

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 20-F-0043 - Application of Garnet 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 Conquest, Cayuga County.

ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED, WITH CONDITIONS

Issued and Effective: October 28, 2022

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NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State
Board on Electric Generation Siting
and the Environment held in the City
of Albany on October 27, 2022

BOARD MEMBERS PRESENT:

Rory M. Christian, Chair of the
New York State Public Service Commission

Louis Alexander, Alternate for
Basil Seggos, Commissioner of the
New York State Department of Environmental Conservation

Elizabeth Lewis-Michl, Alternate for
Mary T. Bassett, M.D., M.P.H., Commissioner of the
New York State Department of Health

Ian Wells, Alternate for
Hope Knight, Commissioner of the
New York State Department of Economic Development

John Williams, Alternate for
Richard L. Kauffman, Chair of the
New York State Energy Research and Development Authority

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(Issued and Effective October 28, 2022)

BY THE BOARD:

I. INTRODUCTION

This Order grants a Certificate of Environmental Compatibility and Public Need (Certificate) to Garnet Energy Center, LLC (Garnet or the Applicant) to construct and operate a solar energy generating facility (Facility or Project) in the Town of Conquest, Cayuga County, New York.

This Order resolves a legal issue in this proceeding related to the protection afforded to freshwater wetlands under Article 10 of the Public Service Law (PSL), as guided by the requirements of Article 24 of the Environmental Conservation Law (ECL) and the implementing regulations. The Siting Board recently examined a similar wetlands issue in a separate Article 10 proceeding, North Side Energy Center, LLC (North Side).¹ North Side is an affiliate of Garnet. This Order is consistent with the Siting Board's determination in North Side that PSL Article 10's environmental impact provisions and minimization and avoidance requirements, as well as ECL Article 24's regulatory mitigation requirements, are applicable to both wetlands delineated on the State freshwater wetlands maps and to wetlands that do not appear on the State maps that nevertheless meet the ecological and regulatory criteria for protection.

Given the discussions in this Order and the detailed Certificate Conditions and other attachments, which have been agreed to in whole or in part by Garnet, DPS Staff, and DEC Staff, we determine that Garnet's Project will meet the statutory requirements of PSL Article 10 and allow us to grant a

¹ Case 17-F-0598, In the Matter of the Application of North Side Energy, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction and Operation of a Solar Electric Generating Facility, Order Denying Certificate (issued August 9, 2022).

Certificate to the Applicant. Our decision is supported by the extensive evidentiary record compiled before the Presiding Examiners appointed by the Department of Public Service (DPS) and the Associate Examiner appointed by the Department of Environmental Conservation (DEC).² We base our decision on the record and on the initial and reply briefs of the Parties, public comments, and applicable laws, regulations, and policies.

II. BACKGROUND

A. Company Business Description

Garnet is a limited liability company formed under Delaware law and is a wholly owned subsidiary of NextEra Energy Resources, LLC (NextEra), which in turn is a subsidiary of NextEra Energy, Inc., whose principal place of business is located in Juno, Florida.³ Garnet will develop, construct, own, operate, and maintain the proposed solar Facility. NextEra has a portfolio of renewable generation facilities in the United States and Canada and produces approximately 2,600 megawatt (MW) of solar generation and 23,000 MW of total generation capacity. Garnet's Application asserts that, with its affiliates, NextEra is the largest renewable energy facility operator in the world.⁴

B. Description of the Project and Associated Impacts

Garnet's proposed 200 MW solar Facility would be located on 2,288.7 acres (Project Area) of property leased from

² Presiding Examiners and Administrative Law Judges (ALJs) Maureen F. Leary and Gregg C. Sayre from the DPS Office of Hearings and Alternative Dispute Resolution, and Associate Examiner, ALJ Michele M. Stefanucci from the DEC Office of Hearings, were assigned to oversee this proceeding.

³ Hearing Exhibit 86 (Application Exhibit 1), p. 6.

⁴ Hearing Exhibit 86 (Application Exhibit 1), p. 6.

private property owners in the Town of Conquest.⁵ The Facility as initially proposed would consist of fixed racking or tracking commercial-scale arrays of photovoltaic (PV) solar panels 15 feet in height;⁶ 12.3 acres of temporary and permanent access roads; 25.5 miles of buried collection lines; 68 inverters and cabling systems; transformers; a collection substation on 0.4 acres; a 345-kilovolt (kV) switchyard on 2.7 acres; 19 construction laydown yards and parking areas; and a seven to eight-foot tall chain link fencing around Project components.⁷ The Facility also would include a 20 MW, four-hour duration energy storage system, consisting of 11 units that are approximately 11.4 feet in height and are located throughout the Project Area.⁸

The Facility will interconnect to the State's electric grid through an interconnection switchyard, substation, and related facilities, and will utilize the existing New York Power

⁵ Hearing Exhibit 88 (Application Exhibit 3), pp. 1-3. The Project Area consists primarily of land that has been disturbed by historical agricultural activities, but also consists of forestland, wetlands, and aquatic habitat. The total limit of disturbance for the Project is approximately 1,200 acres, and the area inside the fencing totals 1,053.7 acres. Locations for Project components and interconnection locations are identified. Hearing Exhibit 129 (Figure 3-1).

⁶ During the proceeding, Garnet determined that tracking solar panels were not suitable for the Project due to the expense.

⁷ Hearing Exhibit 87 (Application Exhibit 2), pp. 1-3; Hearing Exhibit (Application Exhibit 4), p. 26. Garnet's Application indicates that access roads will follow existing farm roads and trails.

⁸ Hearing Exhibit 87 (Application Exhibit 2), p. 3.

Authority (NYPA) Clay - Pannell 345 kV transmission line.⁹ Existing transmission lines and a natural gas pipeline owned by NYPA cross portions of the Project Area.

The Project Area is made up of multiple properties under lease or purchase options with private landowners and will occupy land classified as agricultural (active and inactive), residential, vacant land, and farm roads. The Project is sited within the mapped Cayuga County Agricultural District 5, with approximately 1,053.7 acres of farmland within the fenced portion of the Project Area.¹⁰ The Project will convert and impact approximately 167.60 acres of forestland, primarily through clear cutting.¹¹

In evaluating the Project's resource impacts, Garnet undertook studies in a Project Study Area, which encompasses a 2-mile radius around the Project Area, although the Visual Impact Study Area is comprised of 5 miles around the proposed Facility fence line.¹² Garnet evaluated several resource impacts in the Project Area, including noise, visual, environmental

⁹ Hearing Exhibit 88 (Application Exhibit 3), p. 3. Following Siting Board approval of the Project, the Facility interconnection switchyard will be transferred to NYPA to own and operate. Hearing Exhibit 87 (Application Exhibit 2), p. 1.

¹⁰ Hearing Exhibit 89 (Application Exhibit 4), pp. 1, 18.

¹¹ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 11-12. As used in this Order, the cited page references are to the redline version of Updated Application Exhibit 22 (Hearing Exhibit 333) for the purpose of discerning the changes made to the proposed Project during the proceeding.

¹² Hearing Exhibit 109 (Application Exhibit 24), p. 3. Although the Article 10 regulations require a Study Area to encompass a 5-mile area, as part of the Stipulations process the Parties agreed to the more limited 2-mile Study Area because "the proposed Project is not located in an area with significant resource concerns..." Hearing Exhibit 66 (Final Stipulations), Stipulation 3(a)(5), p. 12.

(wetlands, streams, wildlife, threatened and endangered species, invasive species, and agricultural), archeological, architectural, and overall community impacts.¹³ The Project Study Area contains vacant land, wild, forested or conservation lands, and public parks, and includes agricultural, residential, commercial, industrial, recreational, and community services land uses.¹⁴ Garnet estimates that its proposed design layout for the Facility consists of approximately 1,054.1 acres that will be disturbed and impacted by the Project,¹⁵ including approximately 260 acres of proposed tree clearing.¹⁶

In its January 2022 Updated Application, Garnet identified changes to the Project layout and an overall reduction of the land on which Project components would be located from 512 acres to 326.76 acres, while increasing the length of collection lines from 25.5 miles to 26.7 miles.¹⁷ In the Updated Application, Garnet claims to have reduced tree-clearing from 262 acres to 159.6 acres; eliminated solar arrays on approximately 152 acres; added solar arrays to a new area;

¹³ Hearing Exhibit 88 (Initial Application Exhibit 3), pp. 3-4.

¹⁴ Hearing Exhibit 89 (Updated Application Exhibit 4), pp. 2-7, 20-22. The Application notes that portions of two recreational snow mobile trails are within the Project Area, may need to be re-routed for the Project, and are expected to have visibility impacts. Hearing Exhibit 137 (Application Figure 4-7); Hearing Exhibit 356 (Updated Application Exhibit 24), pp. 12-13, Table 24-3. In addition, segments of a wildlife trail associated with the Cato Trailblazers Club will likely receive partial, intermittent, and transient views of solar arrays. Hearing Exhibit 89 (Updated Application Exhibit 4), p. 23.

¹⁵ Hearing Exhibit (Updated Application Exhibit 22), pp. 9-10, Table 22-2.

¹⁶ Hearing Exhibit 290 (September 27, 2021 Final Report on Indiana Bat Survey), p. 3.

¹⁷ Hearing Exhibits 355-356 (Updated Application Exhibit 24), §1.

reduced the length of access roads from 12.1 miles to 10 miles; and reduced access road width from 20 feet to 12 feet.

The Updated Application identifies environmental impacts resulting from 159.61 acres of tree clearing (a 100.71 acre reduction) and Project component visibility for approximately 3.23 square miles (a 0.26 mile reduction).¹⁸ The Updated Application identifies a total of approximately 750.59 acres of prime farmland of Statewide importance that will be impacted by the Project (a reduction of 55.62 acres from the Initial Application's proposed use of 806.21 acres).¹⁹

The Updated Application further notes that the solar arrays for the Project would cover approximately 326.76 acres and have a fenced area of approximately 901 acres. It would continue to have 68 inverters, 7 acres of laydown areas, and an 11 unit, 20 MW, four hour energy storage system (with each energy storage unit being 11 feet, 4 inches tall).

1. Wetland Impacts

Garnet submitted a Wetlands Delineation Survey with its initial and Updated Application.²⁰ The Updated Application identifies a total of 45 wetlands within the Project Area and notes that delineated wetlands comprise 613.50 acres of the 2,288.7 acre Project Area, and that 192.86 acres of State and

¹⁸ Hearing Exhibit 315 (Updated Application Summary), Table 1; Hearing Exhibits 279-304. The Updated Application also noted impacts to approximately 8,324 linear feet of streams (a 7,413 linear foot reduction), but failed to provide the width of such impacts so that an accurate understanding of the impacts could be discerned.

¹⁹ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 4-5, 11; Hearing Exhibit 89 (Updated Application Exhibit 4), p. 26.

²⁰ Hearing Exhibits 339. 347-350 (Updated Application Exhibit 22), Figure 22-3: Wetlands Delineation Survey; and Figure 22-7: Impacts to Wetlands and Streams.

federal wetlands will be impacted, including 43.85 acres of DEC mapped wetlands; 45.21 acres of adjacent wetland areas (i.e., within 100 feet of a mapped wetland); 11.49 acres of DEC jurisdictional or unmapped wetlands.²¹

Both the initial and Updated Application assert that wetlands not mapped by the NYSDEC are not subject to ECL Article 24 regulation and "[f]inal impact calculations to state-regulated wetlands and the 100 foot adjacent area ... will be submitted as a Compliance Filing."²² Garnet's Updated Application notes that it will use horizontal directional drilling (HDD) in wetlands when installing collection lines for the Project.²³

The Updated Application identifies several additional acres of federally regulated wetlands that would be impacted by the Project (15 acres), but notes that there is an overall reduction in impacts to DEC-regulated mapped wetlands and adjacent areas.²⁴ Garnet estimates a total of 613.50 acres of delineated wetlands are located within the 2,288.7 acre Project Area.²⁵ In both the initial and Updated Application, Garnet differentiates between wetland impacts that are "temporary " and

²¹ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 7-8; Hearing Exhibits 351-352 (Updated Wetlands Delineation Report), p. 8.

²² Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 65-66.

²³ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 94.

²⁴ Hearing Exhibits 355-356 (Updated Application Exhibit 22), p. 82; Hearing Exhibit (Updated Application Exhibit 22 Summary) §2.4, Table 1, pp. 1-2.

²⁵ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 94-95. Garnet's Initial Application incorrectly characterized impacts to mapped wetlands subject to clear cutting as temporary, which was revised in the Updated Application to reflect permanent impacts.

subject to restoration to pre-existing condition, and impacts that are "permanent" and those characterized as "conversion impacts." Garnet defines conversion impacts to include impacts that are between temporary and permanent, stating that a conversion impact "is not a permanent or significant impact to wetland functionality," given the "temporary nature of the assumed 30-year operational period" for the Project.²⁶

2. Impacts to DEC Mapped Wetlands and Adjacent Areas

The Updated Application identifies 15.0 acres of permanent impacts to DEC mapped wetlands proper, 5.94 acres of "temporary" impacts, and 2.93 acres of impacts to adjacent areas, which Garnet claims will improve wetland benefits.²⁷ Garnet asserts that wetland impacts have been reduced from those identified in the Initial Application.²⁸ The Updated Application notes that final impact calculations to State-regulated (mapped) wetlands and the associated 100 foot adjacent areas will be submitted as a Compliance Filing.²⁹

3. Impacts to DEC Unmapped Wetlands and Adjacent Areas

Like the Initial Application, the Updated Application indicates that unmapped wetlands are "not subject to

²⁶ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 94-95.

²⁷ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 94-97.

²⁸ Hearing Exhibit 315 (Updated Application Exhibit 22 Summary), Table 1-Resource Impact Summary, p. 2. Garnet's Updated Application advised that the U.S. Army Corps of Engineers had determined that certain federally protected wetlands and streams in the Project Area were not "waters of the United States" within its regulatory jurisdiction.

²⁹ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 64-65.

regulation.”³⁰ Thus, Garnet does not identify the impacts to unmapped wetlands, but “acknowledges that wetlands on site not mapped by NYSDEC and thus not regulated by the NYSDEC may be impacted.”³¹

4. Proposed Wetlands Mitigation

Garnet did not submit a Wetlands Mitigation Plan as a part of its initial or Updated Application.³² The Updated Application generally proposes on-site or off-site mitigation that would be addressed in a Mitigation Plan submitted as a Compliance Filing, which would “consider” the requirements of DEC’s Freshwater Wetlands Regulation Guidelines on Compensatory Mitigation, and would include “adaptive management measures” to be implemented if mitigation is not successful.³³ With respect to federally-regulated wetlands, Garnet proposes either “wetland banking or an in-lieu fee” with a third party.

5. Stream Impacts

The Updated Application identifies 27 delineated streams within the Project Area, which are characterized as perennial, intermittent, and ephemeral streams, with some supporting fish and wildlife as aquatic habitat.³⁴ Garnet’s Updated Application notes that to avoid impacts, it will use HDD in streams and water bodies when installing collection lines for

³⁰ Hearing Exhibit 333-334 (Updated Application Exhibit 22), p. 66.

³¹ Hearing Exhibits 333-334 (Updated Application Exhibit 22), p. 99.

³² Hearing Exhibit 395 (DEC Wetlands and Streams Panel), pp. 18-19.

³³ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 100-101.

³⁴ Hearing Exhibits 351-352 (Updated Appendix 22-4: Wetlands Delineation Report), pp. 13-17.

the Project.³⁵

6. Wildlife Impacts

In May and June 2020, Garnet undertook a Grasslands Breeding Bird Survey and no observations of threatened and endangered grassland bird species were documented in the Project Area at that time, although six areas of potential habitat were confirmed totaling 231 acres.³⁶ From November 2020 until March 2021, Garnet undertook a Wintering Grasslands Raptor Survey and protected Northern Harriers, Bald Eagles and Sharp-Shined Hawks were observed in the Project Area.³⁷ These concluded that no threatened or endangered species or "occupied habitat" are located in the Project Area. Although the Updated Application identifies the permanent loss of 20.52 acres of wildlife habitat and the conversion of 167.60 acres of forestland, it claims that construction and operation will not result in a taking of threatened or endangered species or their habitat.³⁸ Consequently, Garnet indicates, submission of a net benefit conservation plan is not necessary.

7. Environmental Compliance Monitoring

Garnet's proposed Certificate Conditions call for implementation of an environmental monitoring and compliance program, including the retention of a qualified Environmental

³⁵ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 94.

³⁶ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 21-22. In conducting the Survey, Garnet indicates that it followed DEC's 2015 "Draft Survey Protocol for State-Listed Breeding Grassland Bird Species" and submitted the Survey to DEC Staff for review. One species of special concern, the Horned Lark, was observed during the Survey. *Id.*, p. 23.

³⁷ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 23-25.

³⁸ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 58-62.

Monitor who would be responsible for assuring the Certificate Holder's compliance with all applicable Certificate Conditions; overseeing minimization of Project impacts; conducting inspections; training personnel; consulting with DPS Staff and DEC Staff; and several other duties.³⁹ The Certificate Conditions also call for an environmental compliance construction team to actively monitor all construction activities. The Certificate Conditions do not include a reporting requirement for any of the monitoring activities.

8. Recreational, Cultural and Other Impacts

The Application recognizes that the DEC-managed Montezuma Wildlife Management Area abuts the northwestern portion of the Project Area, but Garnet's Application indicates it is not expected to have visibility impacts.⁴⁰ Both the initial and Updated Applications indicate that the Project as designed provides for a minimum setback of 250 feet from residences and a minimum of 100 feet from adjoining property lines.⁴¹

The majority of the two-mile Project Study Area is located within the Erie Canal Heritage Corridor but is also not expected to have visibility impacts.⁴² One archeological site is located within the Project Area and two cemeteries are

³⁹ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Conditions 20, 47, 70, 87-88, 91, 95-96, 99, 101-102, 104 and 133. These Conditions include the requirement that the Environmental Monitor will be responsible for oversight of agricultural impact minimization.

⁴⁰ Hearing Exhibit 89 (Application Exhibit 4), p. 20; Hearing Exhibit 109 (Application Exhibit 24), p. 12.

⁴¹ Hearing Exhibit 333-334 (Updated Application Exhibit 22), p. 95; (Application Exhibit 9), pp. 9-10.

⁴² Hearing Exhibits 316-317 (Updated Application Exhibit 4), p. 22; Hearing Exhibit 109 (Updated Application Exhibit 24), Table 24-4, p. 47.

proximally located to the Project, one within a tenth of a mile and the other within a third of a mile.

Consistent with Section 106 of the National Historic Preservation Act (NHPA) and the State Office of Parks, Recreation and Historic Preservation (OPRHP) Guidelines, Garnet undertook a Historic Architecture Reconnaissance Survey for the Project to determine if historic architectural resources would potentially be affected.⁴³

NextEra personnel served as Garnet's witnesses and the TRC Companies acted as Garnet's consultants, witnesses, and Project managers, who prepared and/or oversaw the preparation of the Application materials, including the Application Supplement and the Updated Application, and provided pre-filed and rebuttal testimony and responses to discovery requests in support of the Project Application.

9. Agricultural Impacts

The Updated Application notes that the Facility's fenced-in area will consists of 901.6 acres and approximately 750.59 acres of agricultural land will be used.⁴⁴ The Project will occupy approximately 0.3 percent of all lands designated as part of Agricultural Districts in Cayuga County and approximately 5.0 percent of all lands designated as Agricultural Districts in the Town of Conquest.⁴⁵ The limits of disturbance will consists of approximately 1,043.1 acres and includes approximately 492.2 acres of land classified as Prime Farmland, with mineral soil groups 1-4 having the greatest food

⁴³ Hearing Exhibits 316-317 (Updated Application Exhibit 4), pp. 22-23.

⁴⁴ Hearing Exhibit 333-334 (Updated Application Exhibit 22), p. 4.

⁴⁵ Hearing Exhibit 317 (Updated Application Exhibit 4), p. 3.

and fiber productivity.⁴⁶ This amounts to 0.25 percent of classified Prime Farmland in Cayuga County and 6.5 percent of classified Prime Farmland in the Town of Conquest.⁴⁷

10. Compliance with Local Laws

With the exception of prescribed setback requirements, the Town of Conquest does not have zoning regulations applicable to the Project.⁴⁸ Garnet claims the Project will comply with the applicable setback requirements.⁴⁹ In January 2019 and December 2019, the Town established six-month moratoria on solar facilities in order to allow the Town Board to analyze and determine potential appropriate laws and regulations governing solar facilities to be passed and subject to the Town's jurisdiction.⁵⁰ As of December 30, 2020, the Town has not yet adopted a Solar Law and the most recent moratorium has expired.⁵¹

⁴⁶ Hearing Exhibit 31 (Updated Application Exhibit 4), p. 1. The Department of Agriculture and Markets (AGM) defines prime farmland as mineral groups 1-4, and classifies prime farmland as the most productive farmland. Hearing Exhibit 401 (AGM Witness Michael Saviola), pp. 7-8; AGM Staff Initial Brief, p. 13 (citing AGM NYS Agriculture Land Classifications).

