation of such facility, including site plans and descriptions of the following site security features, including consideration of local zoning and land use regulations for fence-line setbacks and security fencing design requirements (if circumstances dictate their use):
  - (1) Access controls including fences, gates, bollards and other structural limitations;
  - (2) Electronic security and surveillance facilities;
  - (3) Security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass;
  - (4) Lighting of facility components to ensure aircraft safety;
  - (5) Setback considerations for Project components which may present hazards to public safety; Setback considerations with respect to wildlife and habitats are presented in Exhibit 22; and
  - (6) A description of a cyber-security program for the protection of digital computer and communication systems and networks that support the Facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry, including, but not limited to, the Federal Department of Commerce's National Institute of Standards and Technology (NIST), the NERC, or the International Organization for Standardization (ISO), and providing for periodic validation of compliance with the applicable standard by an independent auditor.

- (c) A preliminary response plan to ensure the safety and security of the local community, including:
  - (1) An identification of contingencies that would constitute a safety or security emergency;
  - (2) Emergency response measures by contingency;
  - (3) Evacuation control measures by contingency; and
  - (4) Community notification procedures by contingency. These procedures will include a detailed description of the stakeholders included in the communication/notification efforts, the timeframes for notification, and the planned communication methods (e.g., letter, doorhangers, electronic mail, text, telephone calls, etc.). Mandatory plans for how these communications will be tracked and reported in a log to DPS Staff will be identified and discussed in the Application.
- (d) A statement that the Applicant will provide a copy of the plans required in subdivisions (a), (b), and (c) of this Exhibit to, and request review of such plans and comment by, the New York State Division of Homeland Security and Emergency Services (“DHSES”).
- (e) The Facility is not located within any part of a city with a population over one million, therefore this section of the Exhibit 18 regulation is not applicable.
- (f) A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies and hazardous substance incidents.
- (g) A description of all contingency plans to be implemented in response to the occurrence of a fire emergency, hazardous substance incident, or a gas pipeline incident will be provided in the Application. Relevant on-site equipment and system information will be provided to the appropriate emergency response agencies, including the local fire and police departments. The local entities, all on-site equipment, and any on-site safety control measures (i.e., fire extinguishers and their locations) will be included in the ERP, which will be submitted with the Application. The Genesee County Planning Board, Genesee County Sheriff’s Office, Town of Byron, Genesee County Emergency Management Office, Byron and South Byron Fire Departments, and NYS Division of Homeland Security and Emergency Services will be consulted to review the draft ERP and preliminary plans, and their input will be solicited.
- (h) A statement that the Applicant will consult with Genesee County Emergency Management Office and local emergency first responders during the development of the Emergency Response Plan (“ERP”). The Applicant will provide a copy of the final plans required in subdivision (c) of this

Exhibit to, and request review of such plans and comment by, local emergency first responders serving the Project Area and a review by the Applicant of any responses received.

- (i) The ERP will outline the contingencies that would constitute a safety or security emergency, the appropriate response measures to be taken as a result of this emergency, any evacuation control measures that may be necessary, and the means by which the community will be notified of the emergency and any procedures that shall be followed.
- (j) The Applicant will identify the first responders/emergency services that will be consulted during the development of the ERP and those identified will receive copies of the final site plan.
- (k) The Application will address how the Applicant will provide information and training to the local emergency response organizations, including the Genesee County Emergency Management Department, to instruct such entities on how to respond to emergencies that occur on, near, or as a result of the operation of the solar facility.

## **Stipulation 19 – 1001.19 Exhibit 19: Noise and Vibration**

Exhibit 19 of the Application shall contain a study of the potential noise impacts of the construction and operation of the Project. The study will include the solar arrays, related facilities, energy storage facilities and ancillary equipment, including the proposed collection substation and 345 kV switchyard. The name and qualifications to perform such analyses of the preparer of the study shall be stated. If the results of the study are certified in any manner by a member of a relevant professional society, the details of such certification shall be stated. If any noise assessment methodology standards are applied in the preparation of the study, an identification and description of such standards shall be stated. The Applicant proposes to collect, evaluate, and provide the following information to support and prepare Exhibit 19 of the Application in accordance with § 1001.19.

Exhibit 19 will include:

- (a) A map of the study area in digital format showing the location of sensitive receptors within the 30 dBA noise contour or 0.3-mile of the Project Area whichever is greater, in relation to the proposed Project, related proposed facilities, ancillary equipment, energy storage facilities, collection substation and 345 kV switchyard. The sensitive receptors shown shall include residences (including participating, non-participating, full-time, and seasonal), outdoor public facilities and areas, State Forest Lands, places of worship, hospitals, schools, cemeteries, campsites, summer camps, Public Parks, Federal and NY State Lands and other noise-sensitive receptors, if identified. Seasonal receptors will include, at a minimum, cabins and hunting camps, identified by property tax codes and any other seasonal residences with septic systems/running water.
- (b) An evaluation of ambient pre-construction baseline noise conditions:
  - (1) Will include A-weighted/dBA sound levels and prominent discrete (pure) tones, at representative potentially impacted noise receptors using actual measurement data recorded in winter and summer and during day and night as a function of time and frequency (frequency data will include 1/3 octave bands from 20 Hertz [Hz] up to 10,000 Hz) using a suitable and suitably calibrated sound level meter (SLM) and octave band frequency spectrum analyzer or similar equipment.
  - (2) The ambient pre-construction baseline sound level will be filtered to exclude seasonal and intermittent noise.
  - (3) The pre-construction ambient sound levels will be evaluated in accordance with the requirements of these Exhibits and applicable portions of ANSI Standards S12.100-2014 and



S12.9 Part 2-1992 R-2013. These methods and standards will be described in the PNIA and summarized in Exhibit 19 of the Application.

- (4) Graphical timelines for the A-weighted Leq and the L90 broadband noise levels for each pre-construction sound measurement location will be included in the Application.
- (5) Figures for the un-weighted Leq and the L90 full-octave band noise levels (after exclusions, starting at the 16 Hz full octave band or 12.5 1/3 octave band) for each pre-construction measurement location will also be included.
- (6) The Application will describe how the pre-construction ambient surveys were conducted including specifications for sound instrumentation and weather meters, calibration, settings, positions that were tested, noise descriptors collected, range of sound frequencies evaluated, weather conditions, testing conditions to be excluded, schedules and time frames, testing methodologies and procedures, provisions for evaluation of existing tones and sounds with strong low frequency noise content, if any.
- (7) Measurement locations will include global positioning system (GPS) coordinates of the sound microphones and annual average daily traffic (AADT) information of the nearest road, to the extent the data is available from the County and/or New York State Department of Transportation (NYSDOT). The Application will include a justification for location selection and specify whether selected locations are representative of potentially impacted receptors.
- (8) The seasonal noise will be filtered by using the process specified in ANSI/ASA S12.100-2014. The intermittent noise will be filtered by reporting the L90. Each sound collection will be conducted for a minimum of 7 consecutive days.
- (9) Temporal accuracy of the ambient data will be calculated to a 95 percent confidence interval using the technique in Section 9 of ANSI S12.9-1992/Part 2 (R2013) or any other applicable statistical procedure as appropriate for the Leq and the L90 noise descriptors.
- (10) The sound instrumentation for ambient sound surveys will comply with the following standards: ANSI S1.43-1997 (R March 16, 2007). Specifications for Integrating- Averaging Sound Level Meters; ANSI S1.11-2004 (R June 15, 2009) Specification for Octave-Band Analog and Digital Filters, and ANSI S1.40-2006 (R October 27, 2011) (Revision of ANSI 1.40-1984) Specifications and Verification Procedures for Sound Calibrators.
- (11) Data collected out of the range of operation of the sound instrumentation will be excluded. Sound data collected at wind speed exceeding 5 meters per second (11 miles per hour) at the

sound microphone or portable weather station heights will also be excluded. Pre-construction sound level data collected during periods of rain, thunderstorms and snowstorms will also not be used in the calculation of background sound levels. These exclusions will be indicated on the graphs specified in this section.

- (c) An evaluation of future noise levels during construction of the proposed Project, proposed related facilities and proposed ancillary equipment, including predicted A-weighted sound levels at various distances and at proximate potentially impacted and representative sensitive receptors will be performed using a 3-D computer propagation model. Information will include sound contours and predicted sound levels including the loudest pieces of equipment for the different phases of construction. By its very nature, construction equipment typically moves around the site. This section will include a discussion of time frames for construction activities indicating seasons of the year, days of the week, hours of the day, and whether construction activities will be performed during evening time (6:00 p.m. to 10 p.m.), nighttime (after 10:00 p.m. or before 7:00 a.m.), weekends or national holidays.
- (d) Future sound levels from the Project will be calculated with the Cadna/A computer software or similar software that uses the ISO 9613-2 standard. Sound levels and noise source characteristics will be based upon information provided by the manufacturer on components to be used or a similar product or piece of equipment, documentation of which will be included with the Application.
  - (1) For the purposes of this Exhibit the term “ISO-9613-2” will refer to the ISO 9613-2:1996 Standard or equivalently the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (Modified) Standard with no meteorological correction (Cmet) or equivalently with the meteorological correction Cmet equaled to a value of zero.
  - (2) The Cadna/A model performs calculations for full octave bands from 31.5 Hertz (Hz) to 8,000 Hz.
  - (3) Computer noise modelling will be performed at a minimum for the Project equipment with the highest Broadband A-weighted sound power level (Maximum dBA sound power level).
  - (4) The Application will include a discussion and justification for ground absorption “G” values that will be used for sound propagation over land.
  - (5) The predicted sound levels from ISO 9613-2 will be reported for sensitive receptors in tabular format and shown at sensitive receptors and external property boundaries through graphical isolines of A-weighted decibels. Contours will start at 30 dBA and shown in 1-

dba increments. Noise contours representing sound levels in multiples of 5 dB will be differentiated.

- (6) Participating, developed, and, undeveloped (vacant) non-participating properties will be differentiated. Only properties that have a signed contract with the Applicant as of the date of filing the Application will be identified as “participating”.
  - (7) A temperature of 10 degrees Celsius and 70 percent relative humidity will be used to calculate atmospheric absorption for the ISO 9613-2 model. These conditions result in the smallest reduction in sound levels caused by air absorption at the key frequencies for A-weighted sound levels.
  - (8) The Application will include a brief discussion about the accuracy of selected outdoor propagation models, methodologies, ground absorption values, assumptions and the correlation between measurements and predictions for documented cases as compared to other alternatives, as available.
  - (9) The model will also include any relevant noise sources from the Project, including but not limited to the arrays of panels (e.g. inverters, medium to low voltage transformers), proposed collection substation, energy storage facilities, and 345 kV switchyard and proposed ancillary equipment. No emergency generators are proposed for the Project.
  - (10) A ground absorption factor, G, of zero ( $G=0$ ) will be used to represent waterbodies.
- (e) An evaluation of future noise levels predicted during operation of the Project, related facilities and ancillary equipment including:
- (1) Modeled A-weighted/dba sound levels at all sensitive receptors.
  - (2) A discussion of whether a tonal condition is possible from the substation, energy storage facilities, or inverters. The “prominent discrete tone” constant level differences (Kt) in ANSI S12.9-2013/Part 3 Annex B, Section B.1, will be used to evaluate tones at the nearest 10 potentially impacted and representative noise receptors using spreadsheet calculations if 1/3 octave band data information are available.
  - (3) Amplitude modulation is not an issue with solar projects and will not be included in the Application.
  - (4) Infrasound and low-frequency sounds:

- (i) Low frequency sounds for the full-octave bands equal to and greater than 31.5 Hz will be evaluated at all the sensitive receptors as listed in Section (a) of this Exhibit. The number of receptors with SPL's equal to and greater than 65 dB will be reported.
  - (ii) Infrasound is not an issue for solar projects and will not be included in the Application.
- (f) The A-weighted/dBA sound levels, in tabular form for the facility and related facilities, ancillary equipment sites and each sensitive location and in graphical form at external property boundary lines, will be calculated. The tables will include the following:
  - (1) The daytime ambient noise level will be calculated from leaf on (i.e., summertime) and leaf off (i.e., wintertime) background sound level monitoring data. This will be equal to the L90 of sound levels measured during the daytime at each of the monitoring locations. Daytime will be 15 hours (7 a.m. – 10 p.m.).
  - (2) The leaf on (i.e., summertime) nighttime ambient noise level will be calculated from summer background sound level monitoring data. This will be equal to the L90 of sound levels measured at night, during leaf on conditions at each of the monitoring locations. Nighttime will be 9 hours (10 p.m. – 7 a.m.).
  - (3) The leaf off (i.e., wintertime) nighttime ambient noise level will be calculated from background sound level monitoring data. This will be equal to the L90 of sound levels measured at night, during leaf off conditions at each of the monitoring locations. Nighttime will be 9 hours (10 p.m. – 7 a.m.).
  - (4) The worst case future noise level during the daytime period will be determined for each sensitive receptor listed in Section (a) of this Exhibit by logarithmically adding the most representative daytime ambient sound level (L90) as related to the use and soundscape of the location being evaluated, calculated from background sound level monitoring in Section (f)(1), to the modeled upper tenth percentile sound level (L10) of the Project. The L10 statistical noise descriptor corresponds to the highest short-term daytime sound level. Daytime will be 15 hours (7 a.m. – 10 p.m.).
  - (5) The worst case future noise level during the leaf on (i.e., summertime) nighttime period will be determined for each sensitive receptor listed in Section (a) of this Exhibit by logarithmically adding the most representative leaf on nighttime ambient sound level (L90) as related to the use and soundscape of the location being evaluated, calculated from

background sound level monitoring in Section (f)(2), to the modeled upper tenth percentile sound level (L10) of the Project at each evaluated receptor. The L10 statistical noise descriptor for the leaf on nighttime period will consist of only the substation operating. Nighttime will be 9 hours (10 p.m. – 7 a.m.).

- (6) The worst case future noise level during the leaf off (i.e., wintertime) nighttime period will be determined for each sensitive receptor listed in Section (a) of this Exhibit by logarithmically adding the most representative leaf off nighttime ambient sound level (L90) as related to the use and soundscape of the location being evaluated, calculated from background sound level monitoring in Section (f)(3), to the modeled upper tenth percentile sound level (L10) the Project at each evaluated receptor. The L10 statistical noise descriptor for the leaf off nighttime period will consist of only the substation operating. Nighttime will be 9 hours (10 p.m. – 7 a.m.).
- (7) The daytime ambient average noise level will be calculated by logarithmically averaging sound pressure levels (Leq) (after exclusions) from the background sound level measurements over the daytime period at each monitoring location. These calculations will include both leaf on (i.e., summertime) and leaf off (i.e., wintertime) data. Daytime will be 15 hours (7 a.m. – 10 p.m.).
- (8) Typical facility noise levels for each sensitive receptor listed in Section (a) of this Exhibit will be calculated as the median sound pressure level emitted by the Project at each evaluated receptor (L50). The median sound pressure level will likely be similar to the highest short-term daytime sound level.
- (9) Typical facility daytime noise levels for each sensitive receptor listed in Section (a) of this Exhibit will be calculated as the most representative daytime equivalent average sound level (Leq) that was calculated from background sound level monitoring in Section (f)(7), as related to the use and soundscape of the location being evaluated, logarithmically added to the median facility sound pressure level (L50) at each evaluated receptor. The L50 statistical noise descriptor will correspond to the daytime value calculated in Section (f)(8). Daytime will be 15 hours (7 a.m. – 10 p.m.).
- (g) A description of the noise standards applicable to the facility, including any local substantive requirements, and noise design goals for the facility at representative potentially impacted noise receptors, including residences, outdoor public facilities and areas, hospitals, schools, other noise-

sensitive receptors, and at representative external property boundary lines of the facility and related facilities and ancillary equipment sites.

