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Via Electronic Delivery

January 8, 2021

Hon. Michelle L. Phillips
Secretary
New York State Board on Electric Generation
Siting and the Environment
Three Empire State Plaza,
Albany, New York 12223-1250

Re: Case 17-F-0595 – Application of Watkins Glen Solar 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 Located in the Town of Dix, Schuyler County.

Dear Secretary Phillips:

Attached for filing in the above-captioned proceeding please find the “Supplement to the Application,” comprising the responses of Watkins Glen Solar Energy Center, LLC (“Watkins Glen”) to the deficiencies identified in the letter from the Chair, dated December 10, 2020. The Supplement to the Application presents sequentially the requests made in the Chair’s letter followed by the applicable response.

A copy of the service list and affidavit of service affirming that service of the Supplement to the Application was made “on all entities entitled to receive a copy of the Application pursuant to PSL § 164, as well as any additional parties on any established Party List in this proceeding” will be filed once service is complete. Additionally, please find attached an updated meeting log that identifies the Public Involvement Program (“PIP”) stakeholder meetings conducted by Watkins Glen, through January 8, 2021.

Please contact the undersigned should you have any questions. Thank you.

Respectfully submitted,

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Attachments

**Supplement to the Application for a Certificate of
Environmental Compatibility and
Public Need Pursuant to Article 10 of the
New York State Public Service Law**

Watkins Glen Solar Energy Center

Town of Dix, Schuyler County, New York

Case No.: 17-F-0595

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JANUARY 2021

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- Attachment B: Revised Complaint Resolution Plan
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- Attachment D: Revised Figure 22-2A: Impacts to Plant Communities, Wildlife, Habitats, and Concentration Areas
- Attachment E: Invasive Species Management and Control Plan (ISMCP), Revised January 2021
- Attachment F: Revised Stakeholder List
- Attachment G: Visual Impact Assessment - Revised Simulations
- Attachment H: Glare Analysis Supplement
- Attachment I: Revised EMF Study

In response to the December 10, 2020 letter received from the Chair of the New York State Board on Electric Generation Siting and the Environment (Chair) regarding the Application submitted by Watkins Glen Solar Energy Center, LLC (Applicant) pursuant to N.Y. Public Service Law (PSL) 164 for a Certificate of Environmental Compatibility and Public Need for the Watkins Glen Solar Energy Center Project (the Project), supplemental information is provided below and attached. The organization of this document (hereafter referred to as the "Supplement to the Application") is consistent with the Chair's December 10, 2020 letter and presents each comment followed by the Applicant's response to the comment.

Exhibit 19: Noise and Vibration

1. 16 NYCRR §1001.19 (j) and Stipulation 19(j) require, "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." Although the Application provided a list of possible solutions and an estimate of the noise reductions needed, it did not evaluate alternative designs and alternative project arrangements, as required. Please provide an identification and evaluation of alternatives designs and alternatives project arrangements (e.g., inverter relocation, barrier/enclosure design).

Response: While developing the preliminary layout, the Applicant considered several general arrangements with inverters in various locations. However, given the power level of the inverter that the Applicant proposed, it was determined through several rounds of acoustic modeling that there were no arrangements that eliminated the need for noise reductions when taking into account other engineering and environmental constraints. As such, the Applicant is reviewing various technologies relating to noise abatement measures for the final design and operation of the Project. Currently, the Applicant is evaluating different models of central inverters that are quieter than the inverter model specified in the Application. With a quieter inverter, it is anticipated that the noise reductions required can be achieved. An additional option being considered is the use of sound barriers where dBA limits have been exceeded. Two- or three-sided sound barrier walls may be added around the eleven (11) inverter equipment pads where sound reductions are required. These sound barrier walls would be a minimum of nine (9) feet

tall and constructed of material with a density of at least 5 lbs/sqft in order to block sound from the central inverters. The equipment pads requiring sound barriers under the current layout are: #1, #3, #5, #6, #8, #9, #10, #11, #12, #13, and #15. If a quieter central inverter is available and selected, sound level impacts would be reduced, and the Project would not require sound barriers at as many equipment pads or may not require any sound barriers. An updated design including the inverter model, inverter locations and sound barrier walls (if needed) that complies with the dBA requirements of the Project will be provided during Compliance Filing.