⁴⁷ Hearing Exhibit 31 (Updated Application Exhibit 4), p. 3, Table 4-1.

⁴⁸ Hearing Exhibits 316-317 (Updated Application Exhibit 4), p. 8.

⁴⁹ Hearing Exhibit 316-317 (Updated Application Exhibit 4), pp. 8, 24. The Updated Application notes that the nearby towns of Brutus, Cato, Ira, Mentz and Victory have zoning ordinances, but the Project Area is not located within their borders and therefore the ordinances do not govern the Project.

⁵⁰ Local Law No. 1 for the Year 2019, "A Local Law Establishing a Six Month Moratorium on Applications, Approvals, and/or Construction or Installation on Solar Energy Systems and/or Solar Farms." Hearing Exhibit 116 (Application Exhibit 31), pp. 5-6.

⁵¹ Hearing Exhibit 89 (Application Exhibit 4), p. 17; Hearing Exhibit 116 (Application Exhibit 31), p. 6.

C. Parties to the Proceeding

The active parties to this case include Garnet Energy, the Department of Public Service Trial Staff (DPS Staff), the Department of Environmental Conservation Staff (DEC Staff), the Department of Agriculture and Markets Staff (AGM Staff) (collectively, the Agencies), the Town of Conquest (Town), the Rural Preservation and Net Conversation Benefit Coalition (Rural Preservation), and individual Eugene Moretti.⁵²

III. PROCEDURAL HISTORY

Garnet initiated the Article 10 process by filing a Public Involvement Program (PIP) Plan on January 28, 2020 in the DPS Document and Matter Management (DMM) system.⁵³ DPS Staff commented on the PIP Plan on February 27, 2020, and made certain recommendations to the Applicant, including that it should provide a more detailed description of the Project's design, location, arrangement of facilities, study area and decommissioning; identifying stakeholders, host community, area residents, adjacent municipalities, emergency responders, and environmental justice areas. DPS Staff also asserted that the PIP Plan should set forth public involvement goals, public notification and consultation activities, meeting logs, educational activities, Company website, publicly-available document repositories, and scheduled information sessions.⁵⁴

Garnet filed a revised PIP Plan on March 27, 2020 and a response to DPS Staff's comments. Garnet filed a PIP Plan

⁵² As detailed below, only Garnet, DPS Staff, and DEC Staff executed a Settlement Proposal. On its signature page, DEC Staff expressed objections to numerous aspects of the Proposal and the other parties object to the entire Proposal.

⁵³ Hearing Exhibits 1, 3 (PIP Plan and Revised PIP Plan).

⁵⁴ Hearing Exhibit 2 (DPS PIP Plan Recommendations).

Supplement on August 17, 2020, which contained the stakeholder list, meeting log, and documentation of consultation with the New York Natural Heritage Program and the United States Fish and Wildlife Service. The PIP Plan and other documents were provided to local document repositories established in the Project Area.⁵⁵ Garnet included the PIP Plan on a dedicated Project website and continued to update it with additional Project information. Throughout the proceeding, Garnet filed PIP Plan meeting logs, reflecting its public outreach and implementation of public outreach.⁵⁶

In letters dated April 30, 2020, to the Town and the Cayuga County Legislature, the Secretary initiated the nomination process for ad hoc members of the Siting Board and requested nominations. On September 21, 2020 letters to the New York State Assembly and Senate and the Governor, the Siting Board Chair requested appointments of ad hoc Siting Board members.

On September 17, 2020, Garnet submitted a Preliminary Scoping Statement (PSS) that outlined the Project, expressed the intention to file an Application for an Article 10 Certificate with the Siting Board, and described the proposed contents, the scope, and the methodology of the pre-application studies to be performed, and the data to be included in the Application. With the PSS, Garnet submitted intervenor funding of \$70,000 for the participation of local municipalities and area residents.

On October 2, 2020, the Secretary to the Siting Board issued a notice of the PSS filing and established the deadline for submitting public comments. Comments on the PSS were

⁵⁵ Hearing Exhibit 87 (Application Exhibit 2). Public document repositories included the Conquest Town Hall and the Byron Public Library.

⁵⁶ Hearing Exhibits 3, 172 (PIP Plan Meeting Logs).

thereafter filed by DPS Staff, DEC Staff, AGM Staff, the Town of Conquest, local resident Eugene Moretti, and the Department of Transportation (DOT).⁵⁷ On November 23, 2020, Garnet filed responses to the PSS comments, which indicated that Garnet would comply with the commenters' request, clarify certain aspects of the PSS in the Application, and otherwise addressed the issues raised in the comments on the PSS.⁵⁸

On October 2, 2020, the Secretary issued a Notice of Availability of Pre-Application Intervenor Funds and Schedule to Request Funds, establishing a November 6, 2020 deadline for filing funding requests.⁵⁹ On November 5, 2020, the Town of Conquest filed a request for intervenor funds. On November 6, 2020, the Rural Preservation and Net Conservation Benefit Coalition (Rural Preservation) filed a request for intervenor funds. On November 25, 2020, the Examiners issued a ruling awarding pre-application stage intervenor funding off \$40,000 to the Town and \$30,000 to Rural Preservation.⁶⁰ The ruling also commenced the stipulations process under PSL §163(5) and 16 NYCRR §1000.5(i)-(j), making it subject to the confidentiality requirements of 16 NYCRR §3.9.

⁵⁷ Hearing Exhibits 31 (E. Moretti Comments), 22 (NYS Department of Transportation Comments), 34 (DPS Staff Comments), 35 (AGM Staff Comments), 36 (DEC Staff Comments), and 37 (Town of Conquest Comments).

⁵⁸ Hearing Exhibit 43 (Garnet Reply to Comments on PSS). The Applicant filed updated figures and maps associated with the PSS on January 27, 2021.

⁵⁹ Notice of Availability of Application-Stage Intervenor Funds and Schedule for Submitting Funding Requests (issued July 21, 2021).

⁶⁰ Ruling Awarding Pre-Application Stage Intervenor Funding and Commencing the Stipulations Process (issued November 25, 2020). The Ruling also established the conditions for use of the intervenor funding.

On December 3, 2020, Garnet issued a notice of the commencement of the stipulations process and made the proposed stipulations available for public review and comment.⁶¹ Final Stipulations setting forth the studies and methodologies for the Application were filed on May 20, 2021, and were executed by the Garnet and DPS Staff.⁶² DEC Staff executed the Stipulations subject to numerous exceptions and AGM Staff executed the Stipulations only insofar as they applied to agricultural lands.⁶³

On March 4, 2021, the Secretary issued a notice of availability of application-stage intervenor funds and established a deadline for submitting a request for an award of such funds. Thereafter, the Town and Rural Preservation timely submitted separate requests for intervenor funding.

Garnet filed its Application and pre-filed testimony on June 28, 2021.⁶⁴ On July 21, 2021, the Secretary issued separate notices related to requests for party status and the availability of application-stage intervenor funding. On July 21, 2021, the Examiners issued a ruling adopting a protective order in the proceeding. Thereafter, certain parties executed protective order acknowledgements, giving them access

⁶¹ Hearing Exhibits 65-67 (Stipulations Notice/Affidavit of Service). Garnet filed an affidavit of service of the stipulations on the appropriate parties, persons, and entities.

⁶² Hearing Exhibits 74, 78-80 (Final Stipulations).

⁶³ Hearing Exhibit 78 (DEC Exceptions to Stipulations).

⁶⁴ Hearing Exhibits 83-266 (Initial Application). Garnet also filed an affidavit of service reflecting service of the Application on the appropriate parties, persons, and entities, as required by PSL §164(2). Garnet also filed an affidavit of publication of notice of the Application in two newspapers in the Project Area, the Wayuga Shopper and The Citizen. Hearing Exhibit 269.

to confidential information filed and/or exchanged during the proceeding.

On August 25, 2021, the Siting Board Chair issued a letter notifying Garnet of the Application's deficiencies with respect to preliminary design, air emissions, safety and security, noise and vibration, terrestrial ecology and wetlands, water resources, and aquatic biology, among other issues. In response to the deficiency letter, Garnet supplemented its Application (Application Supplement) on September 27, 2021.⁶⁵ The Application Supplement included additional information related to potential impacts to the endangered Indiana Bat species and noted impacts to 15,737 linear feet of streams, 260.32 acres of tree clearing; 806.21 acres of agricultural land; and 3.49 square miles of Project visibility.⁶⁶ Garnet belatedly filed an affidavit of timely service of the Application Supplement on all appropriate persons and entities on September 8, 2022, at the instruction of the Presiding Examiners.⁶⁷

On November 1, 2021, the Chair of the New York State Board on Electric Generation Siting and the Environment (Siting Board) determined that Garnet's Application was compliant with the Siting Board's regulatory filing requirements pursuant to

⁶⁵ Hearing Exhibits 278-304 (Application Supplement). On October 18, 2021, Garnet requested confidential treatment of the Indiana Bat Final Survey Report submitted with its September 27, 2021 supplemental filing.

⁶⁶ Hearing Exhibit 278 (September 27, 2021 Application Supplement), Table 1 (comparing impacts in Initial Application with impacts identified in Application Supplement).

⁶⁷ Hearing Exhibit 442 (Affidavit of Service of Application Supplement). Garnet advised the Examiners that its untimely filing of the affidavit of service was due to an inadvertent oversight.

Public Service Law (PSL) §165(1).⁶⁸ The Chair's compliance letter initiated the 12-month time frame for Siting Board action on the Project, ending on November 1, 2022.

After reviewing the Town's and Rural Preservation's separate requests for intervenor funds, on November 4, 2021, the Examiners issued a Ruling Awarding Application-Stage Intervenor Funding to the Town (\$109,000) and Rural Preservation (\$91,000) and established conditions for the use of the funding. On November 10, 2021, the Examiners issued a Ruling Establishing the Procedural Schedule for the proceeding and set the dates for Garnet to file Application updates, for the Parties to file testimony and exhibits, and for the commencement of the evidentiary hearing (Procedural Ruling).

On January 10, 2022, Garnet timely filed and served an update to the Application consistent with the Examiners November 10, 2021 Procedural Ruling (Updated Application). The Updated Application revised various sections of the Initial Application, including the Project design and component layout, land use, wetlands, streams and water resources, plant communities, visual resources, noise and vibration, and associated impacts.⁶⁹ As noted above, the Updated Application states that 152 acres of solar arrays had been removed from the Project layout. Garnet filed an affidavit of service of the Updated Application on all appropriate persons and entities.⁷⁰

On January 12, 2022, the Secretary issued a notice of public statement hearings scheduled for February 3, 2022, and invited public comment on the Project.

⁶⁸ Hearing Exhibit 313 (Siting Board Compliance Letter).

⁶⁹ Hearing Exhibits 315-360, 363-364, and 366 (Updated Application Exhibits 3, 4, 11, 22, 23, and 24).

⁷⁰ Hearing Exhibits 362-364 (Affidavit of Service of Updated Application).

On January 14, 2022, Garnet filed a Notice of Impending Settlement Negotiations pursuant to 16 NYCRR §3.9.⁷¹ The Parties thereafter engaged in settlement discussions over several weeks. The settlement negotiations resulted in Garnet filing a Settlement Proposal on March 10, 2022, which included Certificate Conditions, a Site Engineering and Environmental Plan Guide (SEEP Guide), and a Complaint Resolution Plan. The Settlement Proposal was signed by Garnet Energy, DPS Staff, and DEC Staff (Signatory Parties). Although DEC Staff executed the Settlement Proposal, it expressed exceptions to several Certificate Conditions and SEEP Guide provisions related to wetlands, streams, and other associated environmental issues.⁷² AGM Staff, the Town, and Rural Preservation did not sign the Settlement Proposal.

On January 20, 2022, the New York State Senate appointed local resident Ed Cook to be an ad hoc member of the Siting Board pursuant to PSL §161(2).⁷³

The Presiding Examiners conducted afternoon and evening Public Statement Hearings on February 3, 2022.⁷⁴ Transcripts of the Public Statement Hearings were filed in DMM on March 11, 2022.

⁷¹ Hearing Exhibit 361 (Rule 3.9 Settlement Notice).

⁷² Hearing Exhibit 390 (Final Settlement Proposal), p. 120. DEC Staff took exception to several proposed Certificate Conditions and SEEP Guide Provisions, which will be outlined in greater detail below.

⁷³ Although the New York State Assembly is also given the authority to appoint an ad hoc member to the Siting Board, it made no appointment. The Senate's appointment, Ed Cook, served for only a short time before resigning.

⁷⁴ The public statement hearings were conducted via remote teleconferencing to protect public health and safety due to the ongoing COVID-19 pandemic. A summary of the public comments received will be discussed below in the Public Notice and Comment section of this Order.

On March 10, 2022, DPS Staff, DEC Staff, AGM Staff, and Rural Preservation filed direct testimony and exhibits.⁷⁵ Garnet Energy filed rebuttal testimony and exhibits on April 12, 2022. On April 12, 2022, Garnet filed rebuttal testimony and exhibits.⁷⁶

On April 25, 2022, the Secretary issued a notice of evidentiary hearing and the Examiners issued a ruling that established the procedural and briefing schedule. After having had an opportunity to review the direct and rebuttal testimony and exhibits, the Parties agreed that formal cross-examination of witnesses at an evidentiary hearing would be limited to issues associated with the Project's agricultural impacts and advised the Examiners accordingly. On May 3, 2022, Garnet filed a motion objecting to Rural Preservation's proposed cross-examination of AGM Staff witness, Michael Saviola, on the grounds that it would constitute "friendly cross-examination."

On May 6, 2022, after ruling against Garnet on its motion to prevent Rural Preservation's cross-examination of AGM Staff witness Saviola, the Examiners conducted an evidentiary hearing. Only Rural Preservation cross-examined Mr. Saviola related to the Project's impacts on agricultural lands, although

⁷⁵ Hearing Exhibits 391-392 (DPS Staff Settlement Panel); Hearing Exhibits 393-394 (DEC Threatened and Endangered Species/Wildlife Panel), and 395-400 (DEC Wetlands/Streams Panel); Hearing Exhibits 401-407 (AGM Witness Michael Saviola); Hearing Exhibits 383-389 (Rural Preservation Avian Panel), Hearing Exhibits 380-382 (Rural Preservation Socioeconomic Witness Gardner), and Hearing Exhibits 368-382 (Rural Preservation Witnesses Bramble, Lilli, and Moretti). These parties thereafter filed affidavits adopting their pre-filed testimony as if given orally. Hearing Exhibits 437-438, 440.

⁷⁶ Hearing Exhibits 419-436 (Garnet Rebuttal Panel Testimony and Exhibits). Garnet's rebuttal witnesses filed affidavits adopting their testimony as if given orally on May 23, 2022. Hearing Exhibit 439.

AGM Staff counsel conducted redirect examination and Garnet asserted a number of objections during the testimony. The final hearing transcript was filed in DMM on May 18, 2022.⁷⁷ At the Examiners' instruction, the Parties thereafter proposed a consensus evidentiary hearing exhibit list and the final exhibit list was filed in DMM by the Examiners on May 18, 2022.

On June 8, 2022, Garnet and DPS Staff submitted post-hearing briefs in support of the Settlement Proposal; DEC Staff, AGM Staff, and Rural Preservation filed briefs in opposition. On June 24, 2022, Garnet, DPS Staff, and Rural Preservation filed reply briefs.

A. Terms of Settlement Proposal

The Settlement Proposal includes proposed Certificate Conditions, Site Engineering and Environmental Plan (SEEP) Guide, and Complaint Resolution Plan, which address the requirements governing construction and operation of the Facility.⁷⁸

DPS Staff, in both testimony and post-hearing briefs, supports the Siting Board's adoption of the Settlement Proposal. DPS Staff testified that, based on its initial review of the Application, it had several potential issues that required resolution in litigation, including wetlands, threatened and endangered species, cultural and archaeological resources, visual and noise, socioeconomic, and site decommissioning and restoration issues.⁷⁹ DPS Staff further testified, however, that through information Garnet provided in discovery, the proposed Certificate Conditions, and the proposed SEEP Guide, DPS Staff

⁷⁷ Hearing Exhibit 441 (Transcript of May 6, 2022 Evidentiary Hearing) (Hearing Tr.).

⁷⁸ Hearing Exhibit 390 (Final Settlement Proposal).

⁷⁹ Hearing Exhibit 391(DPS Staff Settlement Panel), pp. 106-107.

"is satisfied that all potential issues and issues it initially believed would require litigation have been resolved." DPS Staff's testimony indicated that the Siting Board's order adopting the Settlement Proposal should include a delegation of inspection and stop-work authority to DPS Staff to enforce the Certificate Conditions.

DPS Staff was the only Party to agree to the Settlement Proposal, as submitted. AGM Staff, the Town and Rural Preservation did not execute the Settlement Proposal and have asserted specific objections to the Project in their respective post-hearing briefs.

DEC Staff executed the Settlement Proposal but expressly objected to certain proposed Certificate Conditions and SEEP Guide provisions on its signature page.⁸⁰ Specifically, DEC Staff excepts to the following:

<u>Certificate Condition</u>	<u>Summary</u>
70	Installation methods for underground collection lines, protocol for changes to methods, and development of a Wetland Mitigation Plan for "regulated" wetlands.
111	Defining fuel/chemical storage tanks to be kept more than 300 feet from "regulated" wetlands.
115	Requiring daily inspection of equipment used in "regulated" wetlands for leaks and removal of equipment and cleanup of leaks.
117(d)	Trenchless methods for buried cable installation will be considered "where practicable" and if not practicable, excavation, installation, and backfilling in one continuous

⁸⁰ Hearing Exhibit 390 (Final Settlement Proposal, DEC Signature Page).

- operation, as provided in final design drawings; wide-track/amphibious excavators to be used for installation in "regulated" wetlands.
- 118 Prohibiting discharge of turbid water to "regulated" wetlands and waterbodies and requiring baffling or discharge to settling basins, filter bags or other approved discharge practices.
- 122, 122(a) Requiring restoration of disturbed "regulated" wetlands to pre-existing conditions "to the extent practicable" within 48 hours of backfilling; documenting cover type; defining required seeding.
- 122(g) Providing if Project layout changes from approved layout, Wetland Mitigation Plan addressing new impacts to "regulated" wetlands not previously addressed shall be developed with DPS and DEC to satisfy the applicable State regulations, including the "weighing standards" in the wetlands regulations; requiring additional applicable approvals for impacts to federal wetlands.
- 123-124 Requiring removal of construction debris from "regulated" wetlands and disposal at permitted waste disposal facility; prohibiting burning or buying of cleared vegetation or small branches (slash) in "regulated" wetlands and adjacent areas, but allowing logs and large branches to be left in place in a manner that does not alter wetland hydrology.
- 131(c) Requiring HDD for collection line installation under wetlands and streams; when conducting HDD in "regulated" wetlands and streams, monitoring required for the release of drilling fluids or "frac-outs" to

sensitive areas, as described in the Inadvertent Return Plan; maintaining HDD Spill Response Plan and response equipment for releases to "regulated" wetlands; and reporting to DPS and DEC within two hours of releases to "regulated" wetlands.

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Providing 100 foot buffer zone in "regulated" wetlands, streams, and water bodies as "Restricted Activities Area" on final construction drawings; defining restricted activities, including disposal of debris, concrete, or concrete wash; use of herbicides; degradation of stream banks; equipment washing; refueling; and fuel or chemical storage.

SEEP Guide Provision

Summary

Section A(6)

Defining the wetlands information required to be submitted prior to site preparation for "protected" and "regulated" wetlands and 100 foot adjacent areas.

Section B(17) (a)-(j)

Defining the wetlands and waterbodies information required to be submitted prior to site preparation, including tables listing all delineated wetlands and waterbodies and locations; DEC stream classification; DEC Freshwater Wetlands Map designation; construction activities and crossing methods and related protocols; extent of clearing and ground disturbance; wetlands impacts and mitigation; restoration measures and identification of wetlands subject to restoration; wetlands mitigation plan contents; and stream crossing methods.