- (h) A table outlining regulations, ordinances, noise standards, guidelines and goals applicable to the Project. The Applicant will review applicable local codes and will provide a summary of applicable substantive noise standards from these codes. In addition, the Applicant will include a summary of noise-modeling results from the PNIA for all sensitive receptors as listed in Section (a) of this Exhibit in relation to applicable noise ordinances, standards, guidelines, goals and identified criteria by using the specific requirements as related to noise descriptors (e.g., Leq, L10), weighting scales, and time frame of determination (e.g., minutes/hour, 1-hour, 1-year). The number of receptors exceeding any identified limit, threshold, goal, guideline, or recommendation will be included in the Application (in terms of absolute and relative numbers). For ease of identification and comparison the sound study prepared for Exhibit 19 of the Application will use the same definition of “sensitive receptor” and will employ a common receptor labelling system as used throughout the Application. Noise levels for participant and non-participant lot boundary lines will be represented as specified in Section (d).
- (i) Identification and evaluation of reasonable noise abatement measures for construction activities will be provided, including a description of the Complaint Resolution Plan that shall be provided during the construction period. The Application will include an assessment of reasonable noise abatement measures during construction (i.e., implementing BMPs, Complaint Resolution Plan, etc.).
- (j) The Complaint Resolution Plan will include information on the process to file a complaint (i.e., written, electronic, and oral). An identification of any procedures or protocols that may be unique to each phase of the Project (e.g., construction, operation, decommissioning) or complaint type (e.g., noise) will also be included. The Applicant will maintain a complaint log listing all complaints and resolutions during construction and operations of the Project, and the Plan will include a procedure for review and transmittal of the complaint log to DPS Staff. The Town Clerk will be notified when a complaint is filed.
- (k) An identification and evaluation of reasonable noise abatement measures for the final design and operation of the Project including the use of alternative technologies, alternative designs, and alternative Project arrangements.
- (l) An evaluation of the following potential community noise impacts:

- (1) The potential for the Project to result in hearing damage will be addressed using OSHA standards, EPA “Levels” document (1974), and the World Health Organization (WHO, 1999).
  - (2) Indoor and outdoor speech interference will be addressed using the EPA “Levels” document (1974) and WHO (1999) Guideline Levels.
  - (3) Potential for annoyance and complaints will include a review of peer-reviewed and/or government-sponsored literature, studies, and/or publications, specific to the relationship between noise and annoyance complaints.
  - (4) Information regarding construction activities will be included in the Construction Operations Plan, the Preliminary Blasting Plan (if any blasting is determined to be necessary), and the Preliminary Geotechnical Report. Potential for some construction activities (such as blasting, pile driving, excavation, horizontal directional drilling [HDD] or rock hammering, if any) to produce any cracks, settlements or structural damage on any existing proximal buildings, including any residences, historical buildings or infrastructure will be analyzed in this section and included in the Application.
  - (5) Potential for air-borne or ground-borne transmitted vibrations from the operation of the Facility to reach a sensitive receptor including any sensitive technological, industrial, or medical activities and cause vibrations on the floors or on building envelope elements that may be perceived at the receptor will be evaluated through a review of peer-reviewed and/or government sponsored literature, studies, and/or publications.
- (m) A description of the proposed post-construction evaluation studies and a plan for post-construction evaluations to determine conformance with operational noise design goals.
- (n) An identification of practicable post-construction operational controls and other mitigation measures that will be available to address reasonable complaints, including a description of a complaint resolution plan that shall be provided during periods of construction and operation.
- (o) Specific modeling input parameters, assumptions, and any associated data used in sound propagation modeling and calculations will be included as an appendix to the PNIA and shall fairly match the unique operational noise characteristics of the particular equipment proposed for the Project. The Application will include noise source locations (including latitude/longitude coordinates plus elevation above sea level), evaluated participating and non-participating receptor locations (including latitude/longitude coordinates plus elevation above sea level); participant and

non-participant boundary lines; and noise source sound level data as obtained and as included in the model. These will be delivered directly to DPS Staff by electronic means.



## **Stipulation 20 – 1001.20 Exhibit 20: Cultural Resources**

Consistent with 16 NYCRR § 1001.20, the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, and the NYAC's Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State (1994), the Applicant initiated consultation with the New York State OPRHP via the CRIS system on May 20, 2019 to develop the scope and methodology for cultural resources studies for the Project.

Exhibit 20 shall contain:

- (a) A study of the impacts of the construction and operation of the Project, interconnections and related facilities on archaeological resources, including:
  - (1) Consultation with local historians, such as the Town of Byron Historical Society, the Town of Byron, including the Town Supervisor, to identify locally significant archaeological/cultural resources, as relevant and necessary.
  - (2) A summary of the nature of the probable impact on any archaeological/cultural resources identified addressing how those impacts shall be avoided or minimized, to the maximum extent practicable;
  - (3) A Phase IA archaeological/cultural resources study for the Area of Potential Effect (APE) for the Project Area, as determined in consultation with OPRHP, including a description of the methodology used for such study;
  - (4) A Phase IB study, if required, as determined in consultation with OPRHP;
  - (5) Phase II archaeological and cultural studies, in consultation with OPRHP and DPS, if warranted based on Phase I study results;
  - (6) A Phase III Data Recovery Plan, following completion of a Phase II archaeological study, if any identified archaeological site cannot be avoided through modification of Project design. The Phase III Data Recovery Plan will be prepared by the Applicant in consultation with the NYS OPRHP and submitted as part of the Compliance Filing. The Phase III Data Recovery would be conducted in advance of any ground-disturbing activities and would serve to mitigate impacts caused by Project development to any NRHP-eligible archaeological site(s).
  - (7) A complete list of all recovered artifacts; and

- (8) An Unanticipated Discovery Plan that shall identify the actions to be taken in the unexpected event that resources of cultural, historical or archaeological importance are encountered during the excavation process. The Plan shall include a provision for work stoppage upon the discovery of possible archaeological or human remains. In addition, the Plan shall specify the degree to which the methodology used to assess any discoveries follows the most recent Standards for Cultural Resource Investigation and Curation of Archaeological Collections in New York State. Such an assessment, if warranted shall be conducted by a professional archaeologist, qualified according to the standards of the NYAC.
- (b) A study of the impacts of the construction and operation of the Project and the interconnections and related facilities on historic resources, including the results of field inspections and consultation with local historic preservation groups to identify sites or structures listed or eligible for listing on the State or NRHP within the viewshed of the Project and within the Study Area, including an analysis of potential impact on any standing structures which appear to be at least 50 years old and potentially eligible for listing in the State or NRHP, based on an assessment by a person qualified pursuant to federal regulation (36 C.F.R. 61). Mitigation measures, such as local improvement projects, will be discussed should there be any unavoidable impacts to cultural resources. Audible or visual impacts, if any, will also be addressed.
- (i) The Applicant will consult with OPRHP and DPS to obtain input concerning appropriate criteria for Historic Architectural studies, including defining the APE. The Study Area shall be 2 miles from the boundaries of the Project Area. OPRHP requested an APE of areas with Project visibility, based on bare-earth topography GIS modeling, within a 2-mile radius.
- (ii) Any cemeteries and other significant cultural features within the APE will be identified. Access to any cemeteries located within the Project Area will be discussed.
- (iii) Mitigation measures, such as local improvement projects, will be discussed should there be any unavoidable impacts to cultural resources. Audible or visual impacts, if any, will also be addressed.
- (c) On behalf of DPS, consultation with Federally Recognized Indian Nations will be initiated by OPRHP, consistent with government-to-government consultations. Based on the Project's geographical location, consultation will be conducted with the Seneca Nation of Indians and the Tonawanda Seneca Nation as determined by DPS and OPRHP. The Tribal Historic Preservation

Offices (THPO) will be included on the Master Stakeholder List and documentation of these consultations will be included in the Application and reflected in the Meeting Log.

- (d) Installation methods used for collection lines and potential impacts on cultural resources will be included in the Application.

## **Stipulation 21 – 1001.21 Exhibit 21: Geology, Seismology, and Soils**

Exhibit 21 shall contain a single study of the geology, seismology, and soils impacts of the Project consisting of the identification and mapping of existing conditions, an impact analysis, and proposed impact avoidance and mitigation measures, including:

- (a) A map delineating existing slopes (0-3%, 3-8%, 8-15%, 15-25%, 25-35%, 35% and over) on and within the drainage area potentially influenced by the Project Area and interconnections using project specific LiDar and the USGS National Elevation Dataset and Esri ArcGIS® software.
- (b) Information describing methods considered and proposed to avoid disturbance, erosion and/or sedimentation of steep slopes (i.e., slopes steeper than 3:1 (h:v), and/or greater than 15%), as applicable.
- (c) A proposed site plan showing existing and proposed contours at one-foot intervals, for the Project Area and interconnections, at a scale sufficient to show all proposed structures, paved and vegetative areas, and construction areas (this information may be presented in site plans required at Stipulation 11(a) or presented as stand-alone mapping). No buildings are proposed.
- (d) Preliminary cut and fill calculations based on publicly available contour data. Separate calculations for topsoil, sub-soil and rock will be roughly approximated based on publicly available data from the Genesee County Soil Survey. Exhibit 22 will describe a plan to identify the potential presence of invasive species in spoil material and to prevent the introduction and/or spread of invasive species by the transport of fill material to or from the site of the facility or interconnections. Separate estimates for materials that may need to be imported to the Project Area for access road construction, structural base for foundations, and compacted fill for placement of buried electric lines will be provided as applicable.
- (e) A description and preliminary calculation of the amount of fill, gravel, asphalt, and surface treatment material to be brought into the Project Area. The Application will describe the anticipated amount and characteristics of all fill materials expected to be imported into the Project Area. For comparative context, the anticipated amount of fill materials imported will be presented in both cubic yards, and the equivalent number of truck loads.
- (f) No fill, gravel, asphalt, cut, or surface treatment materials will be removed from the Project Area. The Application will confirm that existing soils are suitable for reuse as backfill with reference to the results of the Preliminary Geotechnical Investigations and existing soils mapping and data, and will indicate why it is not necessary to remove material from the Project Area.

- (g) A description of construction methodologies and activities associated with the Project, including anticipated excavation techniques, based on site-specific Preliminary Geotechnical Investigations, and a preliminary identification of where each type of excavation will be employed. If horizontal directional drilling (HDD) or other trenchless methods are anticipated, an inadvertent return plan will be included in the Application.
  - (1) If HDD is proposed for stream/wetland crossings, road crossings, or other locations, the Application will include:
    - (i) A description of HDD operations and locations
    - (ii) Material Safety Data Sheets (SDS) for drilling fluids
    - (iii) Maps identifying the proposed HDD locations
    - (iv) Identify stream/wetland crossing techniques, including a typical HDD equipment layout diagram
    - (v) An HDD feasibility analysis and frac-out risk evaluation based on known and suspected soil and bedrock conditions.
  - (2) If included in the Application, the Inadvertent Returns Plan shall assess potential impacts from frac-outs based on known soil and bedrock conditions, establish and describe measures for minimizing, to the maximum extent practicable, the risk of adverse impacts to nearby environmental resources from frac-outs. The Inadvertent Return Plan will establish proposed setbacks of HDD operations from stream banks, drinking water wells, and other known potential sensitive receptors and resources, and include a description of inadvertent return mitigation and response measures, as necessary. The plan will also include a scaled drawing showing typical HDD equipment staging layout and design. The Plan will include an identification of any locations where HDD or other trenches installation methods were considered but determined infeasible.
- (h) A delineation of temporary cut or fill storage areas to be employed.
- (i) A description of the characteristics and suitability for construction purposes of the material excavated for the Project and of the deposits found at foundation level, including factors such as soil corrosivity, bedrock competence, and subsurface hydrologic characteristics.
- (j) Blasting is not anticipated as part of the Project and the Applicant intends to provide a general statement in the Application indicating such. If blasting is determined to be required, a preliminary blasting plan, including procedures and timeframes for notifying municipal officials and property owners (or persons residing at the location if different) within one-half mile radius of the blasting site

of these activities, as well as an assessment of potential blasting impacts, and a blasting impact mitigation measures plan will be provided. The evaluation of reasonable mitigation measures regarding blasting impacts will include recommendations for setbacks from existing wells, including all identified water supply wells, livestock, residences and other structures, and plans for pre- and post-blasting inspections of existing structures. In order to protect structures from damage, blasting shall be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines (USBM) Report of Investigation 8507 Figure B-1 and air overpressure shall be under the limits set forth in the Conclusion section in USBM Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485).

- (k) An assessment of potential impacts of blasting to environmental features, aboveground structures and belowground structures such as pipelines, wells, and drain tiles, if applicable.
- (l) An identification and evaluation of reasonable mitigation measures regarding blasting impacts, including the use of alternative technologies and/or location of structures, and including a plan for securing compensation for damages that may occur due to blasting, if applicable.
- (m) A description of the regional geology, tectonic setting and seismology of the Project Area.
  - (1) Information regarding potential karst features associated with the calcareous (limestone or dolostone) and/or evaporitic (gypsum, anhydrite, salt) sedimentary rock units in the Project Area, and methods considered and employed to avoid disturbance of these features.
  - (2) A site-specific karst conditions assessment that will provide the following: (i) identification of manner(s) in which construction activities will minimize excavations in karst-prone areas where excavations may facilitate subsurface erosion; (ii) risks and impacts to karst features and aquifers from directional drilling frac-outs and soil and bedrock displacement during excavations, boring operations, and pile driving will be addressed; (iii) although blasting is not anticipated, if blasting is proposed, a description of potential impacts to karst features from blasting operations.
  - (3) A description of the local rock types, including the Project Area's underlying stratigraphic units the Camillus; Syracuse, and Vernon Formations; which constitute the Salina Group. The Saline Group formations consist primarily of shale (Vernon), salt (Syracuse – also includes shale and dolostone with anhydrite stringers), and gypsum (Camillus – also includes shale). Information will be provided as to whether the site-specific formations are amenable to standard excavation methods and equipment.

- (n) An analysis of the expected impacts of construction and operation of the Project with respect to regional geology, if such can be determined.
- (o) An analysis of the impacts of typical seismic activity experienced in the Project Area based on current seismic hazards maps, on the location and operation of the Project identifying potential receptors in the event of failure, and if the Project is proposed to be located near a young fault or a fault that has had displacement in Holocene time, demonstration of a suitable setback from such fault; the design of any electrical energy storage system(s) will be in accordance with the New York State Uniform Code or American Society of Civil Engineers (ASCE 7) and will include any seismic bracing requirements of the Code.
- (p) A map delineating soil types within the Project Area and the various USDA NRCS farmland classifications as identified on the most current publicly available mapping. The Applicant will consult with the local NRCS office to identify the location of any local farmland designations, which shall be delineated on the maps, if applicable.
- (q) A description of the characteristics and suitability for construction purposes of each soil type identified above, including a description of the soil structure, texture, percentage of organic matter, and recharge/infiltration capacity of each soil type and a discussion of any de-watering that may be necessary during construction and whether the Project shall contain any facilities below grade that would require continuous de-watering. If de-watering is necessary, the Application will analyze how any de-watering will affect adjacent lands and farm fields, consistent with SPDES General Permit for Stormwater Discharges from Construction Activity.
- (r) Exhibit 21 will include an evaluation of potential impacts to existing natural and artificial drainage features, particularly in areas where the Facility Site overlies soils with a shallow water table and poor infiltration rates. Measures for stabilizing excavation walls in locations where saturated or near-saturated soils exist, and measures to repair or replace existing drainage features that are damaged during construction will be described in the Application.
- (s) Maps, figures, and analyses delineating depth to bedrock and underlying bedrock types, including vertical profiles showing soils, bedrock, water table, seasonal high groundwater, and typical foundation depths on the Project Area, and any area to be disturbed for roadways to be constructed and all off-site interconnections required to serve the Project, including an evaluation for potential impacts due to Project construction and operation, including any on-site wastewater disposal system, and closed public landfills, if applicable, based on information to be obtained from available

published maps and scientific literature, review of technical studies conducted on and in the vicinity of the Facility, and on-site field observations, test pits and/or borings as available.