Exhibit 20: Cultural Resources

1. Stipulation 20(c) requires that "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 other Indian Nations 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." The Seneca-Cayuga Nation, Cayuga Nation, and THPOs (Tonawanda Seneca Nation & the Seneca Nation of Indians) are included on the Master Stakeholder List (Appendix 2-5). However, the Meeting Log (Appendix 2-4) does not indicate that the required consultations with Federally Recognized Indian Nations occurred, and the Application provided no indication that the required consultations were initiated by OPRHP. Please indicate whether consultations with the Federally Recognized Indian Nations was initiated by OPRHP, and, if so, please provide a revised Meeting Log (Appendix 2-4) that accurately reflects any such consultations that have occurred to date.

Response: The Applicant reached out to OPRHP on December 11, 2020 to determine whether any consultation with the Federally Recognized Indian Nations was initiated by OPRHP. OPRHP confirmed that as of January 4, 2021, this consultation has not occurred. Once the consultation has occurred, the Applicant will revise the Meeting Log accordingly.

Exhibit 21: Geology, Seismology, and Soils

1. 16 NYCRR §1001.21(r)(2) requires "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." Exhibit 21(s)(4) of the Application describes post installations that will be required for the proposed solar arrays; however, no plan for securing compensation for damages is provided. Please provide a plan for securing compensation for damages that may occur due to pile driving, including post installations for the solar array racking.

Response: As described in Exhibit 21 of the Application and in Attachment A to this Supplement (Evaluation of Vibration Amplitude by Impact Pile Drivers), vibrations induced by pile drivers during the installation of the driven posts used to support the PV solar panels are not anticipated to impact any subsurface conditions or existing buildings or structures. Nonetheless, the Applicant's Complaint Resolution Plan, provided as Appendix 12-3 of the Application, outlines the procedure for complainants to file a complaint and for the Applicant to work with a complainant towards dispute resolution. This Plan has been revised to add provisions for compensating for damages. The revised Plan is provided as Attachment B to this Supplement.

Exhibit 22: Terrestrial Ecology and Wetlands

1. Stipulation 22(a)(1) requires a list identifying and describing the types of plant communities present on the Project Area, the interconnections, and adjacent properties, to 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." Stipulation 22(b)(1)(iv) provides that "[t]he plant community mapping will also depict vegetation cover types 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 and DPS and to any intervening parties upon written request, subject to any confidentiality limitations." This information regarding plant communities was not provided. Please

provide updated Figures 22-1 and 22-2 (on parcels within the Project Area) (1) to identify plant communities according to Ecological Communities of New York State (Edinger et al., 2014) and (2) to identify specific species at locations of invasive species concentrations.

Response: Figures 22-1 and 22-2 have been updated to depict plant communities described in the Ecological Communities of New York State (Edinger et al., 2014) and to identify specific species at locations of invasive species concentrations, and are included herein as new Figures 22-1A and 22-2A in Attachments C and D, respectively. Additionally, table 22-1, Land Cover Types within the Project Area, has been updated to include these revisions and is included below:

Updated Table 22-1. Land Cover Types within the Project Area

Cover Type	Acreage	Percent of Project Area
Appalachian Oak-Hickory Forest	29	3.8
Cropland/Row Crops	360	46.7
Disturbed/Developed	35	4.5
Hemlock-Northern Hardwood Forest	21	2.7
Open Water	1	0.1
Spruce-Northern Hardwood Forest	3	0.4
Successional Old Field	27	3.5
Successional Northern Hardwood	215	27.9
Successional Shrubland	80	10.4
Total	771	100

2. Stipulation 22(d)(4) requires, “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.” Exhibit 22 only address potential impacts to whitetail deer, but it does not provide information on (1) the potential impacts to other wildlife

movements or (2) opportunities to minimize adverse impacts. For instance, Exhibit 22 does not address whether the perimeter fencing could be designed to allow small animals to pass under the perimeter fencing. Please provide a discussion of potential impacts of perimeter fencing on wildlife movements and impact minimization.