DEC Staff's exceptions relate to whether delineated wetlands in the Project Area can be considered "regulated" as a matter of law and therefore subject to ECL Article 24 protection

as well as to Article 10's required minimization and avoidance measures to the maximum extent practicable. DEC Staff disputes Garnet's rebuttal testimony that only wetlands appearing on the official State Freshwater Wetlands Map can be considered regulated and subject to the Article 10 minimization and avoidance requirements.

B. Public Involvement and Comment

The Applicant's public outreach activities are described in detail in the revised PIP Plan and the PIP Plan meeting logs that have been periodically filed during the proceeding.⁸¹ With respect to its public involvement efforts, Garnet asserts that it has met and communicated with adjacent property owners, the Conquest Fire Department, the Cayuga County Emergency Management Services, and other Town and Cayuga County representatives to discuss opportunities for charitable donations, economic development benefits, public involvement, a possible host community agreement, a possible payment-in-lieu-of taxes agreement, and COVID-19 support.⁸² Garnet held its own public meetings in the Conquest Town offices on September 21, 2020, October 19, 2020, March 15, 2021, and July 19, 2021, and held a virtual open house on February 4, 2021.⁸³ At the open house, Garnet answered questions about the Project, took comments, and recorded the open house, making them available on the Project's website. Garnet also provided hard copies of the Application and related documents at the Conquest Town Hall and the Port Byron Library.

The Town held afternoon and evening Informational Open

⁸¹ Hearing Exhibits 1-7, 9, 42, 50, 75, 172, and 296.

⁸² Garnet Initial Brief, p. 7.

⁸³ Hearing Exhibit 172 (Application Exhibit 2), Appendix 2-5, PIP Meeting Log.

House meetings with Garnet on March 29, 2022, to provide residents and stakeholders with an opportunity to learn about the revised layout for the Project and to engage with Garnet representatives.⁸⁴ The Town Board, the Planning Board, the Highway and Fire Departments, and the Town's consultants attended, along with the Cayuga County Planning and Highway Departments and 35 members of the public. Notice of the meetings was provided by mail to approximately 825 residents and stakeholders. Approximately 70 comments on the Project were provided to Garnet at that time covering issues and concerns related to road use, health and safety, visual impacts rights of way, wildlife, community character, and property values.

In an April 28, 2022 letter to the Siting Board Secretary, the Town Supervisor reported the results of the Informational Open House meetings and submitted a resolution by the Town Board to submit to the Department the concerns about the Project and other feedback by the Conquest Planning Board report on the Project.⁸⁵ The Town's letter indicated that the main concern with the Project is "the uncertainty of how the enormous size of this project will directly and indirectly impact our community" because it is located "in the heart of Conquest."

In addition, on February 3, 2022, the Examiners conducted afternoon and evening virtual Public Statement Hearings at which public comments were received. Approximately 75 people attended the Hearings and 30 people provided comments on the Project, most of which expressed opposition insofar as

⁸⁴ June 2, 2022 Letter to the Secretary from Town Supervisor Charles Knapp.

⁸⁵ Hearing Exhibit 442 (April 28, 2022 Letter to Secretary Phillips from Town Supervisor Charles Knapp), p. 2. The Town expressed its concern that nearly 400 property owners live within 2,500 feet of the Project.

the Project would have unacceptable visual, aesthetic, environmental, economic, and public safety impacts that would change the community's rural and farmland character. Approximately 50 written public comments about the Project were filed in DMM, which primarily expressed opposition and raised issues related to environmental, economic, health and safety, visual, and community impacts. The International Brotherhood of Electrical Workers, Local 840 expressed support for the Project on economic development and job-creation grounds.

With respect to public involvement, DPS Staff testified that Garnet implemented its PIP Plan and met its goals by actively encouraging participation from municipal officials, affected local, state, and federal agencies, and the public.⁸⁶ DPS Staff testified that Garnet mailed a Project fact sheet and map to stakeholders; solicited public comments through its website and by telephone; provided responses to the comments on its webpage; and notified the public of Project milestones and activities. DPS Staff also noted that the proposed Certificate Conditions in the Settlement Proposal require Garnet to continue to provide the public with Project information and other requirements, including the development and implementation of a complaint resolution plan with public notification and resolution procedures.⁸⁷ Finally, DPS Staff indicated that it had reviewed and considered all of the public comments filed in the proceeding.

C. August 5, 2022 Site Visit

In a June 2, 2022 letter, the Town Planning Board Chairperson, Robert J. Vogel, requested that the Examiners conduct an in-person site visit to various locations in the

⁸⁶ Hearing Exhibit 391 (DPS Staff Settlement Panel), pp. 95-96.

⁸⁷ Hearing Exhibit 391 (DPS Staff Settlement Panel), pp. 99-101.

Project Area to see the "size and complexity" of the Project and the potential impacts it would have on the community for many years to come. The Town enclosed a map prepared by Cayuga County Planning and Economic Development showing the overall Project footprint with a 2,500 foot boundary area and expressed concern about the Project's land use impacts because it is in "the heart of the Conquest community," is significant in proportion to the Town's overall land area, and will impact future land use laws and regulations being considered in the Town's first Comprehensive Plan. The Town also attached to its letter a list identifying other areas of concern, including noise, dust, traffic congestion, safety, wetlands, visual mitigation, and impacts on wetlands and wildlife.

On June 2, 2022, the Chairperson of the Cayuga County Legislature, David S. Gould, also requested that the Examiners visit the proposed Project site prior to a decision being made in the proceeding. While expressing neutrality on the outcome of the proceeding, the Cayuga County Chairperson expressed concern about the magnitude of land use changes to more than 10 percent (2,300 acres) of the entire area of the Town, noting that "[w]ithout a site visit, the impacts of the project cannot be fully understood." The Chairperson indicated that the County Planning and Economic Development Department were working with the Town with respect to land use decisions.

On August 4 2022, Presiding Examiner Gregg Sayre conducted a site visit to the Project Area accompanied by some of the Parties. On August 7, 2022, Presiding Examiner Maureen Leary also visited the Project Area.

IV. STATUTORY AND REGULATORY FRAMEWORK

A. Article 10 Standards

Pursuant to PSL §168(2), the Siting Board must make express findings regarding the nature of probable environmental impacts, including cumulative impacts, resulting from the construction and operation of a proposed facility. These include impacts to ecology, air, ground and surface water, wildlife, and habitat; public health and safety; cultural, historic, and recreational resources, including visual, aesthetic, and scenic values; and transportation, communication, utilities, and other infrastructure.⁸⁸ The Siting Board may not grant a certificate unless it determines that these impacts have been minimized or avoided to the maximum extent practicable, including any significant disproportionate impacts on the community in which it is located.⁸⁹

In addition, to issue a certificate, the Siting Board also must find that the facility will be a beneficial addition to or substitution for the State's electric generation capacity and serve the public interest; that the facility will serve the public interest; and that the facility is designed to operate in compliance with applicable State and local laws concerning, among other matters, the environment, public health and safety.⁹⁰

In making these determinations, the Siting Board considers several factors, including available technology, reasonable alternatives, environmental impacts, impacts on related facilities, consistency with the State Energy Plan, impacts on community character and whether the community is disproportionately impacted by cumulative levels of pollutants,

⁸⁸ PSL §168(2)(a)-(d).

⁸⁹ PSL §168(3)(c).

⁹⁰ PSL §168(3)(a)-(e).

and any other social, economic, aesthetic, environmental considerations deemed pertinent.⁹¹ In issuing a certificate, the Siting Board may impose any terms and conditions it deems necessary and the Department of Public Service or the Commission "shall monitor, enforce and administer compliance with any terms and conditions" set forth in the Siting Board's Certificate and Order.⁹²

B. ECL Article 24

ECL Article 24 sets forth the policy of the State to protect and conserve freshwater wetlands and prevent despoliation and destruction by regulating use and development.⁹³ A DEC permit is required for any activities proposed to be conducted in freshwater wetlands. Wetlands are classified in four separate classes (Class I thorough Class IV) according to their functions and benefits and are afforded a higher level of protection depending on classification, with Class I wetlands being afforded the highest protection.⁹⁴

Class II and III wetlands are at issue in this proceeding. Class II wetlands are defined as those providing "important wetland benefits, the loss of which is acceptable only in very limited circumstances" and the standard for Article 24 permit issuance is that the proposed activity "must minimize degradation to, or loss of, any part of the wetland or adjacent area and must minimize any adverse impacts on the functions and benefits that the wetland provides."⁹⁵ This is similar to the Article 10 standard requiring minimization and avoidance of

⁹¹ PSL §168(4)(a)-(g).

⁹² PSL §168(5).

⁹³ ECL §24-0301; 6 NYCRR §663.1(a).

⁹⁴ ECL §24-0903; 6 NYCRR §663.2(h).

⁹⁵ 6 NYCRR §663.5(e)(2).

impacts to the maximum extent practicable. Class III wetlands are defined as those that "supply wetland benefits, the loss of which is acceptable only after the exercise of caution and discernment" and the proposed activity "satisfies an economic or social need that outweighs the loss of or detriment to the benefits..."⁹⁶

The evaluation of an activity that may impact wetlands and adjacent areas (within 100 feet) pursuant to ECL Article 24 begins with determining the activity's compatibility with the wetland and its functions and benefits. The compatibility of various regulated activities is outlined in 6 NYCRR §663.4(d) and depends, in part, on whether the proposed activity would take place within a wetland or within an adjacent area. DEC's wetlands regulations assign three regulatory compatibility levels to activities proposed to be conducted in a regulated wetland or in an adjacent area: "usually compatible," "usually incompatible," and "incompatible."⁹⁷ An industrial use facility is defined as an activity involving the production of power, including incompatible activities such as grading, filling, clear-cutting timber and vegetation, and construction of utilities, buildings, access roads, and parking areas all require a permit.⁹⁸

The term "industrial use facility" is defined in the wetlands regulations to mean any facility associated with the production of power and is considered an incompatible use.⁹⁹ Article 24's regulations governing proposed activities deemed

⁹⁶ 6 NYCRR §663.5(e)(2).

⁹⁷ 6 NYCRR §663.4(d).

⁹⁸ 6 NYCRR §663.2(q); 663.4(d)(34), (37), (41), and (43).

⁹⁹ 6 NYCRR §663.2(q).

“incompatible” trigger “weighing standards.”¹⁰⁰ The application of the regulatory weighing standards depend on the classification of the wetland, with Class I wetlands given the most stringent standards.

C. Burden of Proof

The applicant in an Article 10 proceeding has the burden to prove that, based on the evidentiary record, the Siting Board can make all findings required by PSL §168.¹⁰¹ With respect to factual matters, the applicant must sustain that burden by a preponderance of the evidence, unless a higher standard has been established by statute or regulation.¹⁰²

D. Climate Leadership and Community Protection Act

In furtherance of the State’s efforts to address climate change, the Climate Leadership and Community Protection Act, (CLCPA) establishes renewable energy goals of 70 percent by 2030; requires 6 gigawatts (GW) of solar generation by 2025; and targets achievement of 100 percent carbon-free electricity by 2040.¹⁰³ The CLCPA imposes a requirement on all State agencies to consider, in the context of issuing permits, licenses, administrative approvals and decisions, “whether such decisions are inconsistent with or will interfere with the attainment of

¹⁰⁰ 6 NYCRR §663.5(e)(1)-(2). On the other hand, if the proposed activity is deemed either “usually compatible” or “usually incompatible,” a two-step process is undertaken. The first step applies the compatibility test to the proposed activity and if it passes the test, the proposed activity may be permitted. If the activity does not pass the compatibility test, it is deemed an incompatible activity that must meet the “weighing standards” in the Article 24 regulations before being authorized in a permit.

¹⁰¹ 16 NYCRR §1000.12(b).

¹⁰² 16 NYCRR §1000.12(c).

¹⁰³ L. 2019, ch. 106, §4.

the statewide greenhouse gas emissions limits” established by DEC under the CLCPA.¹⁰⁴ If such administrative approvals or decisions are found to be inconsistent or to interfere with the CLCPA’s emissions limits, agencies “shall provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.”¹⁰⁵

The CLCPA requires the Public Service Commission (Commission) to “promulgate regulations that contribute to achieving the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law” and to establish a renewable energy program requiring that: (a) by 2030, a minimum of seventy percent of the State-wide electric generation secured by jurisdictional load serving entities must be generated by renewable energy systems; and (b) by 2040, the State-wide electrical demand system will be zero emissions.¹⁰⁶

¹⁰⁴ L. 2019, ch. 106, §7(2) (effective January 2020). The CLCPA also requires the Commission to promulgate regulations “to contribute to achieving the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.” CLCPA, §8(1).

¹⁰⁵ L. 2019, ch. 106, §8(1). Despite these 2030 and 2040 targets, the CLCPA authorizes the Commission to consider the renewable energy program’s impacts on the provision of safe and adequate service. PSL §66-p(2).

¹⁰⁶ PSL §66-p(2). The CLCPA, amending PSL §66-p, requires the Commission to establish by June 1, 2021, the renewable energy program designed to meet the CLCPA’s specified renewable energy and zero emission targets. The Commission is required to report on the progress of the renewable energy program and may suspend or modify it after a hearing and upon a finding that the program impedes the provision of safe and reliable service. PSL §66-p(3)-(4).

V. ENVIRONMENTAL IMPACTS - PSL §168(2) - (3)

As a threshold issue, we note Garnet's repeated characterization in its Initial Application and Updated Application of impacts on various environmental resources as "temporary," "permanent," or "conversion" impacts, including but not limited to, impacts on wetlands, streams, vegetation, wildlife and habitat, visual, and other resources.¹⁰⁷ Garnet's Application does not specify the criteria used to characterize such impacts as temporary, permanent, or conversion, but assumes that resources can be restored to pre-existing conditions within an unspecified period of time.

For example, although Garnet's Updated Application claims Project impacts to 924.22 acres of wildlife habitat, it asserts temporary impacts to only 105.41 acres and permanent impacts to only 20.52 acres.¹⁰⁸ By way of further example, Garnet's Updated Application characterizes clearcutting of 159.61 acres of forest lands in the Project Area as a "conversion impact" that is "neither temporary nor permanent" because it "falls between the two, being too long to constitute a temporary impact and too short to be thought of as permanent."¹⁰⁹ The Updated Application does not indicate the conditions necessary or the period of time it may take for a similar forest to regrow to its pre-existing state.

Similarly, Garnet also assigns temporary, permanent

¹⁰⁷ Hearing Exhibits 333-334 (Updated Application Exhibit 22), p. 16 (Post-Construction Vegetation Restoration); p. 46 (Post-Construction Vegetation, Wildlife and Habitat Restoration and Maintenance); pp. 77-94 (Temporary and Permanent Wetland Impacts, Minimization and Avoidance); pp. 122-123 (Temporary and Permanent Impacts on Agricultural Resources).

¹⁰⁸ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 52-53, 58; Table 22-9.

¹⁰⁹ Hearing Exhibit 333-334 (Updated Application Exhibit 22), p. 11.

and conversion impacts to various plant communities.¹¹⁰ Garnet asserts that it has minimized these impacts by largely siting Project components in active agricultural fields and co-locating roads and collection lines.¹¹¹ Garnet also states that for minimization efforts, it will comply with guidance from the on-site Environmental Monitor, maintain clean work sites, undertake reseeding and restoration measures, employ best management practices, and mark susceptible areas to avoid.

Garnet's identification of temporary, permanent, and conversion impacts to various environmental resources is inconsistent with the requirements in PSL §168(2) that the Siting Board make "explicit findings" of all probable environmental impacts based on the record.¹¹² Despite our prior determination in which we characterized impacts on agricultural resources as "temporary" in view of the potential for future agricultural uses of the Project Area following the Facility's decommissioning,¹¹³ the same characterization cannot be applied to environmental impacts on wetlands, streams, wildlife, and habitat, particularly if applicable environmental statutes prohibit impacting the resource and have a DEC-permitting scheme associated with the resource in place (e.g., Articles 11, 15 and 24).

Article 10 does not characterize environmental impacts

¹¹⁰ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 13-17, Tables 22-3 and 22-4.

¹¹¹ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 15-16, 61-62.

¹¹² Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 78-82; Table 22-11, pp. 83-92.

¹¹³ See Case 19-F-0299, Application of Excelsior Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued April 6, 2022), (Excelsior Order), pp. 48-49.

as "temporary," "permanent," or "conversion," but speaks only to impacts that must be (1) identified, and (2) minimized or avoided to the maximum extent practicable.¹¹⁴ Article 24 also does not characterize impacts in the way Garnet does. Thus, Garnet's differentiation of these environmental impacts has no basis as a matter of law. We therefore reject Garnet's attempt to characterize environmental impacts as temporary, permanent or conversion impacts.

We find that Garnet's characterization of environmental impacts as temporary (or conversion) is entirely dependent upon the timing and success of the proposed preservation, restoration, mitigation, and other measures that are intended to address the impacts. The timing and success or failure of those measures ultimately will dictate whether the impacts are actually temporary or prove instead to be permanent.

We therefore condition our issuance of the Certificate here on Garnet's overall minimization and avoidance of all environmental impacts, whether characterized as temporary, conversion, or permanent impacts. For impacts not minimized or avoided to the maximum extent practicable, Garnet is required to implement restoration, mitigation, and other measures. During the compliance phase, DPS Staff, DEC Staff, and other interested Parties should assure that Garnet's plans detail the specific restoration and mitigation measures to be implemented during Project construction and are successful. In the event that the measures implemented under these plans are not successful, we anticipate that the agencies and the Parties monitoring Project restoration and mitigation measures would seek to require any additional measures necessary to address the Project's adverse

¹¹⁴ PSL §168(2), 168(3)(c). ECL Articles 15 and 24 also do not address or differentiate between temporary, permanent or conversion impacts to wetlands or streams.

environmental impacts.

As detailed below, we condition the Certificate on Garnet's successful mitigation of the Project's adverse environmental impacts, including those impacts to State-protected wetlands in the Project Area regardless of whether the impacts have been identified as temporary, permanent or conversion impacts.

A. Freshwater Wetlands

As we noted in our determination in North Side, the public policy of the State is to preserve, protect, and conserve freshwater wetlands and the functions and benefits they provide; to prevent the despoliation and destruction of freshwater wetlands; and to regulate the use and development of wetlands consistent with the general welfare and beneficial economic, social, and agricultural development of the State.¹¹⁵ In both its Initial and Updated Application, Garnet takes the position, as its North Side affiliate did, that wetlands not mapped by DEC are not subject to regulation and protection under ECL Article 24 or Article 10.¹¹⁶ By extension, Garnet proposes to minimize and avoid only impacts to mapped wetlands and did not include with its Application a proposed Wetlands Mitigation Plan at all.¹¹⁷ As we did in North Side, we reject Garnet's legal

¹¹⁵ ECL §24-0103.

¹¹⁶ Hearing Exhibit 333-334 (Updated Application Exhibit 22), p. 65. Garnet states that wetlands not mapped by the NYSDEC would not be subject to DEC regulation under ECL Article 24, but may be subject to the Siting Board's Clean Water Act Section 401 Water Quality Certification jurisdiction, citing the decision in Case 16-F-0267, Application of Atlantic Wind LLC, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued June 30, 2020) (Atlantic Wind).

¹¹⁷ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 91-92.

position here that unmapped wetlands and adjacent area are not protected under Article 24 or Article 10.

1. Positions of the Parties

Garnet's Updated Application identifies 47 wetlands and delineates 613.50 acres of wetlands within the 2,288.7 acre Project Area, which was confirmed in site visits by DEC Staff on May 11, 2021, October 15, 2021, and November 9, 2021.¹¹⁸ Garnet also delineated in the Project Area seven ECL Article 24 "DEC-regulated wetlands" appearing on the State's Official Wetlands Maps (mapped wetlands) and one Article 24 jurisdictional, unmapped wetland.¹¹⁹ The Updated Application states that final calculations of impacted regulated wetlands and adjacent areas will be submitted as a Compliance Filing.¹²⁰

Garnet's Updated Application indicates that it had reduced the impacts to regulated mapped wetlands and adjacent areas. Garnet maintains that the majority of impacts to wetlands and their associated adjacent areas are either "temporary," while some are "permanent" impacts, and some are

¹¹⁸ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 63-66; 78-94, Table 22-11. As originally proposed, Project components were sited in approximately 43.85 acres of Article 24 regulated, mapped wetlands, 45.21 acres of regulated, mapped wetland adjacent area, and 103.8 acres of DEC jurisdictional, unmapped wetlands. Garnet's Initial Application had incorrectly characterized impacts to mapped wetlands subject to clear cutting as temporary, which was revised in the Updated Application to reflect permanent impacts.