- (t) An evaluation to determine suitable proposed collection substation and 345 kV switchyard foundations (and energy storage foundations if applicable), including:
  - (1) A preliminary engineering assessment to determine the types and locations of foundations to be employed. The assessment shall investigate the suitability of such foundation types as spread footings, caissons, or piles, including a statement that all such techniques conform to applicable building codes or industry standards.
  - (2) If piles are to be used, a description and preliminary calculation of the number and length of piles to be driven, the daily and overall total number of hours of pile driving work to be undertaken to construct the Project, and an assessment of pile driving impacts surrounding properties and structures due to vibration.
  - (3) Identification of mitigation measures regarding pile driving impacts, if applicable, including a plan for securing compensation for damages that may occur due to pile driving.
  - (4) A description of methods for minimizing, to the maximum extent practicable, construction-related vibrational impacts on nearby infrastructure, along with a description and justification of any proposed pile-driving setback distances.
- (u) An evaluation of the vulnerability of the Project Area and the operation of the Project to an earthquake event. Because of the Project's distance from any large body of water, the Application will not address tsunami vulnerability.
- (v) As applicable, an evaluation of corrosion potential, including separate evaluations for the potential for corrosion of coated and uncoated steel and the potential for corrosion and degradation of concrete.
- (w) A discussion of consistency, to the maximum extent practicable, with the New York State Department of Agriculture and Markets guidance document entitled *Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands* (dated October 18, 2019), and other NYSDAM guidance documents applicable to the Project that are in effect 30 days prior to submission of the Application. The discussion will also include a summary of the requirements for an Environmental Monitor related to agricultural matters per the Guidelines.
- (x) As applicable, an evaluation of the risk of damage or displacement to foundations and underground cables from frost action and soil shrink/swell (if applicable based on the soils types within the Project



Area). If existing soils are proposed for re-use as structural and/or compacted fill, the Application will assess the suitability of existing soils specifically for those purposes and describe screening measures to remove materials that do not meet the fill composition characteristics recommended by the Applicant's geotechnical expert.

- (y) The Applicant will provide a map showing locations of mines/quarries, oil and gas wells, and associated features within the Study Area. If bedrock will be quarried from within the Project Area for Project use, the Application will identify the locations of quarry areas, provide estimates of the amount of materials that will be removed, and describe the proposed methods of excavation and processing as applicable.
- (z) Existing Oil and/or Natural Gas Wells:
  - (1) The Application will include an identification of all oil and/or natural gas wells that are located within 500 feet of the Project Area. The identification will be based on records maintained by NYSDEC. The need for the magnetometer survey will be addressed following review of the DEC records.
  - (2) If it is determined that Project components cannot be located outside of the NYSDEC's recommended 100-foot buffer area, the Applicant will consult with NYSDEC.
  - (3) The Application will include a map depicting the location of all wells, along with the proposed permanent Project components. The map will include wells known to exist and any wells discovered during magnetometer surveys (conducted to locate all wells including those lacking any surface expression), if conducted. The location of the wells discovered will be recorded in decimal degrees, NAD 83, with six decimal places of accuracy. A buffer area of 100 feet will be shown around the permanent Project components.
  - (4) The Application will include a description of controls for minimizing, to the maximum extent practicable, and monitoring impacts to existing gas infrastructure during construction of the Facility, including measures for responding to the discovery of existing or abandoned wells.
  - (5) Exhibit 21 will describe protocols in the event petroleum-impacted materials are encountered during construction.

## **Stipulation 22 – 1001.22 Exhibit 22: Terrestrial Ecology and Wetlands**

Exhibit 22 shall contain:

- (a) An identification and description of the type of plant communities present on the Project Area, the interconnections, and adjacent properties, based upon field observations, desktop review of literature, and data collection, consistent with the nature of the site and access control to adjacent properties. The observation date for each species will be included as part of the plant community descriptions. The Application will also include maps and shapefiles depicting plant communities identified within the Project Area, electric interconnection lines, and adjacent properties (based upon roadside surveys).
  - (1) The list will include specific information on, and a detailed description of, all communities found within parcels that will host facility components based on communities described in the Ecological Communities of New York State (Edinger et al., 2014). For each community identified, Heritage Program Element Ranks will be provided.
  - (2) Maps of the Project Area at a scale of 1:6,000 (1"=500') , based on aerial photography, and National Land Cover Data ("NLCD") information showing approximate locations and extent of identified plant communities as classified according to Ecological Communities of New York State (Edinger et al., 2014).
  - (3) Maps at a scale of 1:1,200 (1"=100') showing approximate locations and extent of identified plant communities as classified according to Ecological Communities of New York State (Edinger et al., 2014) for Project Areas within 500 feet of disturbance. Plant communities for parcels outside the Project Area on which the Applicant does not have control will be determined as identified through the National Land Cover Database (NLCD), and observations made from publicly accessible roads, as feasible.
  - (4) A narrative description of the following: i) Approximate locations and extent of identified plant communities, including areas of invasive species concentrations or any occurrence of giant hogweed (*Heracleum mantegazzianum*) or wild parsnip (*Pastinaca sativa*) which are recognized by the NYSDEC to pose a health and safety hazard; ii) All ecological communities identified within parcels that will host Project components as well as adjacent parcels; and iii) A list of all plant species observed during on-site field investigations and incidentally, including the date(s) each species was observed.

- (5) The sources of information including on-site surveys, roadside surveys from adjacent parcels, review of recent aerial imagery and NLCD information.
- (b) An analysis of the temporary and permanent impacts of the construction and operation of the Project and the interconnections on the vegetation identified, including a mapped depiction of the vegetation areas showing the areas to be removed or disturbed, and including a plan to identify the presence of invasive species and to prevent/minimize the introduction and/or spread of invasive species.
- (1) Proposed temporary and permanent impacts to plant communities shall be calculated and discussed including:
  - (i) A discussion of specific assumptions associated with approximate limit of vegetation clearing for each type of Facility component as identified in the Preliminary Design Drawings associated with Exhibit 11;
  - (ii) A table listing area assumptions used to determine vegetation disturbance by component (e.g., solar panel installations, roads, collection lines, staging area, collection substation, switchyard and tap line);
  - (iii) The number of acres of each habitat type impacted, calculated using GIS software, and presented in a summary impact table. Permanent impact calculations will include all tree clearing and other cover type conversion for construction and operation of the Project.
  - (iv) The plant community mapping will also depict vegetation cover types and a table shall provide acreages for each of the following cover types: active agricultural land, row crops, pasture/hay, fallow fields, and grasslands, and any concentrations of invasive species in relation to proposed limits of vegetation disturbance, and associated GIS shapefiles of all areas of disturbance will be provided to NYSDEC, NYSDAM, and NYSDPS and to any intervening parties upon written request, subject to any confidentiality limitations.
  - (v) A summary impact table quantifying the number of acres of each plant community type impacted. Vegetation impacts including any temporary and permanent impacts, and indirect impacts to existing, non-invasive plant communities, particularly grasslands, interior forests, wetlands, shrublands, and young successional forests

will be included in the table. Permanent impact calculations including: i) all areas disturbed by Project components; ii) all tree clearing for construction of the Project; and iii) permanent conversion of one plant community type to another.

- (vi) A discussion and evaluation of fragmentation to grasslands and forested habitat.
  - (vii) Maps and GIS files depicting the limits of disturbance (all areas of vegetation clearing and ground disturbance) overlaid with approximate locations and extent of identified plant communities, including areas of invasive species concentrations.
- (2) An overview of vegetation management plans for operation and construction of the Facility, including a discussion of ground cover maintenance and forest clearing and ongoing vegetation maintenance required to prevent shading of solar panels.
- (c) An identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable, minimization and restoration measures including use of alternative technologies (such as adaptive management), that will be implemented to avoid and minimize to the maximum extent practicable, for any temporary and permanent impacts to existing, non-invasive plant communities particularly grasslands, interior forests, wetlands, shrublands, and young successional forests as a result of the construction, operation, and maintenance of the Project.
- (1) A discussion of measures to be included to avoid and minimize impacts to vegetation such as co-locating linear Project components, and constructing all solar arrays, buildings, storage areas, and other structures in areas already developed or disturbed, to the maximum extent practicable.
  - (2) A discussion of restoration measures for post-construction vegetative restoration will be included such as reseeding disturbed areas with appropriate native seed mix or planting native woody species, as necessary, to recreate or enhance wildlife habitat.
  - (3) A summary impact table quantifying anticipated temporary and permanent impacts associated with the various facility components in relation to Project Area wildlife habitats, and vegetation cover types classified according to Ecological Communities of New York State (Edinger et al., 2014), particularly grasslands and interior forests, if affected.
- (d) A characterization of the Project Site and any areas to be disturbed for interconnections as to the vegetation, wildlife (including mammals, birds, amphibians, terrestrial invertebrates, and reptiles)

and wildlife habitats, that occur in, on, or in the vicinity based on reconnaissance or multi-season surveys and data collection appropriate to the nature of the site, supplemented by available data from the NYNHP, New York State (“NYS”) Amphibian and Reptile Atlas Project, the NYS Breeding Bird Atlas and range maps, Breeding Bird Survey Routes, Christmas Bird Counts and other similar reference sources, including time and date (i.e., day, month, and year) of observation, to the extent time and dates are available. Note that wetlands are addressed separately in paragraphs (i) through (p). Characterization will include:

- (1) Assessments of suitable habitat within the Facility Area, and an identification and depiction of any unusual habitats or significant natural communities that could support state or federally listed endangered or threatened species or species of special concern.
- (2) For the specific surveys identified and where draft reports to be submitted to NYSDEC have been identified, the Applicant will provide said draft reports to the NYSDEC, as soon as possible, when finalized.
- (3) A discussion of the extent, methodology and results of all avian, bat, amphibian, and other wildlife surveys that have been and will be conducted within the Project Area and Study Area will be included, as applicable. Information on and a characterization of aquatic and terrestrial vegetation, wildlife and wildlife habitats that occur within the Project Area will be included, specifically an identification and description of plant communities, plant species and wildlife habitat. Such descriptions will include field identification and verification of aquatic habitats, plant communities, and other wildlife habitat that could potentially support federally or NYS-listed T&E species, species of special concern (“SSC”), and species of greatest conservation need (“SGCN”) as documented during on-site field investigations (e.g., ecological cover type assessments, habitat assessments, wildlife surveys and delineation of wetlands, streams and other regulated waters). Habitat identification will include the results of field studies, the Grassland Breeding Bird Survey, and Winter Raptor Survey. Coordination with USFWS, NYSDEC staff, and NHP database to document known occurrences of bat species in the Study Area, and relevant, applicable information regarding terrestrial vegetation, wildlife, and wildlife habitats will be provided in the Application.
- (4) A discussion of the potential impacts of perimeter fencing of the Project on wildlife movements, and opportunities for minimizing adverse impacts, to the maximum extent practicable.

- (5) A characterization of aquatic and terrestrial vegetation, wildlife and wildlife habitats within the Project area, including a narrative description, detailed location map, and discussion of potential impacts for each of the following: i) Habitats that are known to support or could potentially support State SGCN and ii) Calcareous shoreline outcrops and karst features, if applicable.
  - (6) Identification and delineation of vernal pools, including surrounding upland habitat, within 500 feet of all proposed areas of disturbance, verified under appropriate seasonal conditions. If vernal pools are identified, the Application will include: i) Ecological characterization data; ii) Detailed location maps; iii) Results of site-specific surveys for amphibians and reptile species conducted under appropriate seasonal conditions and developed in consultation with NYSDEC staff; and iv) Potential impacts that may occur to vernal pools and the species that utilize them.
- (e) The Application will include an inventory of and information on plant species and wildlife species (mammals, birds, terrestrial invertebrates, amphibians, and reptiles (herpetofauna)) known or reasonably likely to occur within the Project Area and areas to be disturbed for interconnections at any time during the year based on site observations, as well as existing data available from the following sources: NHP; NYSDEC; USFWS; local bird/wildlife experts; New York State Amphibian & Reptile Atlas Project (Herp Atlas); Breeding Bird Atlas (“BBA”); USGS Breeding Bird Surveys (“BBS”); Christmas Bird Counts (“CBC”); Hawk Migration Association of North America (“HMANA”); eBird; The Nature Conservancy surveys/reports; Kingbird publication; county-based hunting and trapping records maintained by NYSDEC, and supplemented by reasonably available public information, including those identified in paragraph (d) above, and/or not already listed in this paragraph. On-site field surveys (e.g., avian and bat surveys, amphibian/reptile surveys; ecological cover type assessments, habitat assessments, wetland delineations, etc.) and the availability of suitable habitat will also be used to identify species that could potentially occur within or near the Project Area at some time during the year. The inventory will specify whether species were observed, known to occur in Project site, or are predicted to occur based on habitat characteristics and historical records, and identify the data source(s) that documented or predicted the presence of each species. Information on terrestrial invertebrates should be limited to a general discussion regarding the range of species likely to occur near the Project.

(f) A narrative analysis and associated mapping to explain and illustrate potential and expected construction, operation, post-construction restoration, and maintenance impacts of the Project and interconnections on vegetative cover types, wildlife (reptiles, amphibians, mammal species, and avian species), wildlife habitats (including a discussion of impacts from functional loss and degradation of habitat, forest and grassland fragmentation, and wildlife displacement, as applicable), wildlife concentration areas, wildlife travel corridors, if identified, and terrestrial and aquatic organisms. The narrative will include an analysis of construction and operational impacts to wildlife concentration areas, migration corridors, and wildlife habitat resulting from habitat fragmentation. This will include a detailed assessment of direct and indirect impacts and identification and evaluation of the expected environmental impacts of the Project on New York State SSC, SGCN, and threatened and endangered species protected by State and Federal law and the habitats of such species. Given the provisions of §3-0301(2)(r) of the Environmental Conservation Law (“ECL”) and §15 of the PSL, information that identifies the locations of habitats of such species or any other species or unique combination of species of flora or fauna where the destruction of such habitat or the removal of such species there from would impact their ability to survive, shall not be disclosed to the public and shall only be disclosed to the parties to a proceeding pursuant to an appropriate protective order. The Application will also include the following detailed analyses:

(1) Bat and Avian analyses, specifically Breeding Bird Surveys and Winter Raptor Surveys, were conducted. Based on the NYSDEC *Survey Protocol for State-listed Breeding Grassland Bird Species, Draft 2015*, Grassland Breeding Bird Surveys were conducted from May 20 to July 20, 2019. Based on the NYSDEC *Survey Protocol for State-listed Wintering Grassland Raptor Species, Draft 2015*, Winter Grassland Raptor Surveys began on November 18, 2019 and are currently being conducted. Adjustments to these protocols were employed based in part upon NYSDEC comments provided to the Applicant. The scope included property under the Applicant’s control or visible from public roads as identified in the work plan submitted to NYSDEC for review and comment. A draft of each report will be provided to NYSDEC as soon as possible. Final reports for both surveys, incorporating any comments provided by NYSDEC, (if practicable, upon notice to NYSDEC as to the estimated filing date of the Application) will be provided in the Application, and will include an assessment of any potential direct and indirect impacts to grassland bird species habitat as a result of the Project. GIS shapefiles showing all breeding and wintering bird survey locations will be provided to NYSDEC with the final reports under applicable confidentiality protections. In addition, a discussion and analysis of any bat and avian information relevant

to the Project Site that is provided by NYSDEC, USFWS, or otherwise obtained by the Applicant prior to the submission of the Application will be included (if practicable, upon notice to NYSDEC and USFWS as to the estimated filing date of the application).