Response: Approximately 352 acres (45.5%) of the Project Area will be enclosed by fencing. Fencing will consist of 2-inch diamond mesh chain link and will be 7 feet in height with a 6-inch clearance from the bottom of the fence to grade to allow for small animal access (refer to detail entitled 'Perimeter Chain-Link Security Fence Detail' on Drawing C.602 of the site plans included in Appendix 11 of the Application). This fencing will go through active agriculture, forestland, successional shrubland, and successional old field communities. Larger mammals such as white-tailed deer, eastern cottontail, coyote, and racoon may be affected by the perimeter fencing. The access to foraging habitat may be reduced by the perimeter fencing. Proper siting of fencing will minimize the impact on wildlife travel corridors. While some wildlife corridors were identified within the Project Area (see Figure 22-5 of Application), most corridors in the vicinity of the Project are largely located outside of the Project Area. Wildlife travel within those areas will be unaffected by the Project. Fencing was designed to promote movement between arrays and to allow for unobstructed movement both north-south and east-west through the Project. Existing corridors (i.e., riparian corridors) will be preserved where possible to allow for wildlife and agricultural access. Fencing will be erected around individual solar arrays with enough spacing for uninhibited travel between arrays. Several forested corridors will be preserved within the Project Area. It is anticipated that wildlife species unable to access foraging habitat due to the perimeter fencing will find new foraging habitat elsewhere within the vicinity of the Project Area.

3. Stipulation 22(o)(2) requires an Invasive Species Management and Control Plan ("ISMCP") to include "[f]or areas of high invasive species density and as useful for management of individual invasive species, identification of an area and concentration threshold that requires mapping and an individual management plan. GIS files of such concentration areas will be provided to NYSDEC." The ISMCP included as Appendix 22-7 of the Application does not include an area and concentration threshold for invasive species that would require mapping and an individual management plan. Please provide

a revised ISMCP that addresses the presence of areas of high concentrations of invasive species and potential for individual treatment.

Response: The ISMCP has been updated to address the presence of areas of high concentrations of invasive species in the Project Area. Stands of invasive plants were recorded when a species was present at a concentration of 10 percent or greater over an area of 100 square feet or greater or if it was a species of concern for even a single plant (refer to Section 2.1 of the revised ISMCP included as Attachment E). As indicated in Figure 1 of the revised ISMCP, very limited occurrences of invasive species were found onsite within the proposed limits of disturbance and therefore there is no need for an individual management plan for any particular species. The ISMCP has also been updated to clarify the control measures and best management practices that will be utilized to prevent introduction and spread of invasive species, including the potential for individual treatment (refer to Section 4.0 of revised ISMCP included as Attachment E).

4. Stipulation 22(o)(4) states that “[a] preliminary ISMCP will be included with the Application and final ISMCP shall be provided as a Compliance Filing. Specifically, the plan will apply to all prohibited and regulated invasive species and include [the information that follows.]” The preliminary ISMCP included as Appendix 22-7 of the Application does not contain all of the required information. Please provide a revised ISMCP including the items specified below.
 - (a) Stipulation 22(o)(4)(i) requires the ISMCP to include “[a] summary of the survey methods to be used to identify and mark existing non-native invasive species within the Facility site (i.e., baseline survey conducted concurrently with the wetland delineation on June 6 through 8, 2017 and April 22 through April 26, 2019), 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”. The ISMCP included as Appendix 22-7 of the Application does not summarize the survey methods to be employed during the invasive species baseline survey. Please provide a revised ISMCP that includes a summary of the survey methods to be employed during invasive species baseline survey.