¹¹⁹ Garnet defines "Article 24 regulated wetlands" as those wetlands that are included on DEC's official Freshwater Wetlands Maps; and "Article 24 jurisdictional wetlands" are those wetlands that are not on the official Maps and require additional DEC administrative action to be added to DEC's official Freshwater Wetlands Maps through a map amendment.

¹²⁰ Hearing Exhibits 333-334 (Updated Application Exhibit 22), p. 64

"conversion" impacts, meaning the impacts are somewhere between temporary and permanent.¹²¹ Of these impacted mapped wetlands, six are Class II and two are Class III, with each having a separate level of protection under the wetlands regulations.

Garnet asserts that in analyzing such impacts, DEC Staff fails to appreciate the distinction between temporary, permanent, and conversion impacts.¹²² In short, the Updated Application lacks sufficient clarity on the total number of acres of protected mapped and unmapped wetlands and adjacent areas impacted by the Project (whether temporary, permanent and conversion), which should be minimized or avoided to the maximum extent practicable or properly mitigated through the creation of new wetlands if impacts are unavoidable.

Garnet urges that "[t]he Siting Board's Atlantic Wind decision also makes it clear that wetlands that have not proceeded through the DEC mapping or remapping process are subject only to the [Siting] Board's application of [best management practices] BMPs to activities within these wetlands as part of the 401 WQC process."¹²³ Garnet concedes that the Project will result in impacts to both mapped and unmapped wetlands and adjacent areas. Notably, Garnet's Updated Application states that it reduces the Project's wetlands impacts as compared with those proposed in the Initial Application.¹²⁴

The Updated Application differentiates between

¹²¹ Hearing Exhibit 419 (Garnet Rebuttal Panel), p. 42; Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 90, 94-95.

¹²² Garnet Initial Brief, p. 16.

¹²³ Hearing Exhibits 333-334 (Updated Application Exhibit 22), p. 66.

¹²⁴ Hearing Exhibits 333-334 (Updated Application Exhibit 22), pp. 78-95, Table 22-11.

"regulated" wetlands that appear on the official State Freshwater Wetlands Maps and those that are not mapped, and characterizes certain adjacent areas within 100 feet as "predicted" wetlands.¹²⁵ Thus, Garnet urges, as its affiliate did in North Side, that wetlands not appearing on the State's official wetlands maps are not subject to DEC's regulatory authority under ECL Article 24 and, by extension, to the Siting Board's protection under Article 10. Garnet rejected DEC Staff's requested expansion of the delineated wetlands in the Project Area, claiming that such an expansion requires a formal amendment to the official wetlands maps.

Garnet notes that DEC Staff's attempted regulation of unmapped wetlands are already subject to the U.S. Army Corps of Engineers regulation and compensatory mitigation requirements.¹²⁶ In addition, Garnet argues (as the North Side applicant did) that DEC Staff incorrectly categorizes a solar energy project as construction an "industrial use facility" in a wetland, which is by definition incompatible with the functions and benefits of a wetland.¹²⁷ Garnet asserts that the Project meets the "weighing standards" identified in the wetlands regulations, whereby the "compelling or pressing economic and social needs of the Project" are balanced against the adverse wetland impacts.¹²⁸ Garnet claims that the Project outweighs any wetland losses. Finally, Garnet argues that if the Siting Board orders additional mitigation (beyond what is specified in proposed Certificate Conditions 121 and 122), it should be limited to

¹²⁵ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 63-69.

¹²⁶ Garnet Initial Brief, pp. 24-25.

¹²⁷ Garnet Initial Brief, pp. 41-43.

¹²⁸ Garnet Initial Brief, pp. 46-47.

only those permanent impacts to Article 24 regulated mapped wetlands and their adjacent areas.

In its testimony, DEC Staff's Wetlands and Streams Panel indicates that the Project does not avoid protected mapped and unmapped wetlands and their adjacent areas to the maximum extent practicable and that Project components will be located in such wetlands and have direct adverse impacts. Specifically, DEC Staff indicates that the Project as currently proposed will result in permanent impacts to 11.7 acres of protected wetlands and 73.76 acres of associated adjacent areas.¹²⁹ DEC Staff's estimate includes both mapped and unmapped wetlands. By contrast, Garnet asserts in its brief permanent impacts to 0.5 acres of mapped wetlands and 10.47 of adjacent areas; and 29.75 acres of unmapped wetlands, but does not calculate impacts to unmapped wetland adjacent areas.¹³⁰ Based on the lack of clarity in Garnet's Updated Application and the record as a whole, we rely on DEC Staff's estimate of wetland impacts, including adjacent areas, which will be subject to verification in the compliance phase.

DEC Staff maintains that HDD and reconfiguring the project layout should be further evaluated and implemented to minimize or avoid wetland impacts. Garnet's Initial and Updated Application both claim that HDD will be used to cross wetlands and streams, but Certificate Condition 131 indicates that HDD will be used "where practicable."¹³¹ When read with other Certificate Conditions and in view of DPS Staff's standard practice, the meaning of this phrase is to require the

¹²⁹ Hearing Exhibit 395 (DEC Staff Wetlands & Streams Panel), pp. 16-18.

¹³⁰ Garnet Initial Brief, pp. 12-13, 29.

¹³¹ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Condition 131.

Certificate Holder's demonstration of engineering impracticability based on field conditions to avoid the use of HDD. Standing alone, however, Certificate Condition 131 does not precisely reflect this meaning. Consequently, we reiterate that Certificate Condition 131 requires a demonstration of impracticability in order to depart from the HDD requirement with respect to wetlands and streams.

DEC argues that, based on the record, the Siting Board cannot make the required findings that adverse environmental impacts have been minimized or avoided to the maximum extent practicable under Article 10. DEC further argues that if the Siting Board determines that the impacts to protected wetlands are unavoidable and have been appropriately minimized, the mitigation standards set forth in the regulations promulgated by the Office of Renewable Energy Siting (ORES) should be applied. DEC proposes 51.36 acres of wetlands mitigation, which Garnet estimates will cost \$5.13 million; and Garnet on the other hand proposes 24.79 acres of wetlands mitigation at a cost of \$2.47 million, representing a \$2.65 million difference between the two positions.¹³²

2. Discussion

Garnet essentially makes two legal arguments related to the Project's wetlands impacts. First, similar to its affiliate's argument in North Side, Garnet argues that DEC Staff misapplies ECL Article 24 to the Project's unmapped wetlands in contravention of the statutory requirement to follow the wetland mapping procedure before exercising jurisdiction over any wetlands not appearing on the official Maps.¹³³ Accordingly, Garnet urges that if unmapped wetlands are not subject to ECL

¹³² Garnet Initial Brief, pp. 12-13.

¹³³ Garnet Initial Brief, p. 15.

Article 24 protection, the Project's impacts need not be minimized and avoided to the maximum extent practicable under PSL §168(3)(c) or subject to compensatory mitigation in accordance with Article 24.

Second, Garnet alternatively argues that even if protection is afforded to unmapped wetlands and the implementing wetland regulations are applied, DEC Staff failed to correctly apply both the regulatory compatibility and weighing standards for purposes of determining how much compensatory wetlands mitigation should be required.¹³⁴ Citing 6 NYCRR Part 663 in support of its position, Garnet maintains that no additional mitigation is required beyond what it has already proposed or otherwise required by the U.S. Army Corps of Engineers for federally-protected wetlands.

DEC Staff's exceptions to the proposed Certificate Conditions and SEEP Guide provisions focus on this dispute. DEC proposes revisions to both the Certificate Conditions and the SEEP Guide designed to eliminate any differentiation between mapped and unmapped wetlands and the protections afforded both.¹³⁵

As detailed in the Siting Board's recent order in North Side, the protections afforded by ECL Article 24 and PSL Article 10 apply to both regulated mapped wetlands and DEC-jurisdictional unmapped wetlands.¹³⁶ We reject Garnet's assertion here that unmapped or DEC-jurisdictional wetlands are not subject to Article 10's minimization and avoidance measures

¹³⁴ Garnet Initial Brief, pp. 15-16.

¹³⁵ Hearing Exhibits 399-400 (DEC Wetlands & Streams Panel: Exhibits FW-4 and FW-5).

¹³⁶ Case 17-F-0598, Application of Northside Energy Center, LLC, Order Denying Certificate of Environmental Compatibility and Public Need (issued August 9, 2022) (North Side Order), pp. 33-34.

or to ECL Article 24's compensatory mitigation requirement. Moreover, irrespective of the breadth of DEC's authority under ECL Article 24, PSL §168(3)(c) provides the Siting Board with an independent basis on which to evaluate wetland impacts and requires minimization and avoidance of such impacts to the maximum extent practicable as well as mitigation measures consistent with DEC's regulations under 6 NYCRR §663.5. Thus, North Side stands for the principle that the Siting Board has the authority to impose minimization and avoidance measures as well as compensatory mitigation measures in Certificate Conditions and provisions in the final SEEP.

As noted in Garnet's Updated Application, 45 wetlands and 21 adjacent areas within 100 feet are delineated in the Project Area, of which 26 will be directly impacted.¹³⁷ In light of Garnet's impact characterizations (temporary, permanent, or conversion) to various wetland areas, we find that the record lacks clarity with respect to the actual total number of delineated mapped and unmapped wetlands acres, including adjacent areas, that will be impacted by the Project.¹³⁸ This lack of clarity must be addressed in the compliance phase through submission of a Wetlands Restoration and Mitigation Plan so that appropriate restoration and mitigation measures can be evaluated and implemented. Although the Article 10 regulations require submission of a compensatory mitigation plan "where

¹³⁷ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 76-77; Appendix 22-4, §22(h)(4).

¹³⁸ Hearing Exhibit 333-334 (Updated Application Exhibit 22), pp. 77-80.

impacts are unavoidable.”¹³⁹ Garnet did not include such a plan as part of its Application or Updated Application while conceding that some wetland impacts are unavoidable (albeit less than DEC’s estimated impacts). Although we recognize the efforts Garnet undertook to eliminate some solar panels and thereby minimize and avoid some limited wetland impacts, it also added 13 acres of panels in the process. Consequently, we find that additional efforts are required, including but not limited to compensatory mitigation in accordance with the revised Certificate Conditions appended to this Order.

Garnet argues that DEC failed to weigh the Project’s compelling economic and social need, arguing that the need outweighs the wetland losses. We find that the record does not support Garnet’s position. The Project layout changes Garnet made show some of the practicable alternatives that could be implemented, but DEC’s testimony nevertheless indicates that Garnet did not adequately explore alternatives in order to demonstrate minimization or avoidance to the maximum extent practicable insofar as 11.7 acres of direct wetlands and 73.76 acres of adjacent areas will still be impacted by the Project.¹⁴⁰ As we noted in North Side, and as DEC urges here, the wetland impacts in other Article 10 cases were minor compared to those evident here.¹⁴¹ And although the impacts here are not as extensive as they were in North Side (which justified denial of

¹³⁹ 16 NYCRR §1001.22(n). Garnet justifies its failure to submit a compensatory mitigation plan by arguing that the Article 24 wetlands regulations do not require one. Garnet Initial Brief, p. 15. The Article 10 regulations establish the application’s necessary components for this proceeding, not the Article 24 wetlands regulations.

¹⁴⁰ Hearing Exhibit 395 (DEC Wetlands and Streams Panel), pp. 14-17.

¹⁴¹ DEC Staff Initial Brief, pp. 17-18; North Side Order, pp. 44-48.

the Certificate in that case), Garnet must do more than it appears willing to do to meet the requirement in PSL §168(3)(c) to minimize and avoid wetland impacts to the maximum extent practicable.

Given our rejection of Garnet's approach with respect to temporary/permanent/conversion impacts, discussed above, and based on our decision in North Side that both mapped and unmapped wetlands and adjacent areas are protected under both Article 10 and ECL Article 24, we determine that wetlands impacts require restoration and compensatory mitigation. We find that the \$2.65 million mitigation cost differential between Garnet's estimate and DEC Staff's estimate is not significant when viewed in the context of total Project costs for a 200 MW Facility.

We therefore modify Certificate Condition 122 to require Garnet's submission of a Wetlands Restoration and Mitigation Plan as a Compliance Filing subject to DPS Staff and DEC Staff review and Commission approval. The Wetlands Restoration and Mitigation Plan shall:

- (1) identify all impacted mapped and unmapped wetlands and adjacent areas (within 100 feet), whether characterized as temporary, permanent or conversion impacts, and an estimate of the total number of wetland acres impacted by the Project;

- (2) detail the appropriate restoration measures for all temporary wetlands impacts to return them to pre-existing conditions;

- (3) evaluate and implement HDD for all wetlands and stream crossings unless there is a demonstration of a lack of engineering feasibility; and

- (4) present a compensatory mitigation strategy to address impacts to mapped and unmapped wetlands and adjacent areas, which mitigation shall be inclusive of mitigation for

federally protected wetlands.

The Wetlands Restoration and Mitigation Plan should contain specific details, short and long-term goals, and performance and success criteria. The Plan should prioritize avoidance. The order of mitigation should be first restoration, followed by creation, and lastly enhancement. The Plan should be consistent with Article 24 and the implementing regulations governing compensatory mitigation, including 6 NYCRR §663.5, and with DEC's Freshwater Wetlands Regulation Guidelines on Compensatory Mitigation (Wetlands Guidelines). The Plan and compensatory mitigation also may be guided by the mitigation requirements in the regulations promulgated by the Office of Renewable Energy Siting (ORES), 9 NYCRR §900-2.15. Although the Siting Board does not implement the ORES regulations, we find them instructive in determining the nature and extent of compensatory mitigation necessary to address wetland impacts.

Compensatory mitigation should be based upon the character and location of the particular wetlands impacted and should compensate for the loss of acreage, function, and benefit to both wetlands and adjacent areas.¹⁴² Compensatory mitigation preferably should be on-site and "in-kind" (or of the same type of wetland that has been lost) and should be completed concurrently with the Project, with DPS Staff and DEC Staff oversight.

In requiring compensatory mitigation for impacted wetlands and adjacent areas, we can make the requisite finding that the Project as designed complies with ECL Article 24 and the implementing regulations and meets the criteria in PSL

¹⁴² 6 NYCRR §663.5. As DEC's Wetlands Guidelines note (p. 3), where pre-construction wetland conditions are restored, compensatory mitigation is not required since the loss of function and benefit is not permanent.

§168(3)(c) and (e).

B. Streams and Waterbodies

ECL Article 15 and the implementing regulations at 6 NYCRR Part 608 govern the disturbance of protected streams and require a permit from DEC for the disturbance of a stream with a classification of C(T) or higher.¹⁴³

Garnet's Application delineates streams and waterbodies in the Project Area and characterizes projected impacts to these resources.¹⁴⁴ DEC testified that there are thirty-one (31) streams or stream sections, including ten (10) Class C streams and two (2) streams tributary to a Class C stream.¹⁴⁵ Based on the Updated Application, DEC testified that the Project could result in impacts to nine of the ten NYSDEC-designated Class C Streams.¹⁴⁶

Pursuant to the proposed SEEP Guide, Garnet will prepare an Inadvertent Return Plan describing the steps that will be taken in the event that an inadvertent return of drilling fluid occurs. In addition, the SEEP Guide addresses other potential impacts to streams from access road and collection line crossings, culverts and grading and tree clearing.

DEC Staff proposed limited revisions to the SEEP Guide to ensure compliance with ECL Article 15, which protects streams, waterbodies, and the State's water quality.¹⁴⁷ We agree

¹⁴³ ECL §15-0501.

¹⁴⁴ Hearing Exhibit 354 (Initial Application Exhibit 23).

¹⁴⁵ Hearing Exhibit 395 (DEC Wetlands and Streams Panel), p. 21.

¹⁴⁶ Hearing Exhibit 395 (DEC Wetlands and Streams Panel), pp. 21-22.

¹⁴⁷ DEC Staff Initial Brief, p. 29; Hearing Exhibit 400 (DEC Fish and Wildlife Panel Exhibit NYSDEC-FW-5), pp. 5, 21, 23 and 31.

with the purpose of DEC Staff's limited proposed revisions to the SEEP Guide, which clarify the protections intended by us to be afforded to streams and water bodies as well as wetlands, and have amended it accordingly. Based upon our review of the record and the revisions to the SEEP Guide related to the protection of streams and water bodies, we conclude that any adverse environmental effects on streams and waterbodies from the construction and operation of the Facility will be minimized or avoided to the maximum extent practicable and that the Facility is designed to operate in compliance with ECL Article 15 and 6 NYCRR Part 608.

C. Air Quality Impacts

Unlike fossil fuel generation plants, solar facilities generate electricity directly from sunlight and without fuel combustion or generation of air pollutant emissions.¹⁴⁸ Thus, the operation of the Project will not generate air emissions and does not require any federal, State or local air emissions permits. As noted above, Garnet's Application includes an analysis showing that, on an annual basis, the Project is expected to reduce carbon dioxide (CO₂) emissions by approximately 71,680 tons, nitrogen oxide (NO_x) emissions by 41 tons, and sulfur dioxide (SO₂) emissions by 8 tons.¹⁴⁹ The Application notes, however, that temporary air impacts may result from construction of the Project due to engine exhaust and fugitive dust.¹⁵⁰

Such temporary impacts during construction are not

¹⁴⁸ Hearing Exhibit (Initial Application Exhibit 17), p. 5. Garnet's Application states that the Project will not have a back-up generator for operation of the Project.

¹⁴⁹ Hearing Exhibit 93 (Initial Application Exhibit 8), Table 8-1, p. 2.

¹⁵⁰ Hearing Exhibit 102 (Initial Application Exhibit 17), p. 1.

significant in view of the overall benefits of the Project. We expect, however, that Garnet will impose measures on its contractors during construction to assure minimization and avoidance of these temporary air impacts during the construction window by prohibiting equipment and vehicle idling consistent with State law, limiting dust creation, and timely responding to any complaints received from area residents or local officials.

D. Avian Species, Wildlife, and Habitat

PSL §168(2)(a) requires the Siting Board to make explicit findings regarding the potential environmental impacts of construction and operation of a project on wildlife. In addition, in order to grant a certificate, the Siting Board must determine that the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable, and that the facility is designed to operate in compliance with applicable State environmental laws protecting wildlife. The State Endangered Species Act, ECL §11-0535, and its implementing regulations are applicable to this Project.

On-site surveys conducted by Garnet document the presence of threatened and/or endangered Northern Harriers and Bald Eagles in the Project Area during the winter months. DEC Staff testified that it does not have a record of mapped, occupied habitat for any listed species within the Project Area, although immediately adjacent to the Project Area and within five miles, there is documented occupied habitat for the following listed species: Short-Eared Owl, Sedge Wren, Pied-Billed Grebe, Least Bittern, King Rail, Bald Eagle, Indiana Bat, Bog Turtle, and Lake Sturgeon.¹⁵¹ DEC Staff also testified that

¹⁵¹ Hearing Exhibit 393 (DEC Threatened and Endangered Species Panel), pp. 3-4.

some of these species may utilize the Project Area now in some capacity "and if they engage in nesting, roosting, foraging, or other essential behaviors within the Project area, or the Project area otherwise becomes occupied habitat, there would be a potential for listed species to be adversely impacted by the construction, operation, restoration or maintenance of the Project."¹⁵² DEC Staff concluded that the proposed Certificate Conditions are intended to protect against the Project impacting and harming protected species.

Solar projects have the potential to impact listed species if the project is sited in occupied habitat, if project-related activities occur during a time of year any listed species may be present, or if listed species move in to or are adjacent to the Project Area after construction is completed.

Rural Preservation argues that, as sited, the Project poses a substantial unmitigated adverse risk to birds, including a "lake affect" risk to the listed Pied Billed Grebes as a result of the appearance of the solar panels as a water body.¹⁵³ In addition, Rural Preservation maintains that the pre-application studies conducted by the Applicant are insufficient and fail to account for the potential presence and adverse impacts to the Pied Billed Grebe, which has been seen near the Project Area.

We reject Rural Preservation's speculation that protected species and occupied habitat, including the presence

¹⁵² Hearing Exhibit 393 (DEC Threatened and Endangered Species Panel), pp. 3-4. DEC testified that solar projects have the potential to impact listed species if the project is sited in occupied habitat, if project-related activities occur during a time of year that listed species may be present, or if listed species move into the project area or adjacent areas after construction is completed, in which case a project then is considered to be occupied habitat.