- (2) USFWS, NYSDEC staff, and NHP database information will be used to determine if any bat hibernacula or maternity roosts are located within the Study Area. If hibernacula or roosts are identified within five miles from the Project Area or any Project component or boundary, the location and distance to each identified hibernaculum and roost will be provided separately and confidentially to NYSDEC.
- (3) Information on amphibians and reptiles based on the New York State Amphibian & Reptile Atlas Project (Herp Atlas), database records obtained from NHP, NYSDEC and USFWS, assessments of suitable habitat within or near the Project Area, including the Bergen-Byron Swamp and surrounding uplands within the Study Area, and any field observations made within the Project Area will be provided. To the extent that vernal pools and their functions (including the surrounding upland habitat) may be impacted by construction, operation or maintenance of the Project, those features will be identified under appropriate seasonal conditions, and these impacts will be identified and assessed in the Application. Such impacts may require, in consultation with NYSDEC and NYSDPS, the development and implementation of site-specific surveys for amphibian and reptile species under appropriate seasonal conditions to fully quantify the level of impact from the Project.
- (4) The Application will discuss potential construction-related direct and indirect impacts to wildlife (reptiles, amphibians, mammal species, and avian species) and wildlife habitat, including but not limited to incidental injury and mortality due to construction activity and vehicular movement, habitat disturbance and loss associated with vegetation clearing and earth-moving activities, and the displacement of wildlife from preferred habitat, likely to occur within the Project Area, including any potential avoidance and minimization measures that will be undertaken. NYSDEC Region 8 Regional Wildlife Office will be contacted to obtain the most recent breeding, wintering, and habitat data for State-listed species, and the USFWS Field Office in Cortland, New York will be contacted to obtain the most recent breeding, wintering, and habitat data for federally listed and protected species, and such information that is provided by NYSDEC or USFWS prior to the submission of the Application will be included (if practicable, upon notice to NYSDEC and USFWS as to the estimated filing date of the application).



- (5) The Application will include a summary impact table that clearly quantifies potential temporary and permanent impacts associated with all Project components in relation to wildlife habitats, identified wildlife concentration areas or travel corridors, and vegetation cover types, particularly grasslands, interior forests and young successional forests, if affected, resulting from construction and operation of the Project.
- (6) In addition to site-specific field studies, a literature review of reasonably available public information will be utilized to assess impacts to wintering and breeding grassland bird species resulting from the construction, operation, post-construction restoration and maintenance resultant from utility-scale solar development, with particular focus on data collected from facilities within a similar regional setting and employing comparable technology to the proposed Project. Based upon the aforementioned literature review, the Application will include a discussion of the potential direct and indirect effects to grassland birds and their habitats from utility-scale solar development at relevant scales for which data is available. All analyses described in 22(f) will take into account the estimated impacts associated with the overhead transmission tap line and related facilities to be constructed, if applicable.
- (7) The assessment of herbicide and biocide application before, during and after construction, if determined necessary, will consider the potential for short- and long-term impacts to plants, crops (human and livestock), grazing lands, animals (both livestock and wildlife), and habitats in the Project Area, as applicable, as well as trees, ground cover, and other vegetation planted as part of restoration, mitigation and habitat enhancement activities, as applicable.
- (8) The Application will discuss potential operational and maintenance-related direct and indirect impacts related to reptiles, amphibians, mammal species, and avian species likely to occur within the Project Area, including any documented wildlife corridors or concentrations areas.
- (9) A discussion of the potential impacts of the Project on wildlife species and the habitats that support them within the Study Area.
- (10) If the Applicant determines that there will be a “take” of a threatened and/or endangered species as a result of the Project, then a draft Net Conservation Benefit Plan will be included in the Application. If it is determined by the Siting Board that a “take” of a threatened and/or endangered species will be caused by the construction, operation, post-construction restoration, or maintenance of the Project within the meaning of 6 NYCRR 182, a full post-

construction monitoring plan will be developed prior to the start of construction and submitted in the Compliance Filing for approval. The full post-construction monitoring plan filed with the Compliance Filing will include information associated with a proposed post-construction monitoring plan to be implemented to assess direct and indirect impacts of the Project on the T&E species and their habitats that are the subject of the take. The details of a full post-construction monitoring plan will be developed on a site-specific basis through discussions between NYSDEC, the Applicant, and USFWS (if federally-listed species may be impacted), and at a minimum specify the following: the expected and allowed level of take of each T&E species that may be impacted; survey monitoring methods, effort, duration, data reporting, and compliance documentation; construction parameters; proposed adaptive management responses, should the allowed level of take be exceeded.

- (11) A cumulative impact analysis will be done to evaluate the actual and expected impacts from the construction, operation, and maintenance of the Project on federally and State-listed threatened or endangered species, particularly grassland birds, in combination with the impacts of proposed and operating solar energy projects equal to or greater than 5 MW occupying grassland habitat within 100 miles of the Project Area based exclusively upon the NYSDEC database to be provided to the Applicant, and any publicly available information the Applicant, in its sole judgment, chooses to employ (Study Projects) but not beyond New York State borders (Grassland Study Area). The Applicant will also review Projects that have submitted responses to comments on their respective filed Preliminary Scoping Statements (PSS). The Applicant is not required to perform any avian studies at the Study Projects and reserves its right to object to other requests for cumulative studies. This analysis will include, at a minimum:
  - (i) Examination of open and grassland habitat data on the Study Projects within the Grassland Study Area relying on the NYSDEC database to be provided to the Applicant and any publicly available information the Applicant, in its sole judgment, chooses to employ. The Applicant is not required to make Freedom of Information Act (“FOIA”) requests;
  - (ii) Estimated take of state-listed T&E bird species and their habitats at the Facility, if any, and a description of methods used, and sources consulted to estimate take;
  - (iii) Estimates of available open and grassland habitat within the Grassland Study Area relying exclusively on the NYSDEC database to be provided to the Applicant;

- (iv) Estimated acreages of open and grassland habitat, as described in 11(i) and 11(iii), lost directly through installation of panels and other project components at the Study Projects, using best available information or typical industry solar land use metrics;
  - (v) Estimates of acres of grassland habitat indirectly affected by the Study Projects due to functional loss/degradation of habitat; and
  - (vi) Cumulative impacts on grassland habitat use, particularly potential impacts on state-listed grassland bird species, within the Project Area.
- (12) An identification of Grassland Focus Areas, forest interior blocks, and any other state, county or locally-identified wildlife concentration areas or migration areas within two miles of the Project.
- (g) An identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable, measures to minimize impacts during siting and development of the Facility, to the maximum extent practicable, including the use of alternative technologies, regarding impacts to vegetation, wildlife, including freshwater mussels, wildlife habitat, federally and State-listed and protected species, SSC, and SGCN. The Project design, construction controls, and operational, post-construction restoration, and maintenance measures, including access road, electrical line, and Facility component siting, that can be reasonably implemented to first, avoid to the maximum extent practicable, then minimize, and mitigate for impacts to threatened and endangered listed wildlife and wildlife habitat as a result of construction, operation, post-construction restoration, and maintenance of the Project will be described. If such impacts cannot be demonstrably avoided to the maximum extent practicable, a discussion of the minimization measures to be implemented for impacts associated with habitat loss, fragmentation, displacement, and mortality will include careful site design (such as appropriate landscape siting, layout design, construction controls, operational measures, as applicable) while adhering to designated construction limits and seasonal restrictions, and other BMPs. If any adverse impacts to listed T&E species are expected, the Applicant will include a draft Net Conservation Benefit Plan with the Application. If any demonstrably unavoidable impacts are anticipated to listed T&E species or their habitats as a result of the Project, a commitment to mitigate in an appropriate and timely manner will be included. Such mitigation will be determined only after avoidance and minimization measures are evaluated and will result in a net conservation benefit to the target species. Any unavoidable impacts to State-listed T&E species will be first minimized to the maximum extent practicable and mitigated for in such a manner as to result in a net conservation benefit to the species.

- (h) Specific impacts to avian and bat species related to wind powered facilities is not applicable to this Project.
- (i) A map, at a scale of sufficient detail (determined in consultation with NYSDEC and DPS) showing delineated boundaries based on on-site identification of all federal and state-regulated wetlands present on the Project Site and within 100 feet of areas to be disturbed by construction, and the interconnections, for land under control by the Applicant. The map will also include an estimation of the presence and extent of wetlands located greater than 100 feet from the areas to be disturbed, on land controlled by the Applicant, or are located within 100 feet of the limits of areas to be disturbed but are on parcels over which the Applicant does not have control. The estimations may be based on remote-sensing data, interpretation of published wetlands and soils mapping and aerial photography, or other methods as further described below. This methodology is consistent with the United States Army Corps of Engineers (“USACE”) Wetland Delineation Manual (Environmental Laboratory, 1987), the appropriate Regional Supplement to the Corps of Engineers Wetland Delineation Manual, the New York State Freshwater Wetlands Delineation Manual (1995), and the DPS Staff interpretation dated May 31, 2018, concerning the delineation of all federal, state and locally regulated wetlands present on the site and within 100 feet of areas to be disturbed by construction. Additionally:
  - (1) All wetlands in the Project Area, including those within 50 meters (164 feet) of a state-regulated wetland, regardless of size or connectivity, will be delineated and included in field mapping. Detailed location maps and ecological characterization data for all vernal pools located within 100 feet of related disturbances on all Project parcels will be included. Any part of the 100-foot survey area which falls outside of the Project parcels, without accessibility, will be estimated within 100 feet of the limits of disturbance
  - (2) Wetland estimation by the Applicant will only occur for areas located within 100 feet of areas to be disturbed by the Project, and will be made using one or more of the following techniques: on-site observations, observations made from public roads and adjacent Project parcels, interpretation of aerial imagery, analysis of topography, existing databases of hydric soils, other remote-sensing data as available, and, wetland and soils mapping maintained by NWI and NYSDEC. Wetlands identified using one or more of the techniques described will be referred to as “predicted wetlands.”
  - (3) Wetland boundaries will be defined by the Applicant in the field by sequentially numbered pink surveyor’s flagging marked “wetland delineation”, the locations of which will be

documented using GPS technology with reported sub-meter accuracy. Wetlands identified by these methods will be referred to as “delineated wetlands”, and any wetlands that may have been verified by the USACE and the NYSDEC will be referred to as “field-verified wetlands.” The Applicant is coordinating with the DPS, USACE, and NYSDEC to coordinate an on-site field verification meeting to determine jurisdiction early in the Application process during the growing season. On-site field delineations by the Applicant shall include boundary flagging of all 100-foot wetland adjacent areas where such flagging does not interfere with currently active agricultural practices. All remaining 100-foot wetland adjacent areas boundaries will be flagged prior to construction/ground disturbance when agricultural practices are no longer active.

- (4) Information indicating which delineated wetlands are likely state-regulated, including those that are part of wetland complexes that meet NYS-criteria for jurisdiction (i.e., 12.4 acres or larger, of unusual local importance and/or support listed species) whether currently mapped or not, will be included. All state-regulated wetlands will be identified by NYSDEC’s wetland identification number in addition to the code assigned by the Applicant during delineation. The Applicant is coordinating with the NYSDEC and USACE as soon as practicable so the agencies may make final wetland jurisdictional determinations of field verified, mapped, and unmapped wetlands. The Application shall include information concerning the likely jurisdictional status of wetlands that is provided by NYSDEC or USFWS prior to the submission of the Application (if practicable, upon notice to NYSDEC and USFWS as to the estimated filing date of the application); and
  - (5) The Applicant will provide NYSDEC and DPS with maps and shapefiles depicting the boundaries of all state-regulated wetlands, likely jurisdictional wetlands, predicted wetlands, vernal pools and all corresponding adjacent areas within the entire Project upon finalization. All wetland boundaries will be keyed to the submissions described in Exhibit 11 (Preliminary Design Drawings). The “predicted wetland” boundaries shown on site plans will be differentiated from field “delineated wetland” boundaries when displayed on maps, site plans, and shapefiles. Maps and shapefiles showing the boundaries of all delineated wetlands, likely jurisdictional wetlands, predicted wetlands, and all corresponding adjacent areas within the entire Project will also include all Project components; proposed grade changes; the limits of ground disturbance and vegetative clearing.
- (j) A description of the characteristics of all likely federal, state and locally regulated wetlands delineated as described above, including the Cowardin classification, and a description of the

vegetation, soils, and hydrology data collected for each of wetland sites identified, based on actual on-site wetland observations. A summary table of wetland delineation information, including the wetland's alpha- numeric code if the wetland is regulated or eligible for regulation under ECL Article 24. Copies of all wetland determination data forms, compiled into a Wetland and Stream Delineation Report, will be included in the Application.

- (k) A qualitative and descriptive wetland function and value assessment, including seasonal variations, for all wetlands delineated above for groundwater recharge/discharge, floodflow alteration, fish and shellfish habitat, sediment/toxicant retention, nutrient removal, sediment/shoreline stabilization, wildlife habitat, recreation, uniqueness/heritage, visual quality/aesthetics, and protected species habitat. The methodology for this assessment will be included in the Application. The assessment will include a discussion of educational and scientific value of the wetlands inventoried, an analysis of production export of wetlands, and an assessment of protected T&E species habitat in wetlands.
  - (1) Vernal pools will be inventoried. The Application will identify actual or potential vernal pools that could be disturbed by construction and operation of the Facility. A discussion will be included that evaluates the use of the identified vernal pools by amphibians and the potential impacts to those species. Such evaluation of impacts may require, in consultation with NYSDEC and DPS , the development and implementation of site-specific surveys for amphibian and reptile species under appropriate seasonal conditions in order to fully quantify the level of impact from the Project and measures to avoid impacts to these species during construction, operation and maintenance of the Project.
  - (l) An analysis and summary of all wetlands outside of the Project Area that may be hydrologically or ecologically influenced or impacted by the development of the Project Area and the wetlands identified above, observed in the field where accessible and including publicly owned lands to determine their general characteristics and relationship, if any, to wetlands delineated as above. A summary of off-site wetlands adjacent to the Project area and any disturbed areas that may be hydrologically or ecologically influenced or impacted by development of the Project, including publicly owned lands, to determine their general characteristics and relationship, if any, to the delineated wetlands within the Project area. The Project is not located near or within the vicinity of any officially designated Significant Coastal Fish and Wildlife Habitat Areas. A wetland and waterbody delineation report will be included as an attachment to the Application and will include an analysis of the potential hydrologic connectivity of all wetlands within the Facility Area to adjacent offsite wetlands and will include a summary of those wetlands anticipated to fall under

NYSDEC jurisdiction and USACE jurisdiction. Assessments of potential NYS wetlands jurisdiction will include both “mapped” and “delineated wetlands that meet NYSDEC’s 12.4-acre size threshold (including any wetlands of any size separated by less than 50 meters (164 feet) which function as a unit in providing wetland benefits, within the meaning of 6 NYCRR Part 664.3(b), or otherwise meet NYS criteria for jurisdiction over a wetland (see 6 NYCRR § 663.2 (p)), including wetlands designated by the NYSDEC Commissioner to be of Unusual Local Importance, pursuant to 6 NYCRR 664.7(c)).