Response: The ISMCP has been revised to include a summary of the survey methods used to identify and mark existing invasive species concentrations within the Project Area, the results of which will serve as the baseline survey for post-construction invasive species monitoring efforts. The revised Plan is provided herein as Attachment E.

- (b) Stipulation 22(o)(4)(viii) requires the ISMCP to include “[d]etailed description of the BMPs or procedures that will be implemented, and the education measures that will be used to educate workers.” The ISMCP included as Appendix 22-7 of the Application does not include a description of the BMPs or a description of the education measures that will be used to educate workers. Please provide a revised ISMCP that describes the BMPs that will be implemented and the education measures that will be used.

Response: Section 4.0 of the ISMCP includes a description of the BMPs that will be implemented during construction and operation of the Project. Section 5.0 of the Plan has been revised to include the information on how and when crews will be educated on invasive species management and control. The Applicant will be responsible for developing/providing/distributing educational materials to workers. The Applicant’s corporate environmental compliance team will provide construction staff with training concerning compliance requirements. The revised ISMCP is provided herein as Attachment E.

- (c) Stipulation 22(o)(4)(x) requires the ISMCP to include “[a]nticipated methods and procedures, incorporating input from consultation with NYSDEC, used to treat non-native invasive species that have been introduced or spread as a result of the construction, operation or maintenance of the Facility (based on comparisons against the baseline survey).” The ISMCP included as Appendix 22-7 of the Application does not provide for consultation with NYSDEC to facilitate development of a plan that addresses invasive species if they are introduced as a result of construction or operation of the Project. Please provide a revised ISMCP that incorporates the required consultations with NYSDEC.

Response: The ISMCP has been revised to include additional information regarding consultation with NYSDEC to facilitate development of a plan that addresses invasive species if they are introduced as a result of construction or operation of the Project. The revised ISMCP is included herein as Attachment E.

Exhibit 23: Water Resources and Aquatic Ecology

1. Stipulation 23(a)(4) provides that respondents to a private water well survey “that indicate there is an active groundwater well on their property will be added to the Master Stakeholder list, if not already included.” It is unclear if property owners with active wells on their property were added to the Master Stakeholder List. Please provide confirmation that those property owners who responded to the well survey confirming the presence of an active well have been added to Stakeholder List.

Response: Property owners who responded to the private well survey confirming the presence of an active well on their property have been included on a revised Stakeholder List, provided as Attachment F.

2. Stipulation 23(c)(4) requires “an analysis and discussion of whether the project is classified as a ‘Scenario 1’ (solar) project or ‘Scenario 2’ (solar) project per the NYSDEC April 5, 2018 ‘Solar Panel Construction Stormwater Permitting/SWPPP Guidance’ memo.” The NYSDEC April 5, 2018 “Solar Panel Construction Stormwater Permitting/SWPPP Guidance” memo is included in Appendix 23-3; however, Exhibit 23 and Appendix 23-3 do not include an analysis and discussion of whether the project is classified as a Scenario 1 or Scenario 2 solar project per the NYSDEC guidance document. Please provide an analysis and discussion of whether the project is classified as a ‘Scenario 1’ (solar) project or ‘Scenario 2’ (solar) project per the NYSDEC Guidance memo.

Response: The Project is classified as ‘Scenario 2’ solar project per the NYSDEC April 5, 2018 ‘Solar Panel Construction Stormwater Permitting/SWPPP Guidance’ memo. The solar project meets all the criteria listed under Scenario 1, including item 6 (“Construction of the solar panels will not alter the hydrology from pre- to post development conditions”). The total basin volume calculated for the 30.3-acre site is 0.137 ac-ft.

3. Stipulation 23(c)(5) requires “[a] statement[] 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.” The Application does not indicate whether or not the Project is located within an MS4 area. Please provide a statement indicating whether the Project is located within an MS4 area.