¹⁵³ Rural Preservation Initial Brief, pp. 32-39.

and habitat of the Pied Billed Grebe, may be found in the Project Area. Rural Preservation presents no evidence in the record to support its speculation and, indeed, acknowledges the absence of such evidence when expressing an intention to reopen the record and extend the evidentiary hearing to gather such evidence.¹⁵⁴

Rural Preservation acknowledges that the collision mortality of wildlife with solar panels is insufficiently understood, but that a greater understanding of causal factors would facilitate Project decision making.¹⁵⁵ Accordingly, Rural Preservation proposes two Certificate Conditions to address these concerns. The first Condition would require post-construction monitoring of live birds as well as bird fatalities, with fatality monitoring linked to compensatory mitigation. In addition, Rural Preservation requests a Certificate Condition requiring a population assessment of the Pied Billed Grebe within a five mile boundary of the Project Area.

Garnet opposes Rural Preservation's proposal, arguing that proposed Certificate Condition 105 already calls for an adequate monitoring plan consistent with Siting Board precedent.¹⁵⁶ Garnet asserts that neither Article 10 nor any other State law imposes a legal requirement to conduct such monitoring.

Based on our review of the record, we find that at least some of Rural Preservation's proposed revisions to Certificate Condition 105 are feasible, including the requirement that the monitoring plan be of a three-year duration

¹⁵⁴ Rural Preservation Initial Brief, pp. 40-41.

¹⁵⁵ Rural Preservation Initial Brief, pp. 34-35.

¹⁵⁶ Garnet Initial Brief, pp. 68-70.

and that the monitoring data and information be made available under appropriate confidentiality protections to avian experts. The three-year duration of the monitoring plan will assure that sufficient, multi-seasonal data will be generated. The ability for academic and other avian experts to have access to the data will assure an appropriate peer-review of the results of the monitoring plan. We therefore revise Certificate Condition 105 to include both requirements.

In adding these revisions to Certificate Condition 105, we can conclude that avian species, including threatened and endangered species, in the Project Area are adequately protected and that the likelihood of a taking of any species (should they enter or make use of the Project Area during construction, operation, restoration, and maintenance activities) has been minimized and avoided to the maximum extent practicable. Garnet has agreed to proposed Certificate Conditions that are protective of listed species and will minimize the likelihood of a taking of protected species should any enter or make use of the Project Area during construction, operation, restoration, and maintenance activities. Based on the record, including DEC Staff's testimony and the proposed Certificate Conditions, as currently designed, we find that the Project is not anticipated to result in an adverse impact to wildlife or any listed species consistent with PSL §168(3)(c).

E. Agricultural Impact Issues

Section 1001.22(q) of the Article 10 regulations requires an applicant to provide an analysis of the temporary and permanent impacts of the construction and operation of the facility and the interconnections on agricultural resources including the acres of agricultural land temporarily impacted, the number of acres of agricultural land that will be

permanently converted to nonagricultural use, and mitigation measures to minimize the impacts.¹⁵⁷

Here, the Project's proposed fenced-in area consists of 901.6 acres and the Project's limit of disturbance (LOD) consists of 1,043.1 acres. The fenced-in area will occupy approximately 0.3 percent of all lands designated as Agricultural Districts in Cayuga County and approximately 5.0 percent of all lands designated as Agricultural Districts in the Town of Conquest.¹⁵⁸ The LOD includes approximately 492.2 acres classified as Prime Farmland (mineral soil groups 1-4).¹⁵⁹ This amounts to 0.25 percent of Prime Farmland in Cayuga County and 6.5 percent of Prime Farmland in the Town of Conquest.¹⁶⁰

1. Temporary Versus Permanent Conversion of Farmland

AGM Staff, echoed by Rural Preservation, argues that the Project as currently proposed would be a permanent conversion of more than 1,000 acres of farmland to nonfarm uses and therefore is not in the public interest.¹⁶¹ AGM Staff argues that the Project would violate AGM's policy of converting no more than 10 percent of prime farmland within a project to a nonfarm use.¹⁶² AGM Staff asserts that a project must avoid conversion of farmland to the maximum extent practicable, and that the siting of the Project fails to do so. AGM Staff also

¹⁵⁷ 16 NYCRR §1001.22(q).

¹⁵⁸ Hearing Exhibit 317 (Updated Application Exhibit 4), p. 3.

¹⁵⁹ Hearing Exhibit 31 (Updated Application Exhibit 4), p. 1. AGM defines prime farmland as mineral groups 1-4, and classifies prime farmland as the most productive farmland. AGM Staff Initial Brief, p. 13.

¹⁶⁰ Hearing Exhibit 31 (Updated Application Exhibit 4), p. 3, Table 4-1.

¹⁶¹ AGM Staff Initial Brief, pp. 14-19; Rural Preservation Initial Brief, pp. 72-73.

¹⁶² AGM Staff Initial Brief, p. 13.

asserts that the Project may lead to the downsizing or closing of farms which are included in the footprint of the Project.¹⁶³ AGM Staff further asserts that the loss of active farmland is likely to extend beyond the fence line of the Project because it may leave farmers with strips of land that are uneconomic to farm.¹⁶⁴ AGM Staff claims that it is unlikely that farmers in the future will decide to return the property to agricultural use.¹⁶⁵

AGM Staff recognizes that the Siting Board in previous cases has rejected the argument that the placement of solar panels is a permanent conversion of farmland.¹⁶⁶ AGM Staff states that it "disagrees with this assessment, especially in the instant case."¹⁶⁷ AGM Staff, however, offers no analysis that purports to distinguish the facts of this case from the facts of the Siting Board's previous cases in which no permanent conversion was found.

Garnet responds that per the Siting Board's previous decisions, only permanent foundations and structures that will

¹⁶³ AGM Staff Initial Brief, p. 14.

¹⁶⁴ AGM Staff Initial Brief, pp. 14-15, 16-17.

¹⁶⁵ AGM Staff Initial Brief, pp. 18-19.

¹⁶⁶ Case 19-F-0299, Excelsior Order, p. 48; Case 17-F-0597, High River Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued March 11, 2021) (High River Order), p. 48; Case 19-F-0366, Trelina Solar Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued Nov. 30, 2021), p. 30 (Trelina Order); Case 17-F-0617, Hecate Energy Albany 1 and Hecate Energy Albany 2, Order Granting Certificate of Environmental Compatibility and Public Need (issued January 7, 2021), p. 27 (Hecate Albany Order); Case 17-F-0599, East Point Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued January 7, 2021) (East Point Order), pp. 31-32.

¹⁶⁷ AGM Staff Initial Brief, p. 16.

not be removed upon decommissioning constitute permanent conversion of farmland.¹⁶⁸ Garnet's evidence shows that the impact to farmland from such permanent placements amounts to a permanent conversion of approximately 11.6 acres, and that this acreage amounts to only 2.6 percent of the prime farmland within the LOD of the Project, well within AGM's policy of limiting conversion of prime farmland to no more than 10 percent within a project.¹⁶⁹ Garnet further argues that many of AGM Staff's further assertions -- that farms might close, that the strips of land outside the fence lines may be too narrow for farmers to use, and that farmers might decide not to return the leased property to agricultural use at the end of the lease terms -- are speculative and not based on record evidence, and thus do not warrant a conclusion that the entire Project constitutes a permanent conversion of farmland.

We do not find a sufficient basis in AGM Staff's and Rural Preservation's testimony and briefs to overturn our long-standing precedent that the placement of solar panels does not constitute a permanent conversion of farmland to nonfarm use. We recognize the importance of farmland, especially prime farmland, to the State of New York, but we find the Siting Board's precedent is clear that in light of the minimal acreage that will be permanently converted and the required decommissioning and restoration measures, the Project will result in minimal permanent impacts to agricultural resources. We also agree with Garnet that AGM Staff's assertions of how farmers might behave in the future are speculative. In addition, those actions are outside the scope of the Siting

¹⁶⁸ Garnet Initial Brief, p. 74.

¹⁶⁹ Garnet Initial Brief, pp. 73-74; Hearing Exhibit 317 (Updated Application Exhibit 4), p. 41-42; Hearing Exhibit 419 (Garnet Rebuttal Panel), p. 128.

Board's purview which is constrained to impacts from the Project. Such post-Project decisions by the landowners are not proximate to warrant consideration on Garnet's application.

2. Agricultural Avoidance and Mitigation Issues

AGM Staff argues that the impact of the Project on farmland should have been avoided or mitigated by changing the location of the Project or by eliminating Project components.¹⁷⁰ Garnet responds that in its January 2022 update to its Application, it reduced the amount of prime farmland within the LOD by 37 acres.¹⁷¹ Garnet offered testimony that further reductions in the Project's size would jeopardize Garnet's ability to meet its contracted renewable energy requirements.¹⁷² Garnet also noted its agreements, among other things, not to use concrete foundations for racking systems, not to use offsite staging or storage, to bury utility lines outside the fence line to minimize interference with mechanized farming, to bury electrical conductors close to road edges, to strip, stockpile and return topsoil, to de-compact disturbed agricultural soil, to repair damaged drain tiles to the maximum extent practicable, and to use an Environmental Monitor to oversee construction and restoration work.¹⁷³ Garnet asserts that it considered siting alternatives, and presented them in Application Exhibit 9, which AGM Staff failed to address.¹⁷⁴ Garnet has also agreed to follow, to the maximum extent practicable, AGM's Guidelines for

¹⁷⁰ AGM Staff Initial Brief, pp. 21-22.

¹⁷¹ Hearing Exhibit 317 (Updated Application Exhibit 4), p. 1; Garnet Initial Brief, p. 82.

¹⁷² Hearing Exhibit 429 (Garnet Rebuttal Testimony), p. 132.

¹⁷³ Garnet Initial Brief, pp. 83-85.

¹⁷⁴ Hearing Exhibit 94 (Application Exhibit 9: Alternatives); Hearing Exhibit 441 (Hearing Transcript), pp. 49-50; Garnet Initial Brief, p. 88.

Solar Energy Projects - Construction Mitigation for Agricultural Lands (Revision 10/18/2019) (AGM Solar Guidelines).¹⁷⁵

In its Application Exhibit 9, Garnet evaluated alternative siting strategies in detail.¹⁷⁶ AGM Staff's argument that the Project should be moved or downsized does not offer any concrete proposals for where it could be economically moved or how it could be economically downsized, and fails to rebut the showing of alternatives considered in Application Exhibit 9. We have considered the record, the arguments of the parties and the proposed conditions, and we conclude that the Project's impacts to agricultural resources have been avoided and minimized to the maximum extent practicable.

AGM Staff also argues that Garnet should be required to consider "co-utilization" as an element of mitigation, such as sheep grazing, beekeeping and small-scale grass hay production.¹⁷⁷ Garnet provided testimony that no participating landowners asked for co-utilization.¹⁷⁸ We decline to require a process to consider co-utilization. Co-utilization would require the negotiation and facilitation or funding of new business uses of the property in question. This concept goes beyond the minimization of impacts on current agricultural uses. AGM Staff's proposal would inappropriately inject the Article 10 process into such a new business venture.

AGM Staff expressed dissatisfaction with Garnet's assertion that its agreement to comply with the AGM Solar Guidelines demonstrates the Project's minimization of impacts to

¹⁷⁵ Hearing Exhibit 390 (Final Settlement Proposal), Proposed Conditions 57g and 95; Garnet Initial Brief, pp. 74-75.

¹⁷⁶ Hearing Exhibit 94 (Initial Application Exhibit 9).

¹⁷⁷ Hearing Exhibit 401 (AGM Witness M. Saviola), pp. 15-16; AGM Staff Initial Brief, p. 21.

¹⁷⁸ Hearing Exhibit 419 (Garnet Rebuttal Testimony), pp. 132-133.

agriculture. AGM Staff argues that following the Guidelines "does not constitute avoidance or mitigation of adverse environmental impacts to agricultural lands resulting from the Project."¹⁷⁹ Garnet responds that AGM Staff is backing away from its own Guidelines, which have been adopted in many prior Siting Board decisions.¹⁸⁰ On this issue we agree with AGM Staff that compliance with the AGM Solar Guidelines alone is not sufficient to establish avoidance and mitigation of impact to agricultural lands to the maximum extent practicable. However, as discussed above, we accept Garnet's overall showing of avoidance and mitigation measures, which go well beyond the Guidelines.

3. Agricultural Decommissioning Issues

AGM Staff asserts that 30 years of solar farm usage will lead to the degradation of the underlying soil to the extent that it will not be feasible to return the land to agricultural production. AGM Staff witness Saviola testified that in a case in Wyoming County where land was abandoned for over a decade, it took significant inputs of chemical fertilizer, manure nutrients and lime to get the field back into production.¹⁸¹ Garnet responds that the land in question in Wyoming County discussed by Mr. Saviola had been severely damaged by a tornado, and that the AGM Solar Guidelines did not apply in that case to the restoration work.¹⁸² In the case at hand, Garnet argues that the restoration requirements of the AGM Solar Guidelines include a requirement that if the landowner

¹⁷⁹ AGM Staff Initial Brief, p. 22.

¹⁸⁰ Garnet Initial Brief, pp. 87-88.

¹⁸¹ AGM Staff Initial Brief, pp. 17-18; Hearing Tr., pp. 38-46.

¹⁸² Garnet Reply Brief, p. 52, citing Case 07-T-0140, Noble Wethersfield Waterpark LLC, Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (issued Dec. 21, 2007), pp. 5-6, and the Joint Proposal in that case at p. 22.

desires to return the land to agricultural production, then "[s]oil amendments should be applied as necessary so that restored agricultural areas' soil properties, at minimum, reasonably reflect the pre-construction soil test results or as otherwise agreed to by the involved parties to ensure continued agricultural use."¹⁸³

We agree with Garnet that the Wyoming County case does not establish that the soil under the solar panels in this case will be degraded after 30 years. However, we note that even in that extreme case, the land was brought back into production with appropriate soil amendments. Given Garnet's agreement to follow the AGM Solar Guidelines to apply soil amendments as necessary in its decommissioning process in this case,¹⁸⁴ we find that AGM Staff's concern about the possibility of soil degradation has been satisfactorily addressed in the proposed Certificate Conditions.

Rural Preservation argues that the phrase "to the maximum extent practicable" should be removed from proposed Condition 95 in which Garnet agrees to follow the AGM Solar Guidelines in the course of planning, constructing and mitigating the facility. Rural Preservation appears to be proposing that all possible deviations from the Guidelines must be considered by the Siting Board before a certificate is awarded.¹⁸⁵ Presumably Rural Preservation is making the same argument with respect to proposed Certificate Condition 57(g), which has the same language with respect to decommissioning, although Condition 57 is not among Rural Preservation's list of

¹⁸³ Garnet Reply Brief, p. 51-52; AGM Solar Guidelines (attached to Garnet's Initial Brief), pp. 5-6.

¹⁸⁴ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Condition 57(g).

¹⁸⁵ Rural Preservation Initial Brief, p. 96.

Conditions that should be modified.¹⁸⁶ We decline to make the proposed deletions of the term “to the maximum extent practicable.” The language of the proposed certificate conditions is essentially identical to the certificate conditions we approved in the recent Excelsior Energy case¹⁸⁷ and the proposed deletion is unnecessary. If conditions in the field require some deviations, this situation will be identified by the Environmental Monitor and compliance staff, and any disputes will be dealt with as part of the compliance process. We also disagree with any attempt to define in advance whether deviations from the AGM Solar Guidelines may be required and authorized. It is unknown at this time what those conditions might be. We therefore decline to set up a process to identify all potential deviations from the AGM Solar Guidelines before a certificate is awarded, as suggested by Rural Preservation.

4. Public Service Law §168(3)(d)

AGM Staff and Rural Preservation argue that the Project would have “a significant and adverse disproportionate environmental impact” on the farming community due to land being taken out of agricultural production for at least 30 years, in violation of Public Service Law §168(3)(d).¹⁸⁸ Their argument tracks the language of §168(3)(d), but they fail to explain with any clarity what community is being disproportionately impacted in comparison to some other community.

¹⁸⁶ Rural Preservation Initial Brief, pp. 90-96.

¹⁸⁷ Case 19-F-0299, Excelsior Energy Center, LLC, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued April 6, 2022), Appendix A, Conditions 59h and 95.

¹⁸⁸ Hearing Exhibit 401 (AGM Witness M. Saviola), pp. 10-11, 18-21; AGM Staff Initial Brief, p. 21; Rural Preservation Initial Brief, p. 73.

Garnet responds that §168(3)(d) must be read in conjunction with §164(1)(f), which contains the same “significant and adverse disproportionate environmental impact” language but is much more detailed on what kind of disproportionate impact is of concern. Garnet argues that this language in §164(1)(f) is clearly limited to environmental justice communities pursuant to rules promulgated by DEC.¹⁸⁹ Garnet notes that there are no environmental justice communities within the Impact Study Area, a 0.5 mile radius around the Project Area, and that DPS Staff also agrees that the Project does not negatively impact any environmental justice areas.¹⁹⁰ Accordingly, Garnet argues, §168(3)(d) does not apply in this case.

We do not agree with Garnet’s reading of the statute. The language in PSL §168(3)(d) must be read in conjunction not only with §164(1)(f), but also in conjunction with §168(2)(d). In §168(2)(d), which explicitly refers back to §164(1)(f), the Siting Board is prohibited from granting a certificate if the facility “results in a significant and adverse disproportionate impact” on environmental justice communities. PSL §168(3)(d) does not contain such a reference to §164(1)(f) or to environmental justice areas, and it has an exception, not present in §168(2)(d), that the Siting Board may authorize the facility notwithstanding the disproportionate impact if “the applicant will avoid, offset, or minimize the impacts caused by the facility upon the local community for the duration that the certificate is issued to the maximum extent practicable using verifiable measures.” We conclude that §168(3)(d) is broader than §168(2)(d) and §164(1)(f).

¹⁸⁹ Garnet Reply Brief, pp. 54-56.

¹⁹⁰ Hearing Exhibit 113 (Application Exhibit 28), p. 2; DPS Staff Initial Brief, p. 44.

Despite our broader reading of the statute, in this case we do not find that the Project would have a significant and adverse disproportionate environmental impact on the community in which the Project is located. First, for an impact to be "significant" it must be something more than simply taking agricultural land out of production for a period of years. If taking land out of production for the terms of a project's leases is significant and adverse, then every renewable energy project sited in whole or in part on agricultural land would trigger §168(3)(d). There is no indication that the Legislature intended such a result. In this case, as noted above, the amount of Agricultural District land being taken temporarily out of production is only 5 percent of the farmland in the Town of Conquest and 0.3 percent of the farmland in Cayuga County. We do not find this impact to be a "significant and adverse" impact on the local community. Second, "disproportionate impact" means that a community must be negatively impacted in comparison (i.e., proportion) to some other community. AGM Staff and Rural Preservation have not explained what such a comparison might be, and we see no basis in the record for making such a comparison.

Finally, although we find that the impact of the Project is neither significant nor disproportionate with respect to the Town of Conquest or Cayuga County, we also find that the agricultural impacts of the Project, in the language of §168(3)(d), will be avoided, offset or minimized to the maximum extent practicable using verifiable measures. These measures are set forth in the proposed Certificate Conditions and include the use of an agriculturally qualified Environmental Monitor and the adherence to the maximum extent practicable to AGM's Solar

Guidelines.¹⁹¹ Accordingly, §168(3)(d) does not prohibit the granting of a certificate in this case.

5. Article XIV, Section 4 of the State Constitution

AGM Staff and Rural Preservation argue that the proposed Project violates Article XIV, Section 4 of the State Constitution, which states that "the policy of the State shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy shall include adequate provisions for ... the protection of agricultural lands..."¹⁹² AGM Staff cites, as an implementing statute, Article 25-AA §300 of the Agriculture and Markets Law which states that it is the policy of the State "to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products."¹⁹³ Rural Preservation cites, also as a matter of implementation of the Constitutional requirement, Executive Order No. 39 (Nov. 4, 2010) requiring all State agencies when taking administrative actions to consider the Constitutional mandate, the requirements of the Agricultural and Markets Law and the goal of expanding production of locally grown food.¹⁹⁴

Garnet responds that the Siting Board has already addressed these arguments in prior cases, and that the Siting Board has determined that the appropriate standard of review on this issue, in any particular case, is whether "the Project's

¹⁹¹ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Conditions 7(a), 10, 20(a), 57(g), 66(f), 77, 88(a), and 95.

¹⁹² AGM Initial Brief, pp. 12-13; Rural Preservation Initial Brief, pp 23-26.

¹⁹³ AGM Initial Brief, p. 12.