- (m) An identification of temporary and permanent impacts to wetlands (and any state-regulated 100-foot adjacent areas) based on the proposed footprint of all Project components and associated impact assumptions. The Applicant will consider publicly available records on prior converted cropland as part of its analysis. A summary and table will be included in the Application to identify and quantify temporary and permanent impacts to, and any permanent conversions of wetlands and state-regulated 100-foot adjacent areas based on the proposed footprint of all Project components and associated impact assumptions. The table will also indicate permanent forest conversion, if any, caused as a result of the construction or maintenance of the Facility. For each resource included in the temporary and permanent impact table, the following information will be included as determined applicable. Final impact calculations to the 100-foot adjacent area of State-regulated wetlands and associated mitigation will be updated based on verified delineation boundaries for jurisdictional wetlands, as necessary.

- (1) Wetland impacts will be presented in a table that will include:

- (i) All state-regulated and jurisdictional wetlands, federal wetlands, streams, and environmentally sensitive areas that could potentially be impacted by the proposed Project as depicted in preliminary design drawings or wetland delineations;
- (ii) Applicant-assigned wetland identification code, NYSDEC wetland identification number, NYSDEC wetland classification, and NYSDEC stream classification, as applicable;
- (iii) Describe the type and acreage of impact, such as whether it is permanent, temporary, fill, shading of vegetation, or forest/shrubland conversion, and describe the vegetative cover type affected by each impact to each wetlands and adjacent area.

- (iv) The associated crossing methodology for each wetland, clearly discerning between federal and state wetland and 100-foot adjacent area impacts.
  - (v) Calculation of impacts to both wetlands and 100-foot adjacent areas of state regulated wetlands.
  - (vi) Include wetland delineation type (i.e., field survey, review of aerial imagery, roadside observation, etc.);
  - (vii) Identify the corresponding page number on preliminary design drawings depicting the resource, and on the mapping described below.
- (2) For each item identified in the table described 22(m)(1) above, the following will also be provided in a narrative, as applicable:
- (i) Explanation of whether the resource could reasonably be avoided;
  - (ii) Proposed site-specific actions to minimize, to the maximum extent practicable, impacts to resources that are not avoided;
  - (iii) Proposed site-specific actions to mitigate impacts that are not avoided and minimized to the maximum extent practicable; and
  - (iv) Proposed appropriate compliance monitoring schedule to ensure mitigation is successful, including adaptive management actions to be implemented should the planned mitigation fail.
- (3) Impacts to wetlands will be presented on a separate set of site plan drawings at 1":50' scale (or similar), showing wetland and stream boundaries, permanent and temporary structures, stream crossings, roads, power interconnects, grade changes, and the limits of disturbance.
- (n) An identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable, mitigation measures to be employed to offset impacts to streams, wetlands, and 100-foot adjacent areas will be discussed including the use of alternative stream and wetland crossing methods, alternative technologies, and control of potential phosphorus and nitrogen sources from the Project. The Application's discussion of avoidance and minimization will be updated, if necessary, upon final verification of wetland boundary and jurisdictional determinations by NYSDEC and USACE. Final impact calculations to the 100-foot adjacent area of NYS-regulated wetlands and associated mitigation will be based on NYSDEC verified delineated boundaries for jurisdictional wetlands. Where appropriate, mitigation shall include plans for compensatory



mitigation. Such plans shall contain sections on grading, planting, and monitoring for success. The Application will include detailed alternative analysis for siting utility corridors, access roads and solar array locations based on the final verified delineation boundaries, if verified in sufficient time prior to filing the Application.

(1) Applicant will comply with 6 NYCRR Part 663. Where impacts to wetlands are unavoidable, and have been minimized to the maximum extent practicable, then the anticipated mitigation measures to be implemented to offset impacts to wetlands and state-regulated 100-foot adjacent areas will be discussed, including the use of reasonable alternative stream and wetland crossing methods. If required, a conceptual mitigation plan for impacts to NYS-regulated wetlands and adjacent areas will be included in the Application pursuant to 6 NYCRR 663.5(g) and at a minimum, will meet the following provisions:

- (i) The mitigation occurs on or in the immediate vicinity of the Facility (preferably elsewhere in the same wetland);
- (ii) The area affected by the proposed mitigation is regulated by the Freshwater Wetlands Act and 6 NYCRR Part 663 after mitigation measures are completed;
- (iii) The mitigation provides substantially the same or more benefits than will be lost through the proposed activity;
- (iv) A discussion of adaptive management actions to be implemented if the wetland mitigation is not successful; and
- (v) A final mitigation plan, as applicable, will be provided in the Compliance Filing after consultation with NYSDEC and USACE.

(2) Off-site mitigation will only be considered if:

- (i) The analysis being provided shows that all options within the immediate vicinity were thoroughly evaluated and determined to not be feasible.
- (ii) A discussion of avoidance and minimization efforts considered is included. This should indicate methods to be implemented to avoid wetland and stream impacts, as well as address the methodology and a description of Project construction and operation, relating to the standards established by ECL Articles 15 and 24.

(3) A statement and discussion regarding the Applicant's consideration of the following impact and avoidance and minimization measures will be included in the Application: utilizing

existing or narrow crossing locations wherever possible, alternative siting or routing options, trenchless crossings (such as HDD or other special crossing techniques), equipment restrictions, herbicide use restrictions, and erosion and sedimentation control measures; and

- (4) The Application will describe the anticipated environmental compliance and monitoring programs to be implemented during Project construction, demonstrating adherence to all relevant permit conditions to protect wetlands, streams, and other waterbodies. The programs will include an Environmental Monitor(s) during construction and restoration activities on the Project site, and a description of the Environmental Monitor's duties. The programs will describe the locations of all staging areas, temporary spoil or woody debris stockpiles, "extra work" areas, and other places material or equipment may be placed on site. The limits of disturbance around all such areas will be clearly defined in plan maps, and physically marked in the field using orange construction fencing or other similar indicators. Plans to restore all temporary disturbances in regulated areas, including replanting trees in disturbed forested areas, will be provided. The final programs will be submitted in the Compliance Filing.
- (o) An identification of federally and State-listed endangered or threatened species, SSC and SGCN, and their habitats within the Project Area or that could be subject to direct or indirect impacts from the Project construction, operation, post-construction restoration, or maintenance, including incidental takings will be presented in the Application. If the project will have unavoidable adverse impacts to such species or habitats, a draft NCBP will be developed in consultation with NYSDEC and included in the Application. A final, NYSDEC-accepted NCBP will be prepared, executed and filed before the commencement of Project construction and presented in the Compliance Filing as required in any Article 10 Certificate issued for the Project. Additionally:
  - (1) If impacts to state-listed T&E species are unavoidable, a clear and reasoned explanation will be provided as to why complete avoidance of impacts to each affected species is not practicable, how the proposed minimization actions will minimize impacts to the maximum extent practicable, and proposed mitigation actions where impacts cannot be avoided or secondly minimized. If any such impacts cannot be demonstrably avoided to the maximum extent practicable, minimization actions and mitigation measures to be implemented will be developed in consultation with NYSDEC, DPS and USFWS (if federally-listed species may be impacted) to result in a net conservation benefit to the target species, and thorough post-construction monitoring will take place to adequately measure the Project's direct and indirect impacts on the target species and evaluate the effectiveness of measures implemented as minimization actions.

- (2) Analysis and documentation of T&E species, SSC, and SGCN will be included based on database records obtained from the NYNHP, other known records documented by NYSDEC, USFWS, (if practicable, upon notice to USFWS as to the estimated filing date of the application) and observation during on-site wildlife and habitat, ecological, and wetland surveys. If it is determined by the Applicant that a take of a listed T&E species is unavoidable, including the adverse modification of habitat on which a listed T&E species depends, a draft Net Conservation Benefit Plan will be included in the Application. The plan will demonstrate a net conservation benefit to the affected listed T&E species as defined pursuant to 6 NYCRR Part 182.11, along with the informational requirements of an Incidental Take Permit as provided for in 6 NYCRR Part 182.11, including proposed actions to first avoid all impacts to listed T&E species, and will be prepared through consultation between NYSDEC, the Applicant, and DPS. A final NYSDEC-approved NCBP will be executed and filed in the Compliance Filing before the commencement of Project construction. The Application will include a discussion and analysis of information collected as part of pre-construction monitoring surveys within the Project Area.
- (3) A table of state listed species, federally listed species, SSC, and SGCN, occurring or likely to occur within the Project Area will be included, with the following columns:
- (i) Species name;
  - (ii) Federal status;
  - (iii) NYS status;
  - (iv) SSC/SGCN listing;
  - (v) Habitat preference identified according to Ecological Communities of New York State (Edinger et al., 2014);
  - (vi) Identification of maps from 16 NYCRR § 10001.22(a)(3) that include habitat for each species;
  - (vii) Source of information indicating potential or documented presence of species (i.e. from sources listed in 22e, or other documentation, as appropriate);
  - (viii) Indication if species was observed onsite;
- (4) The following items will be addressed in a narrative form following the above mentioned table:

- (i) Discussion of the type of impact (direct and/or indirect) that may occur to each listed species;
  - (ii) Estimated take of each listed species; and
  - (iii) Evaluation of all impact avoidance measures considered and, if full avoidance is not feasible, a discussion of why such actions are not practicable.
- (p) An Invasive Species Management and Control Plan (“ISMCP”) describing the presence of concentrations of invasive species and measures that will be implemented to prevent, to the maximum extent practicable, the introduction of new invasive species and spread of existing invasive species during Project activities such as soil disturbance, vegetation management, transport of materials, and landscaping/revegetation, with the goal of no net increase in invasive species. The ISMCP will address prohibited and regulated invasive species listed in 6 NYCRR Part 575 identified within and near the Project Area. Additional non-native species not included on this list (e.g., wild parsnip, reed canary grass, etc.) may also warrant specific management and control measures, depending on current populations of such species within and near the Project Area. Management and control measures included in the ISMCP will vary depending on invasive species type identified during the field efforts. A preliminary ISMCP will be included with the Application and a final ISMCP shall be provided as a Compliance Filing, or a filing with the Secretary, as applicable. Specifically, the ISMCP will apply to all prohibited and regulated invasive species as described in 6 NYCRR Part 575. The ISMCP will include the following:
  - (1) A list of all invasive species observed during field investigations, incidentally while on Site for other purposes, and known to occur within the Project Area.
  - (2) Maps at a scale of 1”:1,200’ of identified invasive species in areas of proposed disturbance. GIS Shapefiles of these locations will be also provided and be consistent with data content maintained by the NYS Invasive Species Database.
  - (3) A summary of the survey methods to be used to identify and mark existing invasive species within the Project Area (i.e., baseline survey conducted in {month/year conducted}), including the transmission line corridor (if applicable). A field verification of the location(s) of invasive species conducted during the growing season immediately prior (within at least six months) of the start of vegetation or ground disturbance activities;

- (4) An action plan for pre-construction, construction, and operation management of invasive species, including categorical thresholds for action, developed in consultation with NYSDEC and DPS;
- (5) Specification on how fill materials to be placed within the Project site will be free of invasive species material, seeds, and parts, by source inspection or other method. Specific methods to be used to ensure that packing material, imported fill and fill leaving the Project site will be free of invasive species material, seeds, and parts to the extent practicable;
- (6) Detailed description of specific measures that will be used to prevent the introduction, spread, and proliferation of all invasive species due to the implementation of the Project's grading, erosion and sediment control plan;
- (7) Details of procedures for preventing the spread of invasive species, and a discussion of how the Applicant will comply with the NYS quarantine and protective zones, where applicable;
- (8) Detailed plans describing how appropriate measures will be implemented to ensure that equipment and personnel arrive at and depart from the Project Area clean and free of all non-native invasive species material, seeds, and parts. The protocol for inspection of equipment arriving at the Project Area will be provided in the Application;
- (9) A detailed description of cleaning procedures for removing invasive species material, seeds, and parts from equipment and personnel, and properly disposing of materials known to be or suspected of being infested;
- (10) Detailed description of the BMPs or procedures that will be implemented, and the education measures that will be used to educate workers;
- (11) Detailed description of a minimum of 5-year post-construction monitoring and corrective action/adaptive management plan, to achieve the goal of no new invasive species in the Project Area and no new locations of existing invasive species in the Project Area resulting from Project construction or operation, and survey measures and procedures for revising the ISMCP in the event that the goals of the initial plan are not met within a specified timeframe;
- (12) Description of methods and procedures, incorporating input from consultation with NYSDEC and DPS Staff, to develop treatment plans for invasive species if they are introduced or spread as a result of the construction, operation or maintenance of the Project (based on comparisons against the baseline survey); and

- (13) Landscape re-vegetation plans, including specification of native seed mix to be used, as appropriate.
- (q) An analysis of the temporary and permanent impacts of the construction and operation of the Project and interconnections on agricultural resources, including the current agricultural use of the Project Area, if any, including acres of agricultural land temporarily impacted, the number of acres of agricultural land that may be considered permanently converted to nonagricultural use, and mitigation measures to minimize the impact to agricultural resources, to the maximum extent practicable. Information on and mapping of existing agricultural drainage improvements will be provided in the Application, as applicable. This analysis will include reference to the NYSDAM guidance document entitled *Guidelines for Solar Energy Projects – Construction Mitigation for Lands* dated October 18, 2019. If for any reason guidelines cannot be met, NYSDAM will be contacted to discuss applicable alternatives.
- (1) A description of a proposed Agricultural Monitoring Plan to be utilized by a single environmental monitor duly qualified in agricultural practices during construction and restoration, as well as during decommissioning of the Project, per the *Guidelines for Solar Energy Projects – Construction Mitigation for Lands* dated October 18, 2019.

### **Stipulation 23 – 1001.23 Exhibit 23: Water Resources and Aquatic Ecology**

This exhibit will include a study of the Project impacts to groundwater resources, surface water resources, and associated aquatic ecologies, including identification and mapping of existing conditions, an in-depth impact analysis of the Project and proposed impact avoidance and minimization measures.

Exhibit 23 shall contain the following with regard to:

(a) Groundwater:

- (1) Hydrologic information reporting depths to high groundwater and bedrock, including a site map showing depth to high groundwater in increments appropriate for the Project Area.
- (2) A map based on publicly available information showing all areas within the Study Area delineating all groundwater aquifers and groundwater recharge areas, and identifying groundwater flow direction, groundwater quality, and the location, depth, yield and use of all public and private groundwater wells or other points of extraction of groundwater within a 500-foot radius of the proposed Project Area (and within a 2,000-foot radius of blasting locations and pile driving locations, as applicable), and including delineation of wellhead and aquifer protection zones. Well locations will be distinguished as “approximate” or “confirmed.”
  - (i) To identify water wells within the Project Area, a Freedom of Information Law (FOIL) request letter, will be sent to the Genesee County Public Health Department and NYSDEC to request access to all publicly available water well information. The Applicant will also submit a FOIL request letter to NYSDOH. Copies of the FOIL request letters, and any information gained thereof, will be included in the Application. Well construction details, usage patterns, and water quality data will be obtained to the extent that it is publicly available through these agencies for wells located within 500 feet of the Project Area and within 2,000 feet of blasting and pole installation locations, as applicable.
  - (ii) The Applicant will attempt to implement the following verification and maps:
    - (a) Locations of public and private water wells will be verified through field observations where property access rights are obtained by the Applicant.
    - (b) Maps on a parcel basis, showing water well locations will distinguish whether each well location is approximate or confirmed. Maps will also

distinguish between water wells identified from agencies and wells identified via the private well survey.