Response: The Project is not located within an MS4 area; therefore, information regarding MS4s was excluded from the Application.

4. Stipulation 23(c)(6) requires that “[t]he 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.” No such statement has been included in the Application. Please indicate if the Applicant intends to request a waiver to disturb five acres or more of soil at any one time.

Response: The Applicant does intend to request a waiver to disturb five acres or more of soil at any one time.

Exhibit 24: Visual Impacts

1. Stipulation 24(b)(6) states, “Where vegetation screening is relied on for Project mitigation, leaf-off (i.e., wintertime) and leaf-on (i.e., summertime) simulation be provided.” The Applicant has provided leaf-on simulations but does not provide leaf-off simulations where vegetation screening is relied on for mitigation. Further, several of the photos included in the Visual Impacts Assessment (Appendix 24-1 VIA (Part 2 of 2)) are severely blurred, making Project components and mitigation measures indecipherable. Please provide a revised Appendix 24-1 VIA includes leaf-on and leaf-off simulations where natural vegetation or mitigation plantings are used to screen Project elements. The VIA should also be revised to include clear photos for all simulations.

Response: Revised simulations showing mitigation plantings with both leaf-off and leaf-on conditions have been prepared for VP12 and VP13. These simulations are provided in Attachment G. Additionally, the VIA has been revised to include clear photos for all simulations and is included as Attachment G. Regarding the revision of the VIA, all software program electronic export products will show a level of blurriness when zoomed

in at well over a hundred percent. The export parameters are a balance of resolution vs. a manageable file size and typically one suffers at the expense of another. However, in order to satisfy this request, the Applicant believes that the current software program that was used for the simulation exports in the Application would still have inferior resolution in order to fulfill the request. Therefore, the Applicant has chosen a different software program that has greater ability to control export resolutions and thus reconstructed the entire suite of simulations using the new program. Due to the switching of software programs, the new suite of simulations have a slightly different “look”. A greater file size results when using higher export resolution. Although file size is still high, the pdf of the new simulations have been broken up into several separate files, as provided in Attachment G.

2. Stipulation 24(b)(9) requires “analyses of overall appearance and operational characteristics of the facility and related facilities, including night-lighting, glare, or related visible effects of Facility operation, including an assessment of the predicted extent, frequency and duration of any such visible effects created by the Project.” Page 2 of the Glint and Glare Analysis (Appendix 24-2) states, “The analysis conservatively assumes that all residential receptors are from a second story height (16 feet).” However, residential receptors at first story elevation and public roadway receptor locations should be assessed to address any such visible effects created by the Project. Please provide a revised Glare Analysis that includes an assessment of residential receptors at first story elevation and public roadway receptor locations.

Response: A second story height was conservatively selected to assess the potential for glare at residences as the greater viewer height typically results in a greater potential for glare. However, as requested, an assessment of single story residences and roadways in the vicinity of the Project Area have been assessed for glare. The results of the analysis indicate no glare is predicted. Results of this additional analysis are provided as Attachment H and include results for single-story residences and roads.

Exhibit 31: Local Laws and Ordinances

1. Stipulation 31(e) provides that for each substantive local requirement for which the Applicant requests that the Siting Board to elect not to apply the Application must provide

“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 Stipulation then enumerates in subparts (1)-(3) the specific demonstration required for each of the three grounds for justification. Exhibit 31(e) lists four provisions of Town of Dix local requirements for large solar energy facilities for which waivers are requested, based on general statements regarding technological limitations, costs to or needs of consumers. However, Exhibit 31(e) does not provide the demonstrations required under Stipulation 31(e)(1)-(3). Please supplement the Application to provide the demonstration required under Stipulation 31(e)(1)-(3).

Response: The Applicant requested that the Siting Board elect not to apply two substantive requirements of the Town of Dix (Town) Zoning Ordinance and two substantive requirements of the Town of Dix Solar Energy Law and subsequent amendments:

- Town of Dix Zoning Ordinance
 - Utility distribution facilities required to be located underground (Section XIV-5.11); and
 - Performance guarantee for landscaping (Article IX (3.C.)).