¹⁹⁴ Rural Preservation Initial Brief, pp. 22-24.

impacts to agricultural resources have been avoided and minimized to the maximum extent practicable” and whether the applicant has offered “mitigation measures to minimize the impact to [such] resources.”¹⁹⁵

In the case at hand, as fully discussed above, we find that the impact of the Project on agricultural resources will be avoided and minimized to the maximum extent practicable, and that Garnet has agreed to appropriate avoidance and mitigation measures. We see no basis to depart from our previous decisions that this finding, based on the record in this case, represents full compliance with the Constitutional and statutory requirements to consider impacts on agricultural resources. The legislature enacted the CLCPA with full knowledge of the constitution and its previous laws, and all of these laws must be read together. Inasmuch as the Legislature in the CLCPA views fossil fuel induced climate change as an imminent threat to the flora and fauna of New York, elimination of farmland from consideration for renewable energy projects would threaten meeting the CLCPA goals.

F. Ground Water Resources

Garnet’s Application identifies groundwater at varying depths in the Project Area, from 2 to 23 feet, but notes that construction is not expected to impact this resource because the area beneath the solar arrays will remain pervious land cover allowing for continued infiltration of stormwater.¹⁹⁶ Approximately 436 acres of the Project Area is a principal aquifer identified by DEC and the U.S. Geological Survey. Temporary dewatering during construction will be undertaken if

¹⁹⁵ Garnet Reply Brief, pp. 48-49. See East Point Order, pp. 22, 31-32; High River Order, pp. 45, 47-49.

¹⁹⁶ Hearing Exhibit 354 (Updated Application Exhibit 23), pp. 2-3.

groundwater is intercepted.

1. Identification of Private Water Wells

Garnet identified in its Application existing groundwater wells within the Project area by researching State and Cayuga County information and distributing surveys to area landowners within a 500 foot radius of the Project Area. Public water wells are within 0.5 miles and 1.5 miles, respectively.¹⁹⁷ In addition, numerous active private wells were identified at depths of between 5 to 150 feet, which are assumed to be near residences and will be avoided during construction.

2. Minimization/Avoidance Measures

Garnet indicates that it does not expect any impacts to drinking water wells during construction, but will employ best management practices, erosion control, and other measures, which will be specified in the Storm Water Pollution Prevention Plan (SWPPP) issued by DEC as part of the SEEP Guide. In addition, Garnet will submit as a Compliance Filing a Spill Prevention, Containment and Control Plan and comply with its terms during construction.

We find that these comprehensive efforts will protect ground water resources and drinking water supplies and represent adequate minimization and avoidance measures to the maximum extent practicable.

G. Invasive Species

ECL Article 9 and 6 NYCRR Part 575 require that projects subject to State review be examined for any risks posed to the State's environment by invasive species, and that wherever practical, invasive species be prohibited and actively

¹⁹⁷ Hearing Exhibit 354 (Updated Application Exhibit 23), pp. 4-5, 8.

eliminated at project sites regulated by the State.¹⁹⁸

Garnet's application contains field studies documenting the extent of invasive species in the project area. In addition, a proposed Invasive Species Management and Control Plan (ISMCP) detailing procedures for handling and preventing the spread of invasive species was submitted on June 28, 2021.¹⁹⁹ DEC Staff has accepted the ISMCP and notes that it meets the standards set forth in 6 NYCRR 575.²⁰⁰

In addition, the parties have agreed to several proposed Certificate Conditions to further manage and control invasive species.²⁰¹ No party disputes the effectiveness of these Conditions and associated controls. Based on the record, we determine that the Project complies with ECL Article 9 and impacts related to invasive species have been minimized or avoided to the maximum extent practical.

H. Cultural, Historic, Archeological, and Recreational Resources – PSL §168(2)(c)

Garnet's Application identifies the Project's potential impacts on cultural, historic, archaeological and recreational resources. Cultural and historic resources of the Project Area during several periods include early exploration and contact with native Americans (Haudenosaunee Confederacy and the Cayuga and Seneca Nations) and Revolutionary War military tracts.²⁰² Portions of the Project Area consist of

¹⁹⁸ ECL §§9-1701, 9-1709(2).

¹⁹⁹ Hearing Exhibit 230 (Initial Application Exhibit 22), Appendix 22-6.

²⁰⁰ DEC Staff Initial Brief, pp. 26-27; Hearing Exhibit 395 (DEC Wetland and Streams Panel), p. 23.

²⁰¹ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Conditions 76, 78, 109, 116, 126.

²⁰² Hearing Exhibit 105 (Initial Application Exhibit 20), pp. 4-6.

archaeologically sensitive prehistoric resources, with 246 acres of high sensitivity, another 753 acres of moderate sensitivity, and 900 acres of low sensitivity.²⁰³ In addition, there are historic properties of architectural significance, none of which are expected to be physically affected by the Project, although there will be Project visibility from those resources.

In consultation with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), Garnet conducted Phases 1A and 1B surveys of archeological resources, including those resources with high or moderate sensitivity, and submitted the results of those surveys in a preliminary report for OPRHP review and comment.²⁰⁴

In its Phase 1B determination letter, OPRHP concluded that the Project would not have an adverse impact on archeological or historic resources if the proposed minimization and avoidance measures are implemented.²⁰⁵ These measures include Project design changes; the identification of environmentally sensitive locations on final design drawings; marking of sensitive resource locations in the field prior to construction; and a 50 foot buffer around known resources.²⁰⁶ In addition, Certificate Condition 82 requires Garnet to submit as a Compliance Filing a plan for implementation of Cultural Resources Protection Measures, which will also include an Unanticipated Discovery Plan.

Garnet's Initial Application acknowledges that if

²⁰³ Hearing Exhibit 105 (Initial Application Exhibit 20), pp. 3-4.

²⁰⁴ Hearing Exhibits 105, 210-213 (Initial Application Exhibit 20), Appendices 20-1 - 20-4.

²⁰⁵ Hearing Exhibit 297 (August 18, 2021 OPRHP Phase 1B Findings Letter).

²⁰⁶ Hearing Exhibit 105 (Initial Application Exhibit 20), p. 3.

avoidance of identified resources in areas of ground disturbance is not feasible, a Phase II assessment is warranted.²⁰⁷ We revise Certificate Condition 82 to include this requirement and delete the language allowing Garnet to avoid such impacts to the extent practicable, without a Phase II assessment. DPS Staff raised no issues associated with these resources and the proposed minimization and avoidance measures.²⁰⁸

Garnet's Initial Application also notes that recreational resources are found within the Project Area, including snow mobile and hiking trails.²⁰⁹ Garnet acknowledges that existing snow mobile trails "may need to be re-routed to allow for Project construction."²¹⁰ No Certificate Condition addresses this issue. Consequently, we add to Certificate Condition 82 the requirement that Garnet prepare and file a plan assessing the active seasonal or year-round use of snow mobile, hiking, and other recreational trails that may be impacted by the Project, and associated parking areas and driveways, and detail the measures to be taken to re-route or avoid any portion of same that may be affected by the Project's construction and

²⁰⁷ Hearing Exhibit 105 (Initial Application Exhibit 20), pp. 7-8.

²⁰⁸ Hearing Exhibit 391 (DPS Staff Settlement Panel), pp. 83-87.

²⁰⁹ Hearing Exhibit 356 (Updated Application Exhibit 24), p. 12; Hearing Exhibit 317 (Updated Application Exhibit 4), p. 19; Table 4-3.

²¹⁰ Hearing Exhibit 356 (Updated Application Exhibit 24), p. 12; Table 24-4. OPRHP's Statewide Comprehensive Outdoor Recreation Plan (2019 OPRHP Update), provides guidance for "recreation, resource preservation, planning, and development" and recommends restoring, enhancing and maintaining outdoor recreation systems accessible. Hearing Exhibit 89 (Application Exhibit 4), p. 34. The State's Open Space Conservation Plan (NYSDEC 2020) similarly sets forth the methodology for conserving recreational opportunities for the public. Hearing Exhibit 89 (Application Exhibit 4), pp. 32-33.

operation.

Based on the record and Garnet's compliance with the proposed Certificate Conditions, we find that the Project's potential impacts on cultural, historic, archeological and recreational resources have been adequately minimized or avoided to the maximum extent practicable.

I. Visual Impacts

Consistent with the Article 10 regulations, Garnet's Application includes a Visual Impact Assessment (VIA) that defines the extent of the Facility's visibility from area properties, roads, and resources, and identifies visual and aesthetic impacts.²¹¹ Garnet's VIA includes a visual study area within a five-mile radius of the Project and a Viewshed Analysis, Line of Sight Profiles, a Glare and Glint Analysis, and a Glare Mitigation Package.²¹² It also includes visually sensitive resources, viewshed mapping, confirmatory visual assessment fieldwork, visual simulations (photographic overlays with and without Project components) and the appearance of the Facility upon completion, and proposed visual impact mitigation. The VIA also describes the character and visual quality of the existing landscape and affected areas, topography, physiography and landforms, waterbodies, vegetation, roads, farms, land use patterns, and hamlets and villages.²¹³

The VIA assumes solar panels of 11 feet in height, although the solar arrays may reach 18 feet in height.²¹⁴ It

²¹¹ 16 NYCRR §1001.24.

²¹² Hearing Exhibits 109, 236-248, 355-356, 258 (Initial and Updated Application Exhibit 24 and Appendices).

²¹³ Hearing Exhibits 109, 236-248, 355-356 (Initial and Updated Application Exhibit 24 and Appendices).

²¹⁴ Hearing Exhibit 355-356 (Updated Application Exhibit 24), p. 2.

utilized a Light Detection and Ranging point cloud data methodology from the 2018 New York dataset for Cayuga and Oswego Counties in rating visual impacts at various locations throughout the Project Area.²¹⁵ The visual impact ratings are based upon the concepts, applications, guidance and methodologies used by several federal agencies and the rating results are reported for various locations throughout the Project Area, including scenic areas, forest lands, parks, historic sites and districts.²¹⁶

Garnet's January 2022 Updated Application includes revisions to the VIA including the addition of 13.8 acres of panels and a revised Project layout that reduces the Project Area from 512 acres to 327 acres and the Project's fencing from 1,054 acres to 901 acres.²¹⁷ The VIA claimed to have minimized the overall visual impacts of the Project by 0.26 square miles. Garnet also updated its Viewshed Analysis, identifying a new visible area of 5.3 acres extending into an open field near

²¹⁵ Hearing Exhibits 355-356 (Updated Application Exhibit 24), pp. 44-45; 48-61, Tables 24-4, 24-5, and 24-6.

²¹⁶ Hearing Exhibit 109 (Updated Application Exhibit 24), pp. 58-59. Garnet cites the work of its consultants, TRC, in developing the visual impact rating form for use when comparing Project photo-simulations, which is based on the U.S. Department of Interior, Bureau of Land Management Handbook H-8431: Visual Contrast Rating (January 1986); the U.S. Army Corps of Engineers Visual Resources Assessment Procedure (Smardon, et al. March 1988); National Park Service Visual Resources Inventory View Importance Rating Guide (2016c); and the U.S. Department of Agriculture, National Forest Service, Landscape Aesthetics Handbook 701 for Scenery Management (1995).

²¹⁷ Hearing Exhibit 315 (Updated Application Summary), §2.6; Hearing Exhibit 355-358 (Updated Application Exhibit 24), VIA and Updated Layout, Figure 24-1 and Insert 1. Garnet indicates that the addition of 13.8 acres of solar arrays in the Updated Application is in an area not visible to existing landowners.

Schooley Road, which Garnet indicates is not expected to be visible because there are no existing residences in the area and a nearby forested area precludes views of the added arrays.²¹⁸ Garnet also proposes "reduced tree clearing" as a result of the Project layout update and refers to changes to the Landscape Plan. Garnet does not include changes to the initial Landscape Plan as part of the Updated Application, however.

Garnet also conducted a Glint and Glare Analysis, which calculated solar intensity according to the Sandia National Laboratories' Federal Aviation Administration methodology. Solar intensity is a measure of the intensity of reflections from solar panels in comparison to other naturally occurring surfaces (e.g., water bodies) and manmade surfaces (e.g., steel and glass structures).²¹⁹ The Glint and Glare Analysis demonstrates that solar panel reflections are "geometrically possible" for 149 of 167 modeled dwelling receptors, but that no mitigation was required for 142 receptors because of vegetation, terrain, dwellings, buildings, screening, and separation distance.²²⁰ Garnet noted, however, that "mitigation has been recommended for seven dwellings and three sections of Cayuga County Route 17B where a moderate impact was predicted and [f]or one section of road located along Cayuga County Route 17B, a high impact has been predicted and

²¹⁸ Hearing Exhibits 315 (Updated Application Summary), §2.6; Hearing Exhibits 355-356 (Updated Application Exhibit 24), p. 58; Hearing Exhibits 236-246 (VIA with Viewshed Analysis), pp. 43-65; Hearing Exhibit 358, Figure 24-2 (Line of Sight Profile).

²¹⁹ Hearing Exhibit 247 (Initial Application Exhibit 24: Glint and Glare Analysis), Appendices 24-2.

²²⁰ Hearing Exhibit 247 (Initial Application Exhibit 24: Glint and Glare Analysis), Appendix 24-2, p. 4.

mitigation is required.”²²¹ The Glint and Glare Analysis presents a mitigation strategy that includes screening and changes to the Project’s configuration and refers to the Glare Mitigation Package submitted as part of Application Exhibit 24.²²²

Garnet’s Updated Application Exhibit 24 indicates that it will implement visual mitigation “to the maximum extent practicable.”²²³ It also indicates that solar arrays were removed in the area of high impacts along County Route 17B.²²⁴ For the remaining receptors and areas impacted (e.g., seven dwellings and three sections of Route 17B), Garnet proposes to mitigate through the installation of landscape buffers, again “to the maximum extent practicable,” but does not define what that means or include the specific measures that are intended for visual mitigation.²²⁵

For example, in the Glint and Glare Study, Garnet indicates that it will implement a mitigation strategy that includes landscape screening and refers to the Glare Mitigation Package. The Glare Mitigation Package is comprised of maps that do not provide sufficient information necessary to determine the

²²¹ Hearing Exhibit 247 (Initial Application Exhibit 24: Glint and Glare Analysis), Appendix 24-2, pp. 3-4; 102-106.

²²² Hearing Exhibit 248 (Initial Application Exhibit 24: Glare Mitigation Package), Appendix 24-3.

²²³ Hearing Exhibits 355-356 (Updated Application Exhibit 24), pp. 39, 65 (“where there are potential residence views of the Project, the Applicant has also proposed vegetative mitigation for those nearby residences in order to screen and minimize views of the Project to the maximum extent practicable.”)

²²⁴ Hearing Exhibits 315, 355-356 (Updated Application Summary), §2.6.

²²⁵ Hearing Exhibits 355-356 (Updated Application Exhibit 24), pp. 39, 65.

actual visual mitigation measures that Garnet will implement at the seven dwellings and three sections of County Route 17B identified as impacted receptors in the Glint and Glare Analysis.²²⁶

Certificate Condition 66 and the Preliminary Landscape Plans (Appendix 11-2)²²⁷ referenced in that Condition are also a series of maps that fail to adequately clarify the mitigation and screening measures for the identified receptors and does not demonstrate that such measures will effectively minimize and avoid visual impacts to the maximum extent practicable, particularly once site preparation, including tree and vegetation clear-cutting, commences.²²⁸

Although Certificate Condition 66(g) requires the submission of a Final Planting Plan as a Compliance Filing, that Condition leaves open the specifics of what will be included in the Planting Plan. This approach is insufficient and is not consistent with the Siting Board's obligation to determine prior to Certificate issuance that all identified visual impacts will

²²⁶ Hearing Exhibit 248 (Initial Application Exhibit 24), Appendix 24-3. The Glare Mitigation Plan shows the latitude and longitude of vegetative buffer and screen mitigation at various points in the Project Area, but fails to specify the identified receptors in need of such buffers and screening, as recommended in the Glint and Glare Analysis. In short, the record does not include information that addresses specific mitigation measures for these receptors.

²²⁷ Hearing Exhibits 184-185 (Initial Application Exhibit 24), Appendix 11-2.

²²⁸ Hearing Exhibits 184-185 (Initial Application Exhibit 11: Preliminary Landscape Plans), Appendix 11-2. Although Certificate Condition 94 provides that tree and vegetation clearing "shall be limited to the minimum necessary for Facility construction," the Tree Clearing and Grading Compliance Filing submitted as part of the required SEEP documents will "specify [tree and] vegetation protection measures" for areas necessary for visual screening and should provide greater details to achieve such screening.

be minimized or avoided to the maximum extent practicable.

In its opposition to the Settlement Proposal, Rural Preservation urges that additional minimization and avoidance measures should be required, including removal of solar arrays, minimum setbacks from non-participating property lines, and/or construction of a ten-foot berm with mature plantings.²²⁹ Rural Preservation presented the testimony of three residents expressing concern about the visual impacts of the Project on their properties and on the community.²³⁰ Two witnesses included documentary evidence reflecting the Project's close proximity to their property lines and requested 500-foot setbacks and adequate landscape screening.

In light of the foregoing, we have concerns regarding how the Project's visual impacts on receptors identified in the Updated Application, as well as on Rural Preservation's non-participating property owners, will be addressed. There is

²²⁹ Rural Preservation Brief, pp. 80-81. Rural Preservation also requests that the Siting Board consider witness Lillie's two parcels as one, non-participating residential property for setback purposes in proposed Certificate Condition 64. We have reviewed Rural Preservation's submission of a document issued by the Superintendent of the Sole Supervisory District of Cayuga and Onondaga Counties that recites issuance of an order altering the school district boundary lines, which Rural Preservation claims to support its position with respect to the Lillie parcels setbacks. A change in a school district boundary line does not change two separate parcels into one for purposes of the applicable setback, whereby residential properties are afforded a 250 foot setback and non-residential properties are afforded a 100 foot setback. Although this document was made a part of the record through official administrative notice, we find nothing in it that changes the fact that only one parcel - not both - can be considered a residential property. We therefore reject Rural Preservation's argument in this regard.

²³⁰ Hearing Exhibits 368-379 (Testimony and Exhibits of Rural Preservation Witnesses Eugene Moretti, Brenda Bramble, and Peggy Lillie).

insufficient support in the record to assure that visual impacts will be minimized and avoided to the maximum extent practicable. Consequently, we are requiring Garnet to submit as a Compliance Filing a Visual Impact Mitigation Plan containing more specificity with respect to the measures that will be implemented to minimize/avoid to such impacts to the maximum extent practicable for both the receptors identified in its own VIA and the properties identified by Rural Preservation witnesses (Moretti, Bramble and Lilli). We hereby amend Certificate Condition 66 to require this Compliance Filing and direct that it be made in consultation with DPS Staff.

Based on the record, including the Updated Application, the final proposed layout, and our modifications to Certificate Condition 66 requiring more specific visual mitigation measures, we find that the Project as proposed will avoid or minimize the Project's visual impacts to the maximum extent practicable.

VI. SOCIOECONOMIC EFFECTS

The record supports our finding that the Project will have socioeconomic benefits. For example, Garnet presented testimony addressing the Project's socioeconomic impacts, used detailed cost information, and included the results of the Jobs and Economic Development Impact (JEDI) model, which provided estimates of both direct and indirect economic benefits resulting from the Project.²³¹ Approximately 228 fulltime equivalent jobs are expected to be created during construction, with a payroll of \$25.6 million; and an additional 52 full time equivalent jobs, with a \$5.2 million payroll, will be created over the 30-year life of the Project for operations and

²³¹ Hearing Exhibit 112 (Application Exhibit 27), pp. 8-12; Hearing Exhibit 419 (Garnet Rebuttal Panel), pp. 122-124.

maintenance responsibilities. DPS Staff does not dispute these estimates.²³²

Rural Preservation challenges the results of the JEDI model, asserting that the estimates are based on "behavioral assumptions" where labor will be sourced and materials and equipment purchased.²³³ Garnet counters that it took a conservative approach in the JEDI model, whereby no spending on supplier contracts in New York was assumed in the projected, estimated benefits. Thus, Garnet urges, any purchasing within the State would only increase the direct and indirect benefits set forth in the JEDI model.²³⁴

Rural Preservation has not provided record evidence to refute Garnet's position. We therefore reject Rural Preservation's objection in this regard and find, based on the record, that the Project will have direct and indirect socioeconomic benefits.

VII. PUBLIC HEALTH, SAFETY, AND SECURITY

A. Safety, Security and Emergency Response

With the exception of Rural Preservation,²³⁵ no party raised issues with respect to the provisions of Garnet's Application and the proposed Certificate Conditions related to safety, security and emergency response. Garnet's Application Exhibit 18 includes, as required by our regulations,²³⁶

²³² Hearing Exhibit 391 (DPS Staff Settlement Panel), pp. 43-45.