- (3) Based upon publicly available information, an analysis and evaluation of potential impacts (during normal and drought conditions) from the construction and/or operation of the Project on drinking water supplies, groundwater quality and quantity in the Project Area, including potential impacts on public and private water supplies, including private wells within a one-mile radius of the Project Area,, and wellhead and aquifer protection zones. The following measures will be evaluated in the Application:
  - (i) Pier and post driving activities shall be prohibited within 100 feet of any existing, active water supply well;
  - (ii) The Certificate Holder shall engage a qualified third party to perform pre- and post-construction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of civil construction and after completion of construction to ensure the wells are not impacted provided Certificate Holder is granted access by the property owner:
    - (a) collection lines or access roads within 100 feet of an existing, active water supply well on a non-participating parcel;
    - (b) pier or post installations within 200 feet of an existing, active water supply well on a non-participating parcel; and
    - (c) HDD operations within 500 feet of an existing, active water supply well on a non-participating parcel.
  - (iii) Should the third-party testing conclude that the water supplied by an existing, active water supply well met federal and New York State standards for potable water prior to construction, but failed to meet such standards post construction as a result of Project activities, the Certificate Holder shall cause a new water well to be constructed, in consultation with the property owner, at least 100 feet from collection lines and access roads, and at least 200 feet from all other Facility components
- (4) The results of a private well survey distributed to all landowners within a 500-foot radius of the proposed Project Area and within a 2,000-foot radius of proposed blasting and pile driving locations (if applicable). The water well survey materials will include a summary of the Project, contact information and a description of where the well owner can get more information about the Project (i.e., project website, document repositories, etc.), as well as



an invitation to join the stakeholder list. Landowners that identify an active well will be added to the master stakeholder list and notified of Project milestones.

(b) Surface Water:

- (1) A map and identification of all surface waters, including perennial, intermittent, and ephemeral streams, within the Study Area, including Bigelow Creek, Black Creek, Mill Brook, Robins Brook, Spring Creek, Byron-Bergen Swamp, and other unnamed waters. Surface water maps will be based on data from NYSDEC, ESRI, USGS, NWI, and stream data collected during on-site surveys of water resources. On-site survey data for surface waters will be provided to NYSDEC and NYSDPS as shapefiles and in tabular format that can be cross-referenced to the maps.
- (2) A description of the New York State listed Water Classification and Standards, physical water quality parameters, flow, biological aquatic resource characteristics (including species, habitat, and presence of aquatic invasive species) and other characteristics of such surface waters, including intermittent streams, within the Study Area.
- (3) An identification of any downstream surface water drinking-water supply intakes within one mile, or if none within one mile, an identification of the nearest one (giving location of the intakes by longitude and latitude) that could potentially be affected by the Project or interconnections, including characterization of the type, nature, and extent of service provided from the identified source.
- (4) An analysis of the impact of the construction and operation of the Project and interconnections on such surface waters, including impacts, based upon publicly available information, to drinking water supplies, and an identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such surface waters, including the precautions that will be taken to avoid or minimize dredging.
- (5) An identification and evaluation of reasonable avoidance measures, and where impacts are unavoidable, mitigation measures, including the use of water storage, stormwater reuse, and offsetting water conservation, regarding groundwater impacts.
- (6) A list and evaluation of reasonable avoidance, minimization, mitigation measures, and the potential alternatives to avoid impacts to wetlands and streams, including stream crossings, to the maximum extent practicable. Environmental impacts discussed and addressed will

include, as applicable: thermal changes to waterbodies due to vegetative clearing, changes to in-stream structure and morphology, potential impacts to or taking of state-listed T&E, SSC and SGCN, and the effects of turbidity on nearby aquatic habitat.

- (7) All new stream crossings or upgrades of old crossings that may be necessary will be designed for a 100-year storm event and designed to incorporate specifications such as those described in NYSDEC's Stream Crossing Guidelines. Culvert placement specifications will be described and enumerated, detail the expected flow calculations, and demonstrate culvert capacity with BMP considerations for culvert placement, including work prohibition dates as determined in consultation with NYSDEC pursuant to applicable regulations. The feasibility of using trenchless stream crossings will be assessed for all streams proposed to be crossed. BMPs will be utilized year-round for all stream crossings. Where impacts are deemed unavoidable, proposed measures to mitigate impacts to the maximum extent practicable will be discussed. If necessary, this discussion will be updated in any required Compliance Filing or filed with the Secretary upon verification of wetland boundaries and any issued determinations, and final impact calculations will be based on verified delineation boundaries for jurisdictional wetlands.

(c) Stormwater:

- (1) A preliminary Stormwater Pollution Prevention Plan (SWPPP) for the collection and management of stormwater discharges from the Project prepared in accordance with the applicable State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (SPDES General Permit), the most current versions of the New York State Standards and Specifications for Erosion and Sediment Control (SSESC), and the New York State Stormwater Management Design Manual. All components of the final SWPPP, which are enumerated within Part III.B of the Construction General Permit (currently GP-0-15-001) will be included within the final SWPPP (not cross-referenced within Article 10 Application exhibits or appendices) so the final SWPPP can be used as a stand-alone document that will be kept at the construction site as described in the Construction General Permit part II.C.2.
  - (i) The hydrogeology of the Project Area will be taken into consideration when preparing the SWPPP. The SWPPP will include a description of proposed measures of prevention of ecological impacts to these areas to the maximum extent

practicable, and pre- and post-development hydrologic modeling and water quality calculations.

- (ii) An evaluation of potential impacts of stormwater runoff on both agricultural uses and drainage patterns within and adjacent to the Project Area. The Applicant will consult with the County Soil and Water Conservation District Staff and landowners as appropriate through the Article 10 process to identify existing drainage improvements. Restoration of existing drainage improvements will be done as agreed to by landowners in their respective lease agreements. The Project will be designed in accordance with the New York State Stormwater Management Design Manual and existing drainage patterns will be maintained to the maximum extent practicable. The Application will also address the preliminary design of stormwater controls, and draining features used during site restoration, in light of avoiding post-construction negative impacts on the mentioned resources.
  - (iii) Proposed best management practices will be documented in the SWPPP to be included in the Application. BMPs will be utilized year-round for access roads and trenching locations along and across steep slopes. Likewise, BMP procedures will be documented in the preliminary SWPPP. BMP procedures will address temporary risks (such as major storm events with an open trench) and permanent risks (such as “piping” erosion after backfilling of a trench).
- (2) If the Project is not eligible for coverage under the SPDES General Permit, a completed application for an individual SPDES Permit for the collection and management of stormwater discharges from the Project will be submitted.
  - (3) To the extent not covered in paragraph (1) above, a preliminary plan, prepared in accordance with the most current version of the New York State Stormwater Management Design Manual (SWMDM) and SDESC, that identifies the post-construction erosion and sediment practices that will be used to manage stormwater runoff from the developed Project Area. This can include runoff reduction/green infrastructure practices, water quality treatment practices, and practices that control the volume and rate of runoff. Proposed vegetation species that may be used will be listed, and the use of native species and pollinators will be considered.

- (4) The Application will include an analysis and discussion of whether the Project is classified as a “Scenario 1” (solar) project or “Scenario 2” (solar) project as per the NYSDEC April 5, 2018 “Solar Panel Construction Stormwater Permitting/SWPPP Guidance” memo. The discussion will identify how the criteria outlined in the Maryland “Stormwater Design Guidance – Solar Panel Installations” referenced in the NYSDEC memo will be met.
  - (5) If it is determined that the Project is a “Scenario 2” (solar) project, the SWPPP for this type of project must address post-construction stormwater practices designed in accordance with the sizing criteria in Chapter 4 of the NYS Stormwater Management Design Manual, date January 2015. The Application will include statements indicating whether the Project is located within and subject to the requirements of a regulated, traditional land use control of a Municipal Separate Storm Sewer System (MS4) area.
  - (6) The Application will include statements indicating whether the Applicant intends to request a waiver to disturb five acres or more of soil at any one time.
  - (7) The Final SWPPP will include an erosion and sediment control plan as required per the SPDES General Permit to limit the possibility of offsite impacts, and to minimize, to the maximum extent practicable, soil erosion and sedimentation within water resources throughout the Project Area and will be provided as part of a Compliance Filing or filed with the Secretary.
  - (8) The Application will include an evaluation of potential impacts of stormwater runoff on agricultural uses and drainage patterns within and surrounding the Facility Area. The Application will also address design of stormwater controls, and draining features used during site restoration, in light of avoiding post-construction negative impacts to water well and surrounding agricultural land uses.
- (d) Chemical and Petroleum Bulk Storage:
- (1) The Applicant does not currently anticipate the on-site storage or disposal of large volumes of substances regulated under the chemical and petroleum bulk storage programs of New York State. If construction operations require petroleum or other hazardous chemicals to be stored on-site, a description of the spill prevention and control measures to be in place for chemical storage, including an evaluation of alternatives and mitigation measures, will be included in the Application.

- (2) The Applicant does not anticipate the on-site storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or other hazardous substances, or solid waste. However, if construction requires the storage of any of these hazardous chemicals regulated under the State of New York's chemical and petroleum bulk storage program, a demonstration of compliance with such regulation shall be provided in the Application.
  - (3) The Applicant does not currently anticipate the on-site storage or disposal of large volumes of substances regulated under the chemical and petroleum bulk storage programs of any local laws. If construction operations require petroleum or other hazardous chemicals to be stored on-site, those substances will be identified within the Article 10 Application and all applicable laws and guidelines will be followed.
- (e) Aquatic Species and Invasive Species:
  - (1) An analysis of the impact of the construction and operation of the Project on biological aquatic resources, including species listed as endangered, threatened, or species of special concern in 6 NYCRR Part 182, and including the potential for introducing and/or spreading invasive species.
  - (2) An identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, minimization measures regarding impacts on such biological aquatic resources, including species and invasive species impacts (if any) and in compliance with applicable water quality standards (6 NYCRR Part 703).
- (f) This Project will not utilize cooling water during any phase of construction or operation and, therefore, cooling water withdrawals will not be addressed in the Application.

## **Stipulation 24 – 1001.24 Exhibit 24: Visual Impacts**

Exhibit 24 shall contain:

- (a) The Application will include a VIA to determine the extent and assess the significance of Project visibility within a 2 to 5 mile Visual Study Area. The components of the VIA will include identification of visually sensitive resources, viewshed mapping, confirmatory visual assessment fieldwork, visual simulations (photographic overlays), cumulative visual impact analysis, and proposed visual impact mitigation. The VIA will address the following:
  - (1) The character and visual quality of the existing landscape.
  - (2) Visibility of the Project, including visibility of Project operational characteristics.
  - (3) Visibility of aboveground Project interconnections, if proposed, and roadways to be constructed within the Study Area as determined by the viewshed analysis.
  - (4) Appearance of the Project upon completion, including structure size, architectural design, facade colors and texture, and lighting associated with the collection substation and storage facilities;
  - (5) Lighting (including lumens, location and direction of lights for Facility Area and/or task use, safety including worker safety and tall structure marking requirements) and similar features including a discussion on the minimization of upward-directed lighting and off-site lighting effects;
  - (6) Representative views (photographic overlays) of the Project, including front, side and rear views, indicating approximate elevations; from select resource locations representing as practical as possible, views from the north, south, east, and west compass locations;
  - (7) Nature and degree of visual change resulting from construction of the Project and aboveground interconnections;
  - (8) Nature and degree of visual change resulting from operation of the Project;
  - (9) Analysis and description of related operational effects of the Project such as glare. A discussion on any potential glare impacts will be provided in the Application. The Sandia National Labs Solar Glare Hazard Analysis Tool (SGHAT) method or equivalent will be used for this glare analysis. The scope and methodology for the Glare Analysis will include

a discussion of the use of galvanized steel for the racking system. No plumes, shading, or shadow flicker are anticipated.

- (10) Proposed reasonable mitigation measures based on an assessment of mitigation strategies including screening (landscaping, listing species used, and the consideration of usage of native species), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, alternative technologies, facility color and design, lighting options for work areas and safety requirements, and lighting options for aviation obstruction lighting if required by the FAA; and
  - (11) A description of all visual resources that would be affected by the facility that are within a radius of at least five miles from all the Project Area boundaries.
- (b) The viewshed analysis component of the VIA will be conducted as follows:
- (1) A digital GIS based viewshed analysis will be prepared using Esri ArcGIS Spatial Analyst software for this Project and will include vegetated tree groups to realistically depict the surrounding landscape. The results will be prepared and presented on a 1:24,000 scale current USGS base map. The viewshed maps shall provide an indication of areas of potential visibility based on topography and vegetation and the highest elevation of Project structures. The potential screening effects of vegetation shall also be shown. The map(s) shall be divided into foreground, midground and background areas based on visibility distinction and distance zone criteria. Visually-sensitive sites, cultural and historical resources, representative viewpoints, photograph locations, and public vantage points within the five-mile viewshed Study Area shall be included on the map(s) or an overlay. An overlay indicating landscape similarity zones shall be included. A line of sight profile shall also be done for resources of statewide concern located within the Visual Study Area, if applicable.
  - (2) The VIA will include a detailed description of the methodology used to develop the viewshed maps, including software, baseline information, and sources of data.
  - (3) The viewshed mapping will be used to determine potential visibility of viewer groups in the Project Study Area.
  - (4) Viewer groups will include recreational areas (i.e., golf course, state and local parks, recreational waterways, etc.), residences, businesses, listed State or National Register of Historic Places sites, and travelers (including interstate and other highway users, motorists on public roadways, and railroad passengers).

- (5) The Applicant shall confer with the appropriate municipal representatives, DPS, NYSDEC and OPRHP (“Visual Stakeholders”). Viewpoint selection will be based upon the following criteria:
- (i) representative or typical views from unobstructed or direct line-of-sight views from locations predicted to have direct line-of-sight visibility of facilities components, based on results of preliminary viewshed mapping;
  - (ii) significance of viewpoints designated scenic resources, areas or features which features typically include, but are not limited to: landmark landscapes; wild, scenic or recreational rivers administered respectively by the NYSDEC pursuant to ECL Article 15 or Department of Interior pursuant to 16 USC Section 1271; forest preserve lands, scenic vistas, conservation easement lands, scenic byways designated by the federal or state governments; Scenic districts and scenic roads, designated by the Commissioner of Environmental Conservation pursuant to ECL Article 49 scenic districts; state parks; sites listed on or eligible for listing on National or State Registers of Historic Places; areas covered by scenic easements, public parks or recreation areas; nearby NYS Forest Lands, locally designated historic or scenic districts and scenic overlooks; National Rivers Inventory listed or candidate waterways; and high-use public areas;
  - (iii) level of viewer exposure, i.e., frequency of viewers or relative numbers, including residential areas, or high-volume roadways;
  - (iv) proposed land uses identified in publicly available, government-published data bases;
  - (v) verifiable input provided from local public sources; and
  - (vi) The Applicant will use the New York Cultural Resources Information System (CRIS) and provide a listing of Eligible Historic Sites with corresponding Unique Site Numbers (“USNs”), addresses, along with mapped GIS locations. Most data for eligible sites are already on the CRIS system in the form of site plans, pictures, and written forms. The USNs can be cross referenced to the data that SHPO and OPRHP already have in their system. The Historic Resources survey will be utilized for the development of the VIA.