- Town of Dix Solar Energy Law
 - Decommissioning – Inactive duration of six months (Section 8.H.1); and
 - Decommissioning – Bond and Escalator (Section 8.H.3).

(1) Utility distribution facilities required to be located underground: Statement of Justification

As explained in Exhibit 31 of the Application (pages 30–31), Section XIV-5, subheading 11 of the Town of Dix Zoning Ordinance states that, for public utility distribution facilities, “[i]n general, all such utility distribution facilities shall be required to be located underground.” This provision should not apply to the Project’s only aboveground line, an

approximately 75–100-foot 115 kV transmission-level tap line, extending from the proposed switchyard to the existing NYSEG Bath-Montour Falls 115 kV transmission line. The Project’s tap line is an interconnection transmission line, not a distribution line. Further, the Project is under 80 MW; therefore, Watkins Glen Solar Energy Center, LLC will not meet the definition of an “electric corporation” under the New York Public Service Law that would normally be associated with the term “public utility.”

If, *arguendo*, the Siting Board believes the provision should apply, the Applicant requests that, pursuant to 16 NYCRR § 1001.31(e)(1), the Siting Board elect not to apply it because it would be technically impossible, impractical, or otherwise unreasonable to comply. The existing NYSEG line is aboveground. Therefore, it is technologically impossible, impractical, or unreasonable to compel the undergrounding of the Project’s interconnection line in a manner that the Project may properly and safely interconnect to the existing aboveground NYSEG line. For these reasons, no design can reasonably obviate this waiver request. Additionally, the Project’s tap connection is only 75–100 feet and is a typical method for accomplishing solar generation interconnection and, therefore, the waiver request is the minimum necessary. Lastly by siting the proposed interconnection adjacent to the existing NYSEG transmission ROW, potential environmental impacts are minimized to the maximum extent practicable as the tap line is consistent with the visual setting dominated by the NYSEG transmission facilities. Thus, based on technological limitations, the Siting Board should elect not to apply the requirement to underground the Project’s interconnection transmission line contained in Section XIV-5, subheading 11 of the Town of Dix Zoning Ordinance.

(2) Performance guarantee for landscaping: Statement of Justification

As explained in Exhibit 31 (page 31), Article IX section 3.C of the Town of Dix Zoning Ordinance states:

All required landscaping shall be of healthy stock, planted according to accepted horticultural practices. Landscaping plans shall clearly indicate who is responsible for plant maintenance during the first 12 months after planting, and a performance guaranty shall be posted for assuring replacement in kinds of plants, which die or become diseased with in that time.

While the Applicant will comply with this provision's requirement that the landscaping be of a healthy stock, planted according to accepted horticultural practices, and the requirement to replace planting plantings that do not survive the first 12 months after planting, the Applicant is requesting a waiver for the need to post a performance guaranty with the Town in light of the needs of consumers. The requirement for the performance guaranty is an unnecessary cost burden to the Project.

Pursuant to 16 NYCRR § 1001.31(e)(3), the Applicant requested that the Siting Board elect not to apply this provision because the needs of consumers outweigh the impacts on the community that would result from refusing to apply it. The performance guarantee constitutes an unnecessary project development burden on the Applicant since the Applicant's commitments to long-term vegetation management address the landscaping goals in the Ordinance. As stated in Exhibit 5 of the Application, vegetation management and maintenance of the Project Area will be incorporated into the Operations & Management Plan for the Project. Routine inspections and visits by maintenance staff will help identify the general site conditions and required vegetation maintenance. The visits will help monitor the vegetation and site stabilization conditions throughout the Project Area. A long-term vegetation management plan will be filed with the Secretary of the Siting Board (the Secretary) after issuance of a certificate. Long-term maintenance of perimeter landscaping will also be incorporated into the plan in order to maintain the required visual screening. The plan will address vegetation management throughout the Project Area including within the solar array areas, fenced perimeter, along the fence line, and at the substation.