²³³ Hearing Exhibit 380 (Rural Preservation Socioeconomic Expert Witness Kent Gardner), pp. 8-10.

²³⁴ Hearing Exhibit 419 (Garnet Rebuttal Panel), p. 123.

²³⁵ Rural Preservation raised a concern with Garnet's study of potential glare along local roads. Rural Preservation Initial Brief, p. 86-87. This issue is discussed supra in the section of this Order dealing with visual impacts.

²³⁶ 16 NYCRR §1001.18.

provisions for cyber and physical security, a safety response plan and a health and safety plan.²³⁷ Garnet does not anticipate the need for electronic security or surveillance during construction, but will utilize fencing and locked gates around laydown and storage areas, as necessary.²³⁸ Application Exhibit 18 also outlines emergency response measures and actions that apply to emergencies during construction and operation. A final Emergency Response Plan will be filed as a Compliance Filing and reviewed with local first responders.²³⁹ The proposed emergency response measures are consistent with other Article 10 cases.²⁴⁰

We concur with DPS Staff's finding that "adequate safety and security plans will be prepared to ensure that the Project will be constructed and operated safely and securely."²⁴¹

B. Construction and Operation - Town of Conquest and Rural Preservation Issues

The Town and Rural Preservation raise a number of issues in their briefs requesting changes to the Settlement Proposal²⁴² with respect to construction and operation. First, the Town requests a modification to proposed Certificate Condition 22 to provide the contact information for the Operations Manager within three months of commencement of

²³⁷ Hearing Exhibit 103 (Initial Application Exhibit 18: Safety and Security).

²³⁸ Hearing Exhibit 196 (Appendix 18-1: Site Security Plan); Hearing Exhibit 278 (Updated Application Summary/Exhibit 18), p. 3.

²³⁹ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Condition 58; Hearing Exhibit 103 (Initial Application Exhibit 18); Hearing Exhibit 196 (Application Appendix 18-1: Site Security Plan).

²⁴⁰ Excelsior Order, pp. 58-60, Certificate Condition 60; Treline Order, Certificate Condition 58.

²⁴¹ DPS Staff Initial Brief, p. 31.

²⁴² Hearing Exhibit 390 (Final Settlement Proposal).

construction, rather than prior to the end of construction.²⁴³ Garnet responds that this information may not be known so early in the construction schedule and that the Town has shown no need for this information prior to operation.²⁴⁴ We will adopt a compromise. The contact information for the operations manager should be known before operations begin, and we direct Garnet to provide this information to the relevant entities including the Town no later than 14 days before operations commence.

Next, the Town seeks a revision to proposed Certificate Condition 36 to require the filing of all building plans with the Town to review for compliance with the New York State Uniform Fire Prevention and Building Code.²⁴⁵ Garnet responds that the proposed Certificate Condition appropriately gives Garnet the option of either filing the plans with the Town or hiring a qualified engineering firm to certify compliance, but agrees "to share the building plans with the Town and seek their timely input before their certification and filing with the Secretary in the event it chooses the certification option."²⁴⁶

We reject Garnet's position that it may hire its own person to review and certify compliance with the Project's building plans and revise Certificate Condition 36 accordingly, as requested by the Town. Garnet is required to file the complete building plans with the Town, whose Code Enforcement Officer is responsible for reviewing and approving such plans, inspecting construction work, and certifying compliance.

²⁴³ Town Initial Brief, p. 3.

²⁴⁴ Garnet Reply Brief, p. 76.

²⁴⁵ Town Initial Brief, p. 3.

²⁴⁶ Garnet Reply Brief, p. 76.

The Town also requests that Garnet be directed to report all complaints to the Town.²⁴⁷ Garnet responds that the complaint proposal might violate complainants' privacy, that such a condition has not been imposed in some prior cases, that the Town has no authority to resolve complaints and that the complainants are free to share their complaints with the Town.²⁴⁸ We find that the Settlement Proposal is sufficient to address the Town's concerns about complaints. The proposed Guidance for the Development of a SEEP requires Garnet to develop a Complaint Resolution Plan, which must include "Logging and tracking of all complaints received, and resolutions achieved and making access by the Town of Conquest and NYSDPS to the complaint log upon request except that confidential information will be protected and not disclosed." In addition, Garnet must notify the Town of any complaints not resolved within 60 days of receipt.²⁴⁹

The proposed Complaint Resolution Protocol also requires Garnet to maintain a complaint log with the details of each complaint and to make the log available to the Town upon request. Garnet must further notify the Town if Garnet and the complainant do not agree to a resolution of a noise complaint.²⁵⁰ We find that these provisions adequately protect complainants' privacy and provide the Town with appropriate notice in the event of unresolved complaints.

Rural Preservation requests that the Final Complaint Resolution Plan, required by proposed Certificate Condition

²⁴⁷ Town Initial Brief, p. 3.

²⁴⁸ Garnet Reply Brief, pp. 76-77.

²⁴⁹ Hearing Exhibit 390 (Final Settlement Proposal), Appendix A, p. 13.

²⁵⁰ Hearing Exhibit 390 (Final Settlement Proposal), Appendix B, p. 2.

49,²⁵¹ be designated a Compliance Filing rather than an Information Report, so that it will be available to all Parties for review and comment.²⁵² Garnet responds that this requirement is inconsistent with recent Article 10 proceedings.²⁵³ We do not consider our previous cases, in which this issue was not litigated, dispositive of the matter. We see no reason why Rural Preservation should not have an opportunity to review and comment on the Final Complaint Resolution Plan as a Compliance Filing, given its interest. We grant Rural Preservation's request and modify Certificate Condition 49 accordingly.

Rural Preservation also requests that the log be made a public document and that it be provided to DPS Staff and the Town on a monthly basis.²⁵⁴ Garnet responds that this request is unnecessary and inconsistent with other Article 10 proceedings.²⁵⁵ We do not grant this request. We are concerned with complainants' privacy, and making the complaint log a public document could have a chilling effect on complaints, especially those that can be resolved between Garnet and the complainant without any further issues. We also see no reason to require Garnet to send monthly copies of the complaint log to DPS and the Town. We accept the proposed language in Certificate Condition 51 that the complaint log will be emailed to DPS Staff or the Town within seven business days upon request.

²⁵¹ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Condition 49.

²⁵² Rural Preservation Initial Brief, p. 93.

²⁵³ Garnet Reply Brief, p. 72.

²⁵⁴ Rural Preservation Initial Brief, p. 93.

²⁵⁵ Garnet Reply Brief, p. 72.

Next, the Town requests service of any and all Compliance Filings on the Town.²⁵⁶ Garnet does not respond to this request. We find that there is no need for language on this point, because the Town is a party to this proceeding and will be served with all Compliance Filings and Information Reports filed by the Applicant.

The Town further requests substantially larger setbacks than those provided in proposed Certificate Condition 64,²⁵⁷ specifically, a 100-foot setback to the edge of a public right of way, a 500 foot setback from any nonparticipating residence, a 250 foot setback to nonparticipating residential property lines, and a 100 foot setback to nonparticipating nonresidential or vacant property lines.²⁵⁸ Rural Preservation proposes 500 foot setbacks from any non-participating property line, and also agrees with the Town's proposed setbacks as a minimum.²⁵⁹ The Town argues that its proposals "are consistent with present day setbacks" and that the setbacks would help the town in the future development of its zoning laws, rules and regulations and a comprehensive plan.²⁶⁰

Rural Preservation argues that its proposal would ensure minimal visual impacts on non-participating residences and would encourage Garnet to enter into participation agreements with the non-participating owners.²⁶¹ Garnet responds that it fully complies with and is not seeking any waiver of the Town's existing setback requirements, that the parties offer no

²⁵⁶ Town Initial Brief, p. 3.

²⁵⁷ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Condition 64.

²⁵⁸ Town Initial Brief, pp. 3-4.

²⁵⁹ Rural Preservation Initial Brief, p. 94.

²⁶⁰ Town Initial Brief, p. 4.

²⁶¹ Rural Preservation Initial Brief, p. 94.

expert evidence to support their proposals, and that future changes to the Town's local laws are speculative and irrelevant because they have not been adopted.²⁶²

We find that the Town's and Rural Preservation's setback requests are arbitrary because they are unsupported by the record. We agree with Garnet that there is no basis either in the record or in the Town's existing laws for their proposed additional setback distances, and that the impact of such a major re-engineering of the Project could jeopardize Garnet's ability to comply with its contracted electricity production requirements. We concur with DPS Staff's testimony that the Project layout avoids or minimizes impacts, including visual and land use to the maximum extent practicable.²⁶³

Next, the Town requests a timber salvage plan with detailed descriptions of the locations and amounts of forest land to be cleared and a plan for mitigation of adverse environmental impacts resulting from the loss of forest habitat.²⁶⁴ Rural Preservation joins in this request.²⁶⁵ Garnet responds that the requested information will already be provided in proposed Certificate Conditions 72, 82 and 94.²⁶⁶ We agree with Garnet that the proposed Certificate Conditions adequately address the Town's concern. In particular, proposed Certificate Condition 94 requires Garnet, as part of the compliance process, to limit tree and vegetation clearing "to the minimum necessary

²⁶² Garnet Reply Brief, pp. 77-78.

²⁶³ Hearing Exhibit 391 (DPS Staff Settlement Panel), pp. 35-36, 38.

²⁶⁴ Town Initial Brief, pp. 4-5.

²⁶⁵ Rural Preservation Initial Brief, p. 94.

²⁶⁶ Garnet Reply Brief, p. 79, referring to Hearing Exhibit 390 (Final Settlement Proposal), Certificate Conditions 72, 82 and 94.

for Facility construction" and to file documents, including a Tree Clearing and Grading Compliance Filing, that "shall indicate limits of tree and vegetation clearing, and also specify vegetation protection measures to avoid disturbance of vegetated areas necessary for visual screening." As discussed above, these Compliance Filings will be served on the Town, and all parties will have an opportunity to raise any objections they may have as part of the compliance process.

Finally, the Town objects to the proposed hours of permitted construction activity -- 7:00 a.m. to 7:00 p.m. Monday through Saturday and 8 a.m. to 7 p.m. on Sunday.²⁶⁷ The Town proposes construction work hours of 9:00 a.m. to 7:00 p.m. on Saturday, and no work on Sundays. Rural Preservation proposes construction hours of 8:00 a.m. through 5:00 p.m., with no work on Saturday or Sunday.²⁶⁸ Garnet responds that these hours and days have been approved repeatedly by the Siting Board.²⁶⁹ However, the Siting Board orders cited by Garnet do not extend to work on Sundays.²⁷⁰ We accept Garnet's argument that unnecessarily restricting construction hours is likely to be

²⁶⁷ Town Initial Brief, p. 5, referring to Hearing Exhibit 390 (Final Settlement Proposal), Certificate Condition 90.

²⁶⁸ Rural Preservation Initial Brief, p. 95.

²⁶⁹ Garnet Reply Brief, pp. 74, 79.

²⁷⁰ Garnet Reply Brief, pp. 74, 79, n. 28, n. 29. In support of its position, Garnet cites Case 19-F-0366, Trelina Order, Certificate Conditions 88, 89 (allowing construction 7 a.m. to 7 p.m., Monday through Saturday); Case 17-F-0617, Hecate Albany Order, Certificate Condition 77 (allowing construction 7 a.m. to 6 p.m. Monday through Saturday); Case 17-F-0597, High River Order, Certificate Conditions 83, 84 (allowing construction 7 a.m. to 7 p.m. Monday through Saturday); and Case 17-F-0599, East Point Solar Order, Certificate Conditions 84, 85 (allowing construction 7 a.m. to 7 p.m. Monday through Saturday). Notably, none of these orders allow construction on Sundays.

more rather than less intrusive to the local community, because shortened hours would require a longer period of construction. We also find that a work period from 7:00 a.m. to 7:00 p.m. is consistent with our prior decisions. Balancing these considerations, and in accordance with the cases cited by Garnet, we allow construction activities for this Project from 7:00 a.m. to 7:00 p.m. Monday through Saturday, but we disallow the proposed work hours on Sunday. We also revise Certificate Condition 91 to provide a process for notice and consultation with DPS Staff and the Town in the event that the Certificate Holder seeks to extend the construction hours authorized in this Order, which allows for conditions and limitations to be imposed on any such extension.

C. Decommissioning, Site Restoration and Financial Security

As required by our regulations,²⁷¹ Garnet filed a plan for decommissioning and restoration of the Facility site, the provision of necessary funding and a schedule for decommissioning and restoral activities.²⁷² Additional safeguards and requirements are contained in proposed Certificate Condition 57, including the requirement to submit a final decommissioning plan as a Compliance Filing, and proof of a letter of credit to be held by and for the benefit of the Town to provide financial security for all costs of decommissioning.²⁷³ DPS Staff testified the Certificate Conditions and decommissioning plan are consistent with DPS

²⁷¹ 16 NYCRR §1001.29.

²⁷² Hearing Exhibit 114 (Application Exhibit 29); Hearing Exhibit 259 (Application Appendix 29-1) (Decommissioning Plan).

²⁷³ Hearing Exhibit 390 (Final Settlement Proposal), Condition 57.

Staff's position in prior cases and with prior Siting Board Orders.²⁷⁴

The only issues raised by the parties with respect to decommissioning are AGM Staff's position that it is likely to be impossible to return the land to agricultural use, and Rural Preservation's position that the phrase "to the maximum extent practicable" should be removed from the requirement for Garnet to follow the AGM Solar Guidelines in its planning, construction and mitigation activities. These issues are addressed in the section of this Order supra regarding agricultural decommissioning issues and the unequivocal requirement that Garnet comply with AGM's Solar Guidelines, subject to further consultation with DPS Staff and AGM Staff. Given our decision in that section of the Order, and based on the record, we approve the provisions of the Settlement Proposal on decommissioning, site restoration, and financial security with minor adjustments.²⁷⁵

We note that the requirement to comply with AGM's Solar Guidelines and any other aspect of the Certificate is not

²⁷⁴ Hearing Exhibit 391 (DPS Staff Settlement Panel), p. 73.

²⁷⁵ The adjustments to the Certificate Conditions include a clarification that the decommissioning agreement with the Town must be executed and a letter of credit in place prior to commencement of "construction activities," which includes site preparation under PSL §162(1). This protects the Town in the event of Garnet's default or bankruptcy between the commencement of site preparation and the due date for the filing of the final Decommissioning Plan with proof of financial security, which is required "prior to the commencement of construction (including solar panel and other permanent facility installations)." We also delete unnecessary language that calls for the "respective percentage share of the letter of credit" because only the Town of Conquest will hold same and have the conditional right to draw on it.

one that is subject to Garnet's sole determination of practicability in the field. In other words, this and any other Certificate Condition that gives Garnet the option to determine practicability at a later time is contrary to our policy of assuring certainty in the implementation of Certificate Conditions during construction and operation of a facility.

D. Noise, Vibration and Electromagnetic Fields

Except indirectly with respect to the issue of permitted working hours during construction, which is addressed supra in the section of this Order on construction and operation issues, no party took issue with Garnet's evidence and the proposed Certificate Conditions on the topics of noise, vibration or electromagnetic fields.

Garnet modeled the prediction of sound impacts from all Project components operating simultaneously at maximum capacities,²⁷⁶ and the worst-case levels were at or below the sound limits agreed to in proposed Certificate Condition 83(b).²⁷⁷ These requirements include limits of 45dBA Leq-1-hour outside at any permanent or seasonal non-participating residences and 50 dBA Leq-1-hour outside any participating residence, with additional limits specified for substation transformers and for any portions of non-participating property. The Settlement Proposal also includes a Noise Complaint Resolution Protocol, which contains detailed procedures for the resolution of noise complaints.²⁷⁸ No party challenged these proposals.

²⁷⁶ Hearing Exhibit 104 (Application Exhibit 19); Hearing Exhibit 332 (Noise and Vibration Memo).

²⁷⁷ Hearing Exhibit 390 (Final Settlement Proposal), Condition 83.

²⁷⁸ Hearing Exhibit 390 (Final Settlement Proposal), Appendix B.

As stated in Garnet's Application, ground-borne vibration is not an issue in solar projects.²⁷⁹ Garnet provided evidence based on modeling that the Project will meet ANSI standards for air-borne induced vibration.²⁸⁰ No party challenged these conclusions.

Garnet analyzed the potential for electromagnetic radiation from all elements of the Project, including the Project's underground collection circuits and the transmission line connection from the Project switchyard to the existing Clay-Pannell transmission line. Garnet concluded that electromagnetic radiation from solar panels is consistent with household levels and that all projected electromagnetic levels are well within the Commission's guidelines.²⁸¹ No party challenged these conclusions.

DPS Staff testified that the Facility as proposed by Garnet and as limited by the proposed Certificate Conditions would avoid, minimize or reasonably offset the potential for the Project to result in adverse impacts in the areas of noise and electromagnetic fields, and that environmental impacts will be minimized to the maximum extent practicable.²⁸² We accept these conclusions and find that the potential impacts of the Project on noise, vibration and electromagnetic radiation have been avoided or minimized to the maximum extent practicable.

²⁷⁹ Hearing Exhibit 104 (Application Exhibit 19), p. 18.

²⁸⁰ Hearing Exhibit 104 (Initial Application Exhibit 19), pp. 18, 32.

²⁸¹ Hearing Exhibit 120 (Initial Application Exhibit 35), pp. 3-4; Hearing Exhibit 264 (Initial Application Appendix 35-1).

²⁸² Hearing Exhibit 391 (DPS Staff Settlement Panel), pp. 35-36, 38, 65-68.

VIII. INFRASTRUCTURE IMPACTS: TRANSPORTATION,
COMMUNICATIONS, AND UTILITIES - 168(2)(d)

The Siting Board is required to evaluate the Project's impacts on infrastructure prior to Certificate issuance. No party raised an issue regarding infrastructure impacts of the Project. DPS Staff testified that the proposed Certificate Conditions avoid, minimize or reasonably offset the potential for adverse impacts on transportation and communication and minimize all environmental impacts to the maximum extent practicable.²⁸³

With respect to transportation, Garnet provided evidence that its construction-related vehicles will have minimal impact to the traveling public.²⁸⁴ Garnet has agreed to coordinate with local school districts to avoid potential impacts and delays to bus routes during construction, and with local emergency service providers with respect to possible road closures, expected site work and numbers of workers. Garnet will also obtain all applicable State roadway permits and will seek to negotiate Road Use Agreements with the Town and County as applicable.²⁸⁵ Garnet will submit a Traffic Control Plan in a Compliance Filing prior to construction, which will specify the local, county and state roads to be used as delivery routes and will file all necessary transportation permits prior to construction.²⁸⁶ Garnet will conduct an engineering survey of road conditions prior to construction and will repair any

²⁸³ Hearing Exhibit 391 (DPS Staff Settlement Panel), pp. 35-36, 38.

²⁸⁴ Hearing Exhibit 110 (Application Exhibit 25), pp. 11-28.

²⁸⁵ Hearing Exhibit 110 (Application Exhibit 25), pp. 27-30.

²⁸⁶ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Conditions 37, 63.

extraordinary damage or over-run caused by its vehicles, and maintain roads in good working condition during construction.²⁸⁷

With respect to communications, Garnet made a detailed review of FCC license data and other databases to evaluate potential impacts on TV, radio, cellular and microwave radio communications. Garnet consulted with the Cayuga County Sheriff's Department and the New York State Division of Homeland Security and Emergency Services to inform those agencies about the Project and to identify any concerns. No concerns were identified. We accept Garnet's evidence that the Project is not anticipated to interfere with existing communications systems.²⁸⁸ If any issues develop in the future, they will be addressed by the complaint resolution process.²⁸⁹

With respect to utilities, Garnet identified all potentially affected utilities, and determined that its collection facilities will cross the rights of way of a New York Power Authority transmission line, the Empire Pipeline, and a number of electrical distribution lines.²⁹⁰ Garnet agreed to coordinate with all affected utilities, cross existing utilities at 90-degree angles and use directional boring where complete avoidance of underground facilities is not possible.²⁹¹ The proposed Certificate Conditions provide additional safeguards, including notifications, coordination plans, the filing of any necessary crossing agreements and protection of New York Power Authority power system relay protection and appropriate

²⁸⁷ Hearing Exhibit 110 (Application Exhibit 25), p. 39.

²⁸⁸ Hearing Exhibit 111 (Application Exhibit 26), p. 1.