- (6) Photographic simulations of the Facility and interconnections shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the Project. Where vegetation screening is relied on for Project mitigation, leaf-off (i.e., wintertime) and leaf-on (i.e., summertime) simulation shall be provided. Representative viewpoints shall be established in consultation with NYSDEC, DPS, OPRHP, and a three-dimensional model of the Project built according to site engineering specifications will be prepared from select viewpoint locations. Photographs to be used in simulations will be acquired during site visits and will represent leaf-off conditions. An appropriate number of candidate locations for simulations will be chosen resulting from a number of preliminary investigations, surveys and stakeholder input, with the ultimate focus on the visual resources inventory in combination with the predicted visibility of the viewshed analysis and on-the-ground site visits.
- (i) The Applicant will provide either leaf-off photographs or leaf-off photographic simulations from representative viewpoints as determined through additional consultations, having direct line-of-sight visibility of the proposed Project, viewing circumstance with respect to vegetative obstructions (e.g. leaf-off conditions are not as critical with wide open agricultural land views), and within the scope of Article 10 regulations.
- (7) Additional revised simulations illustrating mitigation of the Project, such as through use of screening, will be considered. Discussion of other general mitigation strategies such as design and layout will be discussed in the Application. If mitigation is proposed, simulations will be prepared illustrating the incorporated mitigation, as it appears from the final selected observation points.
- (8) Each set of existing and simulated view of the Project shall be compared and rated and the results of the VIA shall be summarized. Documentation of the steps followed in the rating and assessment methodology shall be provided including results of rating impact panels and a description of the qualifications of the individuals serving on the panels. Where visual impacts from the proposed Project are identified, potential mitigation measures shall be outlined, and the extent to which they effectively minimize such impact shall be addressed. The Applicant will utilize a visual impact rating form for comparing project photo simulations. This form is a simplified version of various federal agency visual impact rating systems.

- (9) As applicable to the proposed Project technology, the analysis shall include analyses of overall appearance and operational characteristics of the Project and related facilities, including night-lighting, glare, or related visible effects of Facility operations, including an assessment of the predicted extent, frequency and duration of any such visible effects created by the Project.
- (10) Documentation of the identification and outreach to Visual Stakeholders pursuant to 16 NYCRR § 1001.24(b)(4). This outreach documentation should demonstrate that the Applicant (a) distributed a request to the Visual Stakeholders, (b) distributed a report/memorandum related to recommendations for Visual Simulations to the Visual Stakeholders following its visual fieldwork and associated data processing, and (c) solicited comments from the Visual Stakeholders on the viewpoints selected. The Visual Stakeholders identified by the Applicant will be added to the Master Stakeholder list; and the Applicant will include copies of its viewpoint selection correspondence to these stakeholders in the Application.

## **Stipulation 25 – 1001.25 Exhibit 25: Effect on Transportation**

Exhibit 25 shall contain:

- (a) A conceptual site plan, drawn at an appropriate scale, depicting all facility site driveway and roadway intersections, showing:
  - (1) Horizontal and vertical geometry, the number of approach lanes, the lane widths, shoulder widths, traffic control devices by approaches, sight distances.
  - (2) There are no wind turbine sites proposed as part of the Project, therefore this section of the Exhibit 25 regulation is not applicable.
- (b) A description of pre-construction characteristics of roads in the vicinity of the Project, including:
  - (1) A review of existing data on vehicle traffic, use levels and accidents.
  - (2) A review of transit facilities and routes, including areas of school bus service and senior and ARC bus services.
  - (3) An identification of potential approach and departure routes to and from the Project Area for police, fire, ambulance and other emergency vehicles.
  - (4) The load bearing and structural rating of existing roads will be specified in the detailed roadway descriptions.
  - (5) The Project Area is not within a congested urbanized area, therefore 24-hour traffic volume counts and peak turning movement counts for typical weekday morning, weekday afternoon, and Saturday peaks, at representative critical intersections are not applicable and will not be included in the Application.
- (c) The Study will include an estimate of the trip generation characteristics of the Project during both construction and operation. The estimate will include:
  - (1) For each major phase of construction, and for the operation phase, an estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure, distribution, by size, weight and type of vehicle.
  - (2) An identification of approach and departure routes to and from the Project Area out to a 5-mile distance for vehicles carrying water, fuel oil, bulk fuels (including wood, biomass, coal, and municipal solid waste, if applicable), chemicals or hazardous materials for construction

or operation of the Project will not be presented in the Application because deliveries of these materials is not proposed.

- (3) For major cut or fill activity (spoil removal or deposition at the Project Area and affected interconnection areas), a separate estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure, distribution, by size, weight and type of vehicle.
  - (4) An identification of approach and departure routes to and from the Project Area for construction workers and employees of the Project.
- (d) The Study will include an analysis and evaluation of the traffic and transportation impacts of the Project, including:
- (1) A comparison of projected future traffic conditions with and without the proposed Project, the analysis to be conducted separately for the peak construction impacts of the facility and for the typical operations of the completed facility.
  - (2) An evaluation of the adequacy of the road system accommodate the projected traffic during peak construction, the analysis to also include an identification of the extent and duration of traffic interferences during construction of the Facility and any interconnections;
  - (3) No oversized load deliveries are anticipated. Should oversize load deliveries be required, the Application will include an assessment of over-size load deliveries and the adequacy of roadway systems (including existing known culverts and bridges with posted limits along haul and construction routes) to accommodate oversize and over-weight vehicles; improvements necessary to accommodate oversize or overweight deliveries; impacts associated with such improvements; and mitigation measures appropriate to minimize such impacts;
  - (4) An identification and evaluation of practicable mitigation measures regarding traffic and transportation impacts if needed, including timing restrictions, the use of alternative technologies, the construction of physical roadway improvements, and the installation of new traffic control devices as well as the repair of local roads due to the damage by heavy equipment or construction activities during construction or operation of the Project.
    - (i) The Applicant will consider any overweight/oversize permitting and road feasibility issues for delivery of transformers and other substation and point of interconnection related equipment, as applicable.

- (5) A description of all road use and restoration agreements, if any, between the Applicant and landowners, municipalities, or other entities, regarding documentation and repair of local roads damaged by heavy equipment or construction activities during construction or operation of the Project. The Applicant will discuss with the County any required permitting for County rights of way. The Applicant intends to enter into Road Use Agreements with the Town, as applicable.
- (e) An analysis and evaluation of the impacts of the Facility on mass transit systems will not be presented in the Application as there are none within the Study Area. An analysis and evaluation of any impacts on airports and airstrips, or on military training and frequent military operations in the National Airspace System and Special Use Airspace designated by the Federal Aviation Administration (FAA) will be included, if any.
- (f) No construction or alteration is proposed that requires a Notice of Proposed Construction to be submitted to the administrator of the FAA in accordance with 14 Code of Federal Regulations, Part 77 pursuant to 49 U.S.C., Section 44718.
- (g) Though no offsite improvements are anticipated to be necessary, should the Project require offsite improvements, these will be assessed in the Application.

## **Stipulation 26 – 1001.26 Exhibit 26: Effect on Communications**

Exhibit 26 shall contain:

- (a) The Applicant will consult with the Genesee County Emergency Management Office, Genesee County Sheriff's Office, and NYS Division of Homeland Security & Emergency Services to assess any effects on communication services, with particular respect to emergency services, or potential impacts on the communication network for the NYS Early Warning Weather Detection System. An identification of all existing broadcast communication sources within a two-mile radius from all Project Area boundaries of the Facility and the electric interconnection between the Project and the point of interconnection, unless otherwise noted, including:
  - (1) AM radio.
  - (2) FM radio.
  - (3) Television.
  - (4) Telephone.
  - (5) Microwave transmission (all affected sources, not limited to a two-mile radius from all Project Area boundaries).
  - (6) Emergency services.
  - (7) Municipal/school district services.
  - (8) Public utility services.
  - (9) Doppler/weather radar (all affected sources, not limited to a two- mile radius from all Project Area boundaries).
  - (10) Air traffic control (all affected sources, not limited to a two-mile radius from all Project Area boundaries).
  - (11) Armed forces (all affected sources, not limited to a two-mile radius from all Project Area boundaries).
  - (12) Global positioning systems (GPS).
  - (13) LORAN (all affected sources, not limited to a two-mile radius from all Project Area boundaries).

- (14) Amateur radio licenses registered to users.
- (b) Based upon publicly available information, the Applicant will identify underground cables or fiber optic major transmission telecommunication lines within two miles of the Facility and the electric interconnection between the Project and point of interconnection. The Project will avoid any impacts to underground cables or fiber optic lines. The Applicant will contact Genesee County to confirm identification of any fiber potentially connecting radio towers.
- (c) A statement describing the anticipated effects of the proposed Project and the electric interconnection between the Project and the point of interconnection on the communications systems required to be identified pursuant to subdivision (a) and (b) of this Exhibit, including the potential for:
  - (1) Structures to interfere with broadcast patterns by re-radiating the broadcasts in other directions;
  - (2) Structures to block necessary lines-of-sight;
  - (3) Physical disturbance by construction activities. The Applicant will consult with Dig Safely New York (“DSNY”) prior to the commencement of any construction activities.
  - (4) Adverse impacts to co-located lines due to unintended bonding; and
  - (5) Any other potential for interference.
- (d) An evaluation of the design configuration of the proposed Project and electric interconnection between the Project and the point of interconnection demonstrating that there shall be no adverse effects on the communications systems required to be identified pursuant to subdivision (a) and (b) of this Exhibit.
- (e) A description of post-construction activities that shall be undertaken to identify and mitigate any adverse effects on the communications systems required to be identified pursuant to subdivision (a) and (b) of this section that occur despite the design configuration of the proposed Project and interconnection facilities. If there is a potential for adverse effects based on the communication analyses, the Applicant will follow up with the Genesee County Sheriff’s Office, Genesee County Emergency Management, and both Byron Fire Departments to determine the appropriate level of further study, monitoring, and mitigation, if necessary.
- (f) There are no wind power facilities proposed as part of the Project, therefore this section of the Exhibit 26 regulation is not applicable.

## **Stipulation 27 – 1001.27 Exhibit 27: Socioeconomic Effects**

Exhibit 27 shall contain:

- (a) An estimate of the average construction work force, by discipline, for each quarter, during the period of construction; and an estimate of the peak construction employment level. This estimate will be based on the actual number of jobs budgeted for the Project, as well as the Applicant's prior industry experience with similarly situated projects.
- (b) An estimate of the annual construction payroll, by trade, for each year of construction and an estimate of annual direct non-payroll expenditures likely to be made in the vicinity of the Project (materials, services, rentals, and similar categories) during the period of construction.
- (c) A range of estimates of the annual secondary employment and economic activity likely to be generated in the vicinity of the Project by the construction of the solar facility, to reflect the uncertainty associated with such, possibly multiplier-based, secondary impact estimates. A qualitative discussion will address the annual net secondary effects from Project construction.
- (d) An estimate of the number of jobs and the on-site payroll, by discipline, during a typical year once the Project is in operation, and an estimate of other expenditures likely to be made in the vicinity of the Project during a typical year of operation. The Applicant should rely, as much as practicable, on the actual number of jobs budgeted for the Project, as well as the Applicant's prior industry experience with similarly situated projects.
- (e) A range of estimates of the annual secondary employment and secondary economic activity likely to be generated in the vicinity of the Project by its operation, to reflect the possible uncertainty associated with, multiplier-based, secondary impact estimates. A qualitative discussion will address the annual net secondary effects from Project operation.
- (f) An estimate of incremental school district operating and infrastructure costs due to the construction and operation of the Project, this estimate to be made after consultation with the affected school district.
- (g) An estimate of incremental municipal, public authority, or utility operating and infrastructure costs that will be incurred for police, fire, emergency, water, sewer, solid waste disposal, highway maintenance and other municipal, public authority, or utility services during the construction and operation phases of the Project (this estimate to be made after consultation with the affected municipalities, public authorities, and utilities).



- (h) An identification of jurisdictions that levy real property taxes or benefit assessments or user fees upon the Facility area, its improvements and appurtenances and any entity from which payments in lieu of taxes will or may be negotiated.
- (i) For each jurisdiction, an estimate of the incremental amount of annual taxes (and payments in lieu of taxes [PILOT], benefit charges and user charges) projected to be levied against the post-construction Facility area, its improvements and appurtenances.
- (j) For each jurisdiction, a comparison of the fiscal costs to the jurisdiction that are expected to result from the construction and operation of the Project to the expected tax revenues (and payments in lieu of taxes, benefit charge revenues and user charge revenues) generated by the Project.
- (k) An analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local emergency response capacity (this analysis to be made after consultation with the affected local emergency response organizations).
- (l) Although not required by ECL 6-0107, Exhibit 27 of the Application will present a detailed statement of how the proposed Facility and interconnections are consistent with each of the applicable state smart growth public infrastructure criteria specified in ECL § 6-0107, or why compliance would be impracticable.
- (m) A summary of available information on the feasibility of providing local access to energy generation by the Facility.
- (n) A commitment by the Applicant to track and report the actual number of direct jobs created during the construction and operational phases of the Project, as well as the tax payments to local jurisdictions made during the course of the Project.
- (o) The Applicant will make available any workpapers associated with its socioeconomic impact estimates.

## **Stipulation 28 – 1001.28 Exhibit 28: Environmental Justice**

Exhibit 28 shall contain:

- (a) The Application will utilize minority population and household income data from the U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates for the Census Block Group(s) and Tract(s) in which the Project Area is located, including the southern Batavia census block group 360379510001. This data will be compared with the thresholds of 6 NYCRR § 487.3 for determining Potential Environmental Justice Areas. A statement that because: (a) the proposed project impact area is not in a Potential Environmental Justice Area, as defined by 6 NYCRR §487.6, and that the closest Potential environmental justice Area is located four (4) miles from the Project impact area; (b) there will be no air emissions during operation; and (c) any vehicle/equipment emissions during construction and operation will not affect any EJ areas due to distance, the Project will not result in significant and adverse disproportionate environmental impacts on any Environmental Justice areas. Therefore, the full Environmental Justice Analysis provided by 6 NYCRR § 487.6 is not required.

Exhibit 28 will further include a preliminary description of the size and location of the impact study area based on the criteria set forth in 6 NYCRR § 487.4 and describe whether or not one or more EJ areas are present within the impact study area.

- (b) A map of potential environmental justice areas in relation to Project facilities and the impact study area.

## **Stipulation 29 – 1001.29 Exhibit 29: Site Restoration and Decommissioning**

Exhibit 29 shall contain:

- (a) A statement of the performance criteria proposed for site restoration in the event the Project cannot be completed and for decommissioning of the Project, including a discussion of why the performance criteria are appropriate. Among other things, the statement shall address:
  - (1) Safety and the removal of hazardous conditions;
  - (2) Environmental impacts;
  - (3) Aesthetics;
  - (4) Salvage and recycling;
  - (5) Potential future uses for the site; and
  - (6) The useful life of the Project.
- (b) A plan for the decommissioning and restoration of the Project Area including how such decommissioning and restoration shall be funded and a schedule with defined period of time for determining when to conduct decommissioning and site restoration activities. This plan shall include a detailed preliminary estimate to support the proposed decommissioning and site restoration funding upon cessation of operation of the Project based on decommissioning and site restoration costs from similar projects (if similar costs are available). The plan will also include:
  - (1) A detailed cost estimate for site restoration activities and decommissioning of the Project. In addition, the Application will include the proposed type of, and justification for, the financial assurance that will be provided for decommissioning and restoration activities.
  - (2) A procedure and schedule for notifying local municipalities and landowners prior to decommissioning and restoration activities.
  - (3) A description of proposed decommissioning activities and preliminary sequence for completion of these activities.
  - (4) A description of proposed agricultural restoration techniques to be utilized during site restoration and decommissioning will be provided in accordance with applicable NYSDAM guidelines, to the maximum extent practicable.