In addition, the Applicant is prepared to agree to a standard Article 10 certificate condition requiring monitoring and replacement of failed plantings as noted above. Certificate Conditions are enforceable by law under Article 10. These Board-approved conditions do not require a performance guarantee.

Accordingly, the needs of consumers for the Project outweigh the impacts on the community that would result from refusal to apply the local substantive requirement. Imposing the requirement for a performance guarantee on the Project would needlessly interfere with the successful completion of the Project, thereby creating an unnecessary obstacle to achieving the clean energy and greenhouse gas emission reduction standards

required by the Climate Leadership and Community Protection Act (CLCPA), the Clean Energy Standard (CES), and the State Energy Plan (SEP). See Exhibit 10 for a more detailed discussion of these State policy laws and goals. Since the Application already proposes successful vegetation management practices, this waiver request is the minimum necessary. No design change can reasonably obviate this waiver request. In addition to the Applicant's vegetation management commitments outlined above, the Applicant minimized the Project's visibility through siting and design choices—such as siting Project Components against tree lines and incorporating setback distances of several hundred feet—and, therefore, the potential environmental impacts are minimized to the maximum extent practicable. See Exhibit 24 for a more detailed discussion of the Applicant's measures to avoid and/or minimize potential visual impacts. Thus, based on the needs of consumers, the Siting Board should elect not to apply the requirement to post a performance guarantee contained in Article IX section 3.C of the Town of Dix Zoning Ordinance.

(3) Decommissioning – Inactive duration of six months: Statement of Justification

As noted in Exhibit 31 (pages 31–32), Section 8.H.1 of the Town of Dix Solar Energy Law states the following: Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 6 months shall be removed at the Owner and/or Operator's expense, which at the Owner's option may come from any security made with the Town as set for in Section 10(b) herein.

Pursuant to 16 NYCRR § 1001.31(e)(3), the Applicant requests that the Siting Board elect not to apply this provision because the needs of consumers outweigh the impacts on the community that would result from refusing to apply it. As noted above and discussed in Exhibit 10, New York residents have a pressing need to reduce greenhouse gas emissions, which has been expressed through the CLCPA, the CES, and the SEP. Certain conditions could arise that prevent a facility from operating or generating electricity for a length of time, such as the need to replace equipment with long lead times due to economic conditions. Since consumer needs would best be met by a fully functioning solar facility that can fulfill its obligations under its NYSERDA contract to help meet the State's renewable energy goals, a longer time period is necessary before triggering decommissioning activities. The benefits to consumers provided by the Project would be

severely reduced if the Project were forced to decommission due to replacement equipment lead times in excess of six months. Further, this requirement imposes an unreasonable risk on the Project that creates unnecessary uncertainty that it may have to decommission the Project prematurely, which in turn creates unreasonable financing risk.

As noted in Exhibit 31, Department of Public Service (NYSDPS) Staff and other parties have previously agreed that 12 months is a more appropriate length of time to decommission a project if it ceases to operate or generate electricity (see proposed certification conditions for High River Energy Center [Case 17-F-0597] and East Point Energy Center [Case 17-F-0599]). Since the Applicant is prepared to agree to a certificate condition incorporating the previously approved 12-month timeframe, this waiver request is the minimum necessary. No design change can reasonably obviate this waiver request as this waiver request is not directly related to the design of the Project. Regardless of when decommissioning occurs, the Applicant's decommissioning plan provides for the safe and efficient removal of all solar facility components and reclamation of the site to substantially pre-construction conditions to the maximum extent practicable and, therefore, there are no adverse environmental impacts associated with granting this waiver request. Rather, continued operation of a renewable facility is environmentally beneficial, as explained above. Thus, based upon the needs of consumers, the Siting Board should elect not to apply the 6-month decommissioning trigger contained in Section 8.H.1 of the Town's solar law.