²⁸⁹ Hearing Exhibit 111 (Application Exhibit 26), p. 14; Hearing Exhibit 390 (Final Settlement Proposal), Certificate Condition 50.

²⁹⁰ Hearing Exhibit 97 (Application Exhibit 12), p. 7.

²⁹¹ Hearing Exhibit 111 (Application Exhibit 26), pp. 10-13.

communication capabilities.²⁹² We accept Garnet's showing and the proposed Certificate Conditions.

In conclusion, we find that impacts to transportation, communication and utilities have been avoided or minimized to the maximum extent practicable.

IX. COMPLIANCE WITH SUBSTANTIVE STATE/LOCAL LAWS AND REGULATIONS – PSL §168(3)(e)

PSL §168(3)(e) addresses the applicability of State and local substantive and procedural legal requirements for the construction and operation of a proposed major electric generating facility under Article 10. Before issuing a certificate under PSL Article 10, we must find that construction and operation of the Project will comply with all applicable substantive State and local laws.²⁹³ An applicant may request that the Siting Board elect not to apply a local substantive requirement because it is unreasonably burdensome in view of the existing technology or the needs of, or costs to, ratepayers.²⁹⁴

With certain exceptions, PSL §§168(3)(e) and 172(1) preempt State and local procedural requirements that otherwise would be applicable, unless the Siting Board expressly authorizes the enacting local authority to exercise such procedural requirements.²⁹⁵

²⁹² Hearing Exhibit 390 (Final Settlement Proposal), Certificate Conditions 18, 19, 37, 38 and 40.

²⁹³ PSL §168(3)(e); 16 NYCRR §1001.31.

²⁹⁴ 16 NYCRR §1001.31(d)-(e). Procedural local laws are supplanted by Article 10, PSL §172.

²⁹⁵ See also 16 NYCRR §1001.31(a).

A. Compliance with State Law

Garnet asserts that it is or will be in full compliance with all relevant State laws.²⁹⁶ Any State permits required in addition to the Siting Board's Article 10 approval, such as a State Pollution Discharge Elimination System permit or a DOT permit will be obtained by Garnet as required by the proposed Certificate Conditions.²⁹⁷

The parties raise three issues regarding State law compliance: (1) DEC Staff objects to a number of proposed Certificate Conditions that limit environmental protections to only to regulated mapped, but not to DEC-jurisdictional unmapped, wetlands and argues that State law provides equal protection to both;²⁹⁸ (2) the Town asserts that the lack of an ad hoc member on the Siting Board caused the Board to be improperly constituted pursuant to PSL Article 10;²⁹⁹ and (3) AGM Staff asserts that the Project violates Article 25-AA §§300, 301, and 321 of the Agriculture and Markets Law, which establish the policy of the State to conserve, protect and encourage the development and improvement of agricultural land.³⁰⁰

With respect to DEC Staff's argument regarding unmapped wetlands, we concur with this argument as fully discussed in the section of this Order supra on wetlands. As we state above, in our recent North Side order we determined that unmapped wetlands are subject to the same protections as mapped wetlands, and we therefore revised applicable Certificate

²⁹⁶ Hearing Exhibit 113 (Application Exhibit 32), pp. 1-5; tables 32-1 and 32-2.

²⁹⁷ Hearing Exhibit 390 (Final Settlement Proposal), Certificate Conditions 36, 37, 41 and 47.

²⁹⁸ DEC Staff Initial Brief, pp. 9-10, 28-29.

²⁹⁹ Town Initial Brief, pp. 5-6.

³⁰⁰ AGM Staff Initial Brief, pp. 12-13.

Conditions to eliminate the reach of those Conditions to only regulated, mapped wetlands, as DEC Staff requests. In light of our findings with respect to wetlands and our revisions to the proposed Certificate Conditions, we find that the Project as designed will comply with ECL Article 24 and the implementing regulations.

With respect to the Town's complaint regarding the lack of an ad hoc member, an ad hoc member was appointed but subsequently resigned, as noted above in the procedural history of this case. Garnet argues that there is no requirement in Article 10 to have an ad hoc member at the time of the Siting Board's decision. To the contrary, Garnet argues, PSL §160(4) provides for the permanent members of the Siting Board, and PSL §168(1) authorizes the Siting Board to make a final decision. We agree with Garnet on this issue. Although Article 10 provides for the appointment of ad hoc members, there is nothing in Article 10 that requires the ad hoc member to be a part of the decision-making in an Article 10 proceeding or that divests the Siting Board of its authority if there are no ad hoc members at the time of the decision.

With respect to AGM's position on violation of the Agriculture and Markets Law, we reject the argument that the Project violates State agricultural laws, as fully discussed supra in the section of this Order on agricultural issues. Section 301 of the Agriculture and Markets Law discusses the State policy to avoid to the maximum extent practicable the use of agricultural land for purposes inconsistent with agricultural production, but it does not prohibit activities or uses and does not require a permit of activities. As we have determined in other Article 10 cases, the use of agricultural lands for a solar facility allows the return of such lands to agricultural production. Based on the record here, the Project's impacts to

the agricultural land have been adequately minimized and avoided to the maximum extent practicable.

B. Compliance with Setback Requirements and Other Local Laws

Garnet asserts that the Project will comply with all substantive local laws and does not seek any waivers of such laws from the Siting Board.³⁰¹ DPS Staff agrees with Garnet's assertion.³⁰² No party challenges this assertion. The Town of Conquest does not have substantive local zoning laws applicable to the Project, except for certain setback requirements.³⁰³ Garnet claims that the Project will comply with the Town's applicable setback requirements. The Town also does not have substantive local solar facility laws. Consequently, we find that the Project as designed will comply with all applicable substantive local laws.

C. State Constitutional Compliance

The parties allege that the Project is incompatible with three State Constitutional provisions. We reject these arguments as explained in detail in this and other sections of this Order.

First, AGM Staff argues that the Project violates Article XIV, §4 due to the Project's extensive use of agricultural land.³⁰⁴ This argument is discussed in full and rejected in the section of this Order supra on agricultural issues.

Second, Rural Preservation argues that the Project violates Article I, §19 and Article XIV, §4 because of its

³⁰¹ Hearing Exhibit 116 (Application Exhibit 31), pp. 1,4.

³⁰² Hearing Exhibit 391 (DPS Staff Testimony), p. 88.

³⁰³ Hearing Exhibits 316-317 (Updated Application Exhibit 4), p. 8, 24.

³⁰⁴ AGM Staff Initial Brief, p. 12.

alleged impact on the environment and agriculture.³⁰⁵ This argument is discussed in full and rejected in the sections of this Order supra on environmental and agricultural issues.

Finally, Rural Preservation argues that proposed Certificate Conditions 3 and 41 should be modified in light of Article IX, Section 2(c)(6) because the proposed Certificate Conditions may divest the Town of its Constitutionally vested control over its local roads.³⁰⁶ We note that this objection is raised only by Rural Preservation and not by the Town. Rural Protection requests additional language in these Certificate Conditions to state that the Siting Board and the Commission lack jurisdiction over the use of local roads and cannot authorize road use over the objection of the local government body.³⁰⁷ Garnet responds that local permitting is a procedural, not a substantive, local law requirement preempted by Article 10,³⁰⁸ and that it is expressly preempted by PSL §168(3)(e), which gives the Siting Board authority over public rights of way.³⁰⁹

In this matter we agree with Garnet. Rural Preservation's proposed language could be read to give a town a veto power over an electric generation facility by unreasonably withholding a road use permit, a result that would be wholly inconsistent with the purpose of Article 10. Proposed

³⁰⁵ Rural Preservation Initial Brief, pp. 87-89.

³⁰⁶ Hearing Exhibit 390 (Final Settlement Proposal), Conditions 3 and 41.

³⁰⁷ Rural Preservation Initial Brief, pp. 91, 92.

³⁰⁸ PSL §172.

³⁰⁹ Garnet Reply Brief, p. 70.

Certificate Condition 3³¹⁰ appropriately allows Garnet to petition either the Siting Board or the Commission for relief if a permit is unreasonably delayed, conditioned or withheld, and provides for the permitting agency to respond to such a petition. This provision does not divest the Town from authority over local roads. It only provides a remedy for unreasonable conduct and is therefore consistent with the New York State Constitution. For these reasons we reject Rural Preservation's request to modify proposed Certificate Conditions 3 and 41.

X. BENEFICIAL ADDITION TO ELECTRIC GENERATION CAPACITY AND
CONSISTENCY WITH STATE ENERGY PLAN AND POLICIES - PSL
§§168(3)(A) AND 168(4)(E)

Before issuing the Certificate here, the Siting Board must find and determine that the Project will be a beneficial addition to the electric generation capacity of the State.³¹¹ When deciding this question, the Siting Board considers, among other things, the Facility's consistency "with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan."³¹²

Renewable resources are vital to New York's energy future because they provide resilient and renewable power, reduce fuel cost volatility, and lower greenhouse gas

³¹⁰ Proposed Condition 41 is irrelevant to Rural Preservation's argument. It only provides a delegation of authority from the Siting Board to the State Department of Transportation for roadways within the Department of Transportation's jurisdiction, and thus has nothing to do with the Town's authority over local roadways.

³¹¹ PSL §168(3)(a).

³¹² PSL §168(4)(e).

emissions.³¹³ The CLCPA has renewable energy targets and highlights the importance of developing renewable energy resources. The State Energy Plan has made renewable energy development a top priority, setting New York on the path to generate a significant percentage of its electricity with renewable sources by 2030.³¹⁴ The State Energy Plan indicates that large-scale renewable energy facilities help power New York's economy and will serve as the backbone to modernization of the State's power grid, offering immediate benefits, including "economic development and jobs for communities across the State, greater stability in customer bills, [and] cleaner air...."³¹⁵

The Commission has prioritized renewable energy development as part of its energy policy by implementing the Clean Energy Standard Order (CES Order) and its associated

³¹³ State Energy Plan, p. 69. In April 2020, the New York State Energy Planning Board adopted amendments to the 2015 State Energy Plan to include New York's new Clean Energy Goals consistent with the CLCPA's objective for New York to be 100 percent carbon free electricity by 2040, with interim goals designed to reach that objective.

³¹⁴ State Energy Plan, p. 112; Hearing Exhibit 95 (Application Exhibit 10), p. 1.

³¹⁵ State Energy Plan, pp. 70-71; Hearing Exhibit 95 (Application Exhibit 10), pp. 1-2.

targets.³¹⁶ The main focus of the CES Order is fostering the construction of new renewable resource power generation facilities and reducing total emissions of air pollutants resulting from fossil fuel combustion.³¹⁷ The CES Order expressly provides for procurement of renewable energy from large-scale renewables.³¹⁸

Garnet's Application notes that it undertook electric system production modeling in consultation with DPS Staff, using acceptable inputs from the New York Independent System Operator (NYISO) and the United States Environmental Protection Agency's emissions monitoring system data.³¹⁹ Garnet assessed the impact of the Facility's operation on State-wide and regional air emission levels, the NYISO zonal power market, including costs, and the dispatch of existing must-run resources.

The Project is expected to generate approximately 376,302 megawatt hours (MWh) of solar electricity per year, with an annual capacity factor of approximately 21 percent and monthly generation of approximately 25 MW during the off-peak period and approximately 62 MW during the on-peak period.³²⁰ In

³¹⁶ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016), pp. 93-95; Order Modifying Clean Energy Standard Load Serving Entity Obligations and Establishing the 2024 Obligation (issued March 16, 2022), p. 2 (collectively, CES Order). The Commission's CES Order is designed to, among other things, support new renewable generation resources through regular solicitation of renewable energy credits and obligate load serving entities to provide retail customers with increasing amounts of electricity from new renewable generation sources.

³¹⁷ CES Order, pp. 3, 78.

³¹⁸ CES Order, p. 16.

³¹⁹ Hearing Exhibit 93 (Application Exhibit 8), p. 1.

³²⁰ Hearing Exhibit 93 (Application Exhibit 8), pp. 3-4.

its Application, Garnet forecasts that the Project is expected to reduce annual CO₂ emissions by approximately 71,680 tons; annual NO_x emissions by 41 tons; and annual SO_x emissions by 8 tons.³²¹ The Application also estimates that the New York Independent System Operator's (NYISO's) zonal energy prices are expected to decrease by approximately \$0.5/MWh or 1.8 percent and production prices reduced by \$5.5 million.³²²

Garnet's Application also includes a System Reliability Impact Study (SRIS), which concludes that any reliability impacts of the Project can be managed by the NYISO and that the owner/operator will comply with applicable reliability standards.³²³ Garnet's Application asserts that the Facility will improve system reliability and fuel diversity.³²⁴ The analysis did not indicate any thermal overloading impacts in the summer peak load and winter peak load scenarios and concluded that the Project would not cause any new thermal violations; would not cause or worsen any voltage violations; and would not have overloading, overvoltage or undervoltage impacts.³²⁵ The Project will require system upgrades and attachments to existing transmission facilities to interconnect the Project into the electric grid.

DPS Staff did not dispute these estimates, nor did any

³²¹ Hearing Exhibit 93 (Application Exhibit 8), Table 8-1, p. 2.

³²² Hearing Exhibit 93 (Application Exhibit 8), Table 8-2, pp. 2-3.

³²³ Hearing Exhibit 90 (Application Exhibit 5, Appendix 5-1), pp. 2, 28. The SRIS (p. 11) notes that it was conducted in accordance with the applicable reliability standards and in accordance with applicable Affected System study guidelines, procedures, and practices.

³²⁴ Hearing Exhibit 95 (Application Exhibit 10), pp. 3-4.

³²⁵ Hearing Exhibit 90 (Application Exhibit 5), p. 1.

other party.³²⁶ In its review of the Application, DPS Staff evaluated the reasonableness of the annual and monthly capacity factor forecasts and wholesale energy price impacts, reviewed the air emission impacts, assessed how the Project could affect generation from existing, must-run zero emission resources, and compared the Garnet's estimate of the Project's forecast impacts with its DPS Staff's own analysis.³²⁷ Based on this review, DPS Staff testified that the Project will provide system benefits, is consistent with State policies on renewable energy generation, including the State Energy Plan, and will help the State meet its regional greenhouse gas emissions goals.³²⁸

After considering the record, we find that the Project, including its energy storage capacity, will advance New York's emissions reductions goals as a renewable solar energy resource that is designed to address the harmful effects of climate change.³²⁹ Overall, the record demonstrates that greenhouse gas emissions reductions resulting from the Project could be considerable over the long term and may decrease zonal pricing. We find that the Project is consistent with the emission reduction goals set forth by the CLCPA, the State Energy Plan, and our CES Order. We conclude that not only does the Project foster the CLCPA's emission reduction objectives, it also represents a beneficial addition to, or substitution for, the electric generation capacity of the State.

XI. CLCPA FINDINGS

The CLCPA mandates that New York's total greenhouse gas emissions be 40 percent below 1990 levels by 2030 and 85

³²⁶ Hearing Exhibit 391 (DPS Staff Testimony), pp. 38-39.

³²⁷ DPS Staff Initial Brief, pp. 43-44.

³²⁸ Hearing Exhibit 391 (DPS Staff Testimony), pp. 38-39, 48.

³²⁹ Hearing Exhibit 95 (Application Exhibit 10), pp. 2-4.

percent below 1990 levels by 2040.³³⁰ The CLCPA also requires that 70 percent of electric power demand be met by renewable generation resources by 2030 and 100 percent be from "zero emission" resources by 2040.³³¹

CLCPA Section 7(1) requires all state agencies, offices and authorities, when issuing "permits, licenses and other administrative approvals and decisions," to "consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75."³³² Additionally, the CLCPA states that, in taking such administrative action, agencies shall "not disproportionately burden disadvantaged communities" and "shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities."³³³ The record reflects that the Project is not located in and will not have an adverse impact on an environmental justice community.

³³⁰ ECL §75-0107(1); 6 NYCRR §496.4(b). The term "Statewide greenhouse gas emissions" is defined to mean the total annual emissions of greenhouse gases produced within the State from anthropogenic sources as well as greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the State, including the extraction and transmission of fossil fuels imported for distribution. State-wide greenhouse gas emissions levels in 1990 were approximately 409.78 million metric tons of carbon dioxide equivalent. 6 NYCRR §496.4(a).

³³¹ ECL §75-0101(13).

³³² CLCPA Section 7(2).

³³³ CLCPA Section 7(3). If an agency concludes that its administrative action approving a project is inconsistent with or will interfere with attainment of the State's greenhouse gas emission limits, it "shall provide a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located." CLCPA Section 7(2).

Rural Preservation asserts that the Project is not supported by the CLCPA because it “mandates distributed solar facilities, not large-scale solar facilities.”³³⁴ We disagree. Nothing in the CLCPA, either expressly or impliedly, mandates only the development of distributed solar generation facilities. Indeed, as we have found in other Article 10 cases, approval of major solar facilities will foster the achievement of the CLCPA’s emission reductions and is entirely consistent with the statute.³³⁵

Accordingly, we find that our approval of the Project is consistent with the CLCPA’s emission reductions mandate and will meaningfully contribute to the State’s objective to meet that mandate by adding 200 MW of renewable solar generation to the State’s electric grid.

XII. PUBLIC INTEREST DETERMINATION - PSL §168(3)(b)

In light of the foregoing findings and the imposition of the Certificate Conditions noted above, we find that the Project meets the public interest standard. As stated elsewhere in this Order, the Project is a beneficial addition to the electric generation capacity of the State, is consistent with the State Energy Plan and other State energy policy goals and initiatives, and its environmental impacts have been adequately minimized or avoided to the maximum extent practicable upon compliance with the Certificate Conditions adopted as a part of this Order.

³³⁴ Rural Preservation Initial Brief, p. 89-90 (citing ECL §75-0103).

³³⁵ See, e.g., Case 16-F-0328, Number Three Wind LLC, Order on Rehearing (issued February 13, 2020), p. 14; Case 17-F-0597, High River, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued March 11, 2021), pp. 31-35.

Rural Preservation argues that the Project is not in the public interest and requests that we add a Certificate Condition requiring Garnet to file as a Compliance Filing an executed Host Community Benefit Agreement with the Town.³³⁶ Rural Preservation lacks standing to make this assertion. It is the Town's assertion to make and the Town has not raised this issue. There remains an adequate opportunity for Garnet and the Town to reach such a Host Community Benefit Agreement or other similar agreement - or for the Town to impose local property taxes on the Facility once it is operational if such an agreement is not reached. We decline to include Rural Preservation's proposed requirement in the Certificate Conditions.

Despite the absence of a Host Community Benefit Agreement with the Town, the record reflects that the Project will have some economic benefits in the form of direct short term construction jobs, direct long-term operation and maintenance jobs, and potential tax assessments by the Town.³³⁷ These socioeconomic benefits are discussed in greater detail above. We therefore find that the construction and operation of the Facility will serve the public interest.

XIII. OTHER DISPUTED CERTIFICATE CONDITIONS

As discussed in other sections of this Order, we have addressed most of the objections raised by both the Town and Rural Preservation. Rural Preservation asserts several additional objections related to specific Certificate Conditions and requests numerous substantive modifications. We have reviewed those objections and, other than those specifically addressed above, find that they lack merit or are otherwise

³³⁶ Rural Preservation Initial Brief, p. 90.

³³⁷ Hearing Exhibit 419 (Garnet Rebuttal Panel), p. 123.

unsupported by the record.

For example, Rural Preservation requests a "sunset clause" that would require an environmental cost/benefit assessment if and when Certificate renewal is sought for the Facility. We have never required this kind of assessment in any Article 10 proceeding and decline to do so now. Moreover, nothing in the statute requires such a look back upon renewal. In issuing the Certificate here, we have assessed and minimized/avoided the Project's environmental impacts to the maximum extent practicable and have evaluated the benefits afforded by the Project, as Article 10 requires.

Rural Preservation seeks a two-year Certificate expiration provision if construction has not begun (Condition 11) and the imposition of a requirement that the Certificate Holder file and make publicly available all leaseholds demonstrating necessary property rights are in place for the Project (Condition 28). Again, neither of these requests have been required in other Article 10 proceedings and are unsupported by the record here. Putting aside the privacy interests of participating property owners if all leaseholds are publicly disclosed together in a filing by the Certificate Holder, this information is already publicly available through a search of real property records.

Rural Preservation asks that proof of mitigation funding for the Cultural Resources Mitigation and Offset Plan be submitted prior to commencement of construction (Condition 82). We find this requirement unnecessary in light of the Conditions requiring Garnet's submission of that Plan.

Finally, Rural Preservation reads Condition 