- (5) As the Project will be located on lands owned by another, a description of site restoration, decommissioning and guaranty/security agreements between the Applicant and landowner, municipality, or other entity, including provisions for Project components, foundations, and electrical collection, transmission, and interconnection facilities will be included.
- (c) There are no wind power facilities proposed as part of the Project, therefore this section of the Exhibit 29 regulation is not applicable.
- (d) No nuclear power facilities are proposed as part of the Project; therefore, this section of the Exhibit 29 regulation is not applicable.

**Stipulation 30 – 1001.30 Exhibit 30: Nuclear Facilities**

There are no nuclear facilities included in the proposed Project. Therefore, this requirement is not applicable to the Excelsior Energy Center.

### **Stipulation 31 – 1001.31 Exhibit 31: Local Laws and Ordinances**

During preparation of the Application, the Applicant will consult with the Town of Byron and Genesee County, as applicable, regarding the local law requirements applicable to the construction, operation and maintenance of the Project, and to determine whether any potential request by the Applicant that the Board elect to not apply any such local requirements could be obviated by design changes to the proposed Project, or otherwise.

Exhibit 31 shall contain:

- (a) A list and copies, in electronic form, of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction and operation of the Project that are of a procedural nature for those towns within the Project Area. Copies of the full text of local laws and ordinances, and attachments, such as official Zoning Districts Maps, Use and Area Tables, definitions of terminology in regulations, and related attachments will be provided to DPS Staff. These local procedural requirements are supplanted by PSL Article 10 unless the Siting Board expressly authorizes the exercise of the procedural requirement by the local municipality or agency.
- (b) A list and copies, in electronic form, of all local procedural requirements required to be identified pursuant to section (a) of this Exhibit for which the Applicant requests that the Siting Board expressly authorize the exercise of the procedural requirement by the local municipality or agency, including a statement why such local exercise would be desirable or appropriate.
- (c) Identification of the local agency qualified by the Secretary of State that shall review and approve the building plans, inspect the construction work, and certify compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing or building code. The Town of Byron has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local electric, plumbing and building codes, therefore the Applicant may make a request pursuant to subdivision (b) of this section that the Siting Board expressly authorize the exercise of the electric, plumbing and building permit application, inspection and certification processes by the Town of Byron.
- (d) Identification and copies, in electronic form, of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction and operation of the Project that are of a substantive nature, together with a statement that the location of the Facility as proposed conforms to all such local substantive requirements, except any that the Applicant requests that the Siting Board elect to not apply. Copies of zoning, flood plain and similar maps, tables and/or

documents shall be included in the Exhibit when such are referenced in such local substantive requirements. Pursuant to PSL §168(3) (e), the Siting Board must find that the Facility is designed to operate in compliance with these local substantive requirements, all of which shall be binding upon the Applicant, unless the Siting Board elects to not apply them by finding that, as applied to the proposed Project such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

- (e) A list of all local substantive requirements required to be identified pursuant to subdivision (d) of this Exhibit for which the Applicant requests that the Siting Board elect to not apply them by finding that, as applied to the Project such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. For each local substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the Project, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The statement shall include a demonstration:
  - (1) For requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary Project component bulk, height, process or materials that make compliance by the Applicant technically impossible, impractical or otherwise unreasonable;
  - (2) For requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and
  - (3) For requests grounded in the needs of consumers, that the needs of consumers for the Project outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.
- (f) A list and copies, in electronic form, of any local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the Project's interconnections in public rights of way, if any, that are of a procedural nature.

- (g) A list and copies, in electronic form, of any local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the Project's interconnections in public rights of way, if any, that are of a substantive nature.
- (h) A list of all local procedural or substantive requirements required to be identified pursuant to subdivisions (f) and (g) of this Exhibit for which the Applicant requests that the Siting Board elect to not apply them by finding that, as applied to the proposed Project interconnections such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. For each local procedural or substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed Project, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The statement shall include a demonstration:
  - (1) For requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary Project component bulk, height, process or materials that make compliance by the Applicant technically impossible, impractical or otherwise unreasonable;
  - (2) For requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and
  - (3) For requests grounded in the needs of consumers, that the needs of consumers for the Project outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.
- (i) A summary table of all local substantive requirements required to be identified pursuant to subdivisions (d) and (g) of this Exhibit in two columns listing the provisions in the first column and a discussion or other showing demonstrating the degree of compliance with the substantive provision in the second column.
- (j) An identification of the zoning designation or classification of all lands constituting the site of the proposed Project and a statement of the language in the zoning ordinance or local law by which it is indicated that the proposed Project is a permitted use at the proposed site. If the language of the



zoning ordinance or local law indicates that the proposed Project is a permitted use at the proposed site subject to the grant of a special exception, a statement of the criteria in the zoning ordinance or local law by which qualification for such a special exception is to be determined.

- (k) The Application will address the Town of Byron zoning ordinance, including applicable solar energy facilities code provisions in effect at the time the Application is filed. Applicable laws, codes and regulations will be included in the Application as an appendix. SEQRA documentation of local code revisions adoption actions will be included in the Application as an appendix to the extent it is finalized and publicly accessible.

### **Stipulation 32 – 1001.32 Exhibit 32: State Laws and Regulations**

Exhibit 32 of the Siting Board's regulation provides that before preparing the Exhibit required by this section, the Applicant shall consult with the state agencies and authorities whose requirements are the subject of the Exhibit to determine whether the Applicant has correctly identified all such requirements.

Exhibit 32 shall contain:

- (a) A list of all state approvals, consents, permits, certificates, or other conditions for the construction or operation of the proposed Project (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) of a procedural nature. These State procedural requirements are supplanted by PSL Article 10, except for permits to be issued by the NYSDEC pursuant to federal recognition of state authority, or pursuant to federally delegated or approved authority, in accordance with the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, and permits pursuant to Section 15-1503, Title 9 of Article 27, and Articles 17 and 19 of the ECL, unless the Siting Board expressly authorizes the exercise of such authority by the state agency. In addition to the Article 10 Application, the Applicant will apply to the Public Service Commission for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the PSL authorizing the exercise of municipal rights to occupy municipal property and for other authorization as clarified by the Siting Board in its Cassadaga decision issuing the certificate.
- (b) A list of all State procedural requirements required to be identified pursuant to subdivision (a) of this section for which the Applicant requests that the Board expressly authorize the exercise of such authority by the State agency, including a statement why such exercise would be desirable or appropriate.
- (c) A list of all State approvals, consents, permits, certificates, or other conditions for the construction or operation of the proposed Project (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) of a substantive nature, together with a statement that the Project as proposed conforms to all such state substantive requirements. Pursuant to PSL §168(3) (e), the Siting Board must find that the Project is designed to operate in compliance with these state substantive requirements, all of which shall be binding upon the Applicant.
- (d) A summary table of all state substantive requirements required to be identified pursuant to subdivision (c) of this section in two columns listing the provisions in the first column, and a

discussion or other showing demonstrating the degree of compliance with the substantive provision in the second column.

- (e) A list of all state approvals, consents, permits, certificates, or other conditions for the construction or operation of any proposed offsite interconnections and ancillary features, that are not encompassed within the definition of Major Electric Generating Facility. These state actions not for the construction or operation of the proposed Project are not supplanted by PSL Article 10 and may be state procedural requirements or state substantive requirements.

### **Stipulation 33 – 1001.33 Exhibit 33: Other Applications and Filings**

Exhibit 33 shall contain:

- (a) A statement whether the Applicant has pending, or knows of others who have pending, with the PSC or with any other governmental department, agency or court of competent jurisdiction (state or federal), any application or filing which concerns the subject matter of the proceeding before the Siting Board. If any such applications or filings are pending, the Applicant shall state, for each application or filing, whether the granting of any such application or filing will have any effect on the grant or denial of a Certificate, and whether the grant or denial of a Certificate will have any effect upon the grant or denial of any such other application or filing. The Applicant shall notify the Secretary, presiding examiner and each party of any significant change in the status of each such application or filing.
- (b) An identification of any federal permits, consents, approvals, or license that will be required for the construction or operation of the Project. The Application shall specify the date on which an application for any such approval was made or the estimated date on which it will be made. The Applicant shall notify the Secretary, presiding examiner and each party of any significant change in the status of each such application.

### **Stipulation 34 – 1001.34 Exhibit 34: Electric Interconnection**

Exhibit 34 shall contain a detailed description of the proposed electric interconnection, including the medium voltage collection system:

- (a) The design voltage and voltage of initial operation.
- (b) The type, size, number, and materials of conductors.
- (c) The insulator design.
- (d) The length of the transmission line.
- (e) The typical dimensions and construction materials of the towers.
- (f) The design standards for each type of tower and tower foundation.
- (g) For underground construction, the type of cable system to be used and the design standards for that system.
- (h) For underground construction, indicate on a profile of the line the depth of the cable and the location of any oil-pumping stations and manholes.
- (i) Equipment anticipated to be installed in both the proposed collection substation and 345 kV switchyard, including an explanation of the necessity of these components.
- (j) Any terminal facility.
- (k) The need for cathodic protection measures.
- (l) A description of installation methods proposed or used for collection lines. For the routing of collection system cables between the various solar arrays within the Project Area and the Project collection substation, a conceptual design of the cable collection system will be provided along with a discussion of installation methods. Electric collection lines will be primarily underground. Any type of overhead collection considered for the Project will be discussed and assessed in the Application. In the event that there are overhead collection or transmission pole structures in agricultural fields, the Applicant understands that NYSDAM prefers that they be self-supporting, with no guy wires located on agricultural land.
- (m) In the event that overhead collection or transmission pole structures are proposed, associated impacts will be incorporated in the VIA.

### **Stipulation 35 – 1001.35 Exhibit 35: Electric and Magnetic Fields**

Exhibit 35 shall contain:

- (a) For the right-of-way (“ROW”) of the proposed connecting transmission line from the collection substation to the 345 kV switchyard providing the electrical interconnection between the proposed Project and the existing electric transmission and distribution system, identify, if applicable, every ROW segment having unique EMF characteristics due to structure types and average heights, corridor widths, and co-location of other transmission facilities in the ROW, if any. The proposed tap will be approximately several hundred feet long and within the Project Area.
- (b) For each if any, identified onsite transmission ROW segment, provide both “base case” and “proposed” cross-sections to scale showing:
  - (1) All overhead electric transmission, sub-transmission and distribution facilities, including the proposed Project showing structural details and dimensions and identifying phase spacing, phasing, and any other characteristics affecting EMF calculations.
  - (2) All underground electric transmission, sub-transmission and distribution facilities.
  - (3) All underground gas transmission facilities.
  - (4) All ROW boundaries.
  - (5) Structural details and dimensions for all structures (dimensions, phase spacing, phasing, and similar categories) and include a Station number identifying the location.
- (c) A set of the aerial photos/drawings enhanced by showing the exact location of each:
  - (1) Onsite transmission corridor segment.
  - (2) Cross-section.
  - (3) Nearest residence or occupied non-residential building in each identified ROW segment with a stated measurement of the distance between the edge of ROW and the nearest edge of the residence or building.
- (d) An EMF study with calculation tables and field strength graphs for each identified right-of-way segment cross-section, as follows:
  - (1) Signed and stamped/sealed by a licensed professional engineer registered and in good standing in the State of New York.

- (2) Identification of the specific computer software program used to model the facilities and make the calculations.
- (3) Regarding the electric fields, modeling of the circuits at rated voltage and electric field calculation tables and field strength graphs calculated at one meter above ground level with 5-foot measurement intervals depicting the width of the entire ROW and out to 500 feet from the edge of the ROW on both sides including digital copies of all input assumptions and outputs for the calculations.
- (4) Regarding magnetic fields, modeling of the circuit phase currents equal to the summer-normal, summer short-term emergency (STE Sum), winter-normal, and winter short term emergency (STE Win), loading conditions and magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5-foot measurement intervals depicting the width of the entire ROW and out to 500 feet from the edge of the ROW on both sides including digital copies of all input assumptions and outputs for the calculations.
- (5) Regarding the magnetic fields, modeling of the circuit phase currents equal to the maximum average annual load estimated to be occurring on the power lines within ten years after the proposed Project is put in operation and magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5-foot measurement intervals depicting the width of the entire ROW and out to 500 feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculation.
- (6) Regarding the magnetic fields, modeling of a “base case” with the circuit phase currents equal to the maximum average annual load currently estimated to be occurring on the existing power lines within the ROW (without construction or operation of the proposed Project) and magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5-foot measurement intervals depicting the width of the entire ROW and out to 500 feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations.
- (7) Regarding magnetic fields, modeling will be conducted for the portion of underground collection circuit where maximum current flow will result from co-located collection lines during peak load conditions.

- (8) The Applicant will provide an EMF study for the overhead electric collection circuit, if applicable, identifying every ROW segment having unique EMF characteristics due to structure types and average heights, corridor widths, and co-location of other transmission facilities in the ROW, if any.
- (e) The application will provide a study evaluating potential induced voltages on Project components (perimeter fencing, solar array structures, etc.) located in proximity to the Project-proposed high-voltage electrical transmission facilities.



**Stipulation 36 – 1001.36 Exhibit 36: Gas Interconnection**

This requirement is not applicable to the Excelsior Energy Center, as there are no gas interconnections included in the proposed Project.

**Stipulation 37 – 1001.37 Exhibit 37: Back-Up Fuel**

This requirement is not applicable to the Excelsior Energy Center, as there is no back-up fuel required for the proposed Project.

**Stipulation 38 – 1001.38 Exhibit 38: Water Interconnection**

This requirement is not applicable to the Excelsior Energy Center, as there are no public water supply interconnections required for the operation of the proposed Project.

**Stipulation 39 – 1001.39 Exhibit 39: Wastewater Interconnection**

This requirement is not applicable to the Excelsior Energy Center, as there are no municipal wastewater interconnections required for the operation of the proposed Project.

**Stipulation 40 – 1001.40 Exhibit 40: Telecommunications Interconnection**

Exhibit 40 shall contain:

- (a) A detailed description of the proposed telecommunications interconnection, including all interconnecting facilities, line route, design details, size, functions, and operating characteristics.
- (b) An analysis demonstrating that there will be sufficient capacity to support the requirements of the Project.
- (c) A description of the status of negotiations, or a copy of agreements that have been executed, with companies or individuals for providing the communications interconnection including any restrictions or conditions of approval placed on the Facility imposed by the provider, and a description of how the interconnection and any necessary system upgrades will be installed, owned, maintained and funded.
- (d) A description of probable environmental effects of the telecommunication interconnection to the extent information is available.

**Stipulation 41 – 1001.41 Exhibit 41: Application to Modify or Build Adjacent**

The Project is not proposed to modify or be built adjacent to an existing electric generating facility and therefore, the requirements of Exhibit 41 are not applicable to the Project.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered:

**Excelsior Energy Center, LLC**

**As to all Stipulations identified above agree:**

By: \_\_\_\_\_

**New York State Department of Public Service**

**As to all Stipulations identified above agree:**

By: \_\_\_\_\_

**New York State Department of Environmental  
Conservation**

**As to all Stipulations identified above agree:**

By: \_\_\_\_\_

**New York State Department of Agriculture &  
Markets**

**As to all Stipulations identified above agree:**

By: \_\_\_\_\_

**New York State Department of Health**

**As to all Stipulations identified above agree:**

By: \_\_\_\_\_

**Town of Byron, New York**

**As to all Stipulations identified above agree:**

By: \_\_\_\_\_

**Byron Association Against Solar**

**As to all Stipulations identified above agree:**

By: \_\_\_\_\_