(4) Decommissioning – Bond and Escalator: Statement of Justification

As noted in Exhibit 31 (pages 32–33), Section 8.H.3 of the Town's Solar Law states the following: the deposit, executions, or filing with the Town Clerk of cash, bond or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of the removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System.

The requirement for submitting the proposed security for review and approval of the Town attorney, including the amount and form, is a procedural requirement which is supplanted by Article 10.

Regarding the requirements that the security contain 125% of the cost of removal with a 2% escalator, the Applicant requests that, pursuant to 16 NYCRR § 1001.31(e)(3), the Siting Board elect not to apply this provision because the needs of consumers for the Project outweigh the impacts on the community that would result from refusal to apply it. As discussed above and in Exhibit 10, New York consumers have a pressing need to reduce greenhouse gas emissions, which has been expressed through the CLCPA, the CES, and the SEP. Imposing this local requirement on the Project would unnecessarily interfere with the successful completion of the Project and the community would not be impacted if it were not applied. The decommissioning plan in Exhibit 29 of the Application provides that the Applicant will work with NYSDPS Staff and the Town on an acceptable form of security and that the decommissioning security will remain active for the life of the Facility, until it is decommissioned.

The Applicant is prepared to agree to a standard Article 10 certificate condition requiring a compliance filing, subject to consultation with the Town, that proposes an estimated decommissioning cost, cost updating, a letter of credit for the benefit of, and to be exercised by, the Town, and a cost escalator. The requirements of the local law would be duplicative, unnecessary, and a burden on the Project. Since the Applicant is prepared to agree to this standard condition, the waiver request is the minimum necessary. The Applicant's decommissioning plan, together with agreeing to the standard certificate condition, provides for the safe and efficient removal of all solar facility components and reclamation of the site to sufficiently pre-construction conditions to the maximum extent practicable and, therefore, there are no adverse environmental impacts associated with granting this waiver request. No design change can reasonably obviate this waiver request as the request is not directly related to Project design. Thus, based upon the needs of consumers, the Siting Board should elect not to apply the requirements that the security contain 125% of the cost of removal with a 2% escalator contained in Section 8.H.3 of the Town's solar law.

Accordingly, the Applicant requests the Board to elect not to apply these local provisions.

Exhibit 35: Electric and Magnetic Fields

1. 16 NYCRR §1001.35(a) require that information be provided for every right-of-way segment having unique electric and magnetic field (EMF) characteristics due to structure types and average heights, right-of-way widths, and co-location of other transmission facilities in the ROW. Regarding the proposed collection system, Appendix 35-1 (EMF Report) of the Application only includes an EMF cross section and analyses for the proposed 34.5 kV collection circuits at a location projected to generate maximum field strength, which is a two-circuit layout. EMF requirements regarding a single 34.5 kV circuit installation and those for bore installations (general and under gas lines) are not included in Appendix 35-1. Please supplement Appendix 35-1 to include all relevant information required pursuant to §1001.35(a) through (d) for the proposed single 34.5 kV circuit installation and for the proposed bored segments.

Response: A revised EMF Study is provided herein as Attachment I. Included are two additional cross sections; one for a single circuit, and one for bore installations under a gas line. The results indicate that the Project complies with the NYSPSC Interim Guidelines for EMF levels at the edge of right-of-way.

Attachment A

Evaluation of Vibration Amplitude by Impact Pile Drivers

Attachment B

Revised Complaint Resolution Plan

Attachment C

Revised Figure 22-1A: Plant Communities

Attachment D

**Revised Figure 22-2A: Impacts to Plant Communities,
Wildlife, Habitats, and Concentration Areas**

Attachment E

**Invasive Species Management and Control Plan
(ISMCP), Revised January 2021**

Attachment F

Revised Stakeholder List

Attachment G

Visual Impact Assessment - Revised Simulations

Attachment H

Glare Analysis Supplement

Attachment I

Revised EMF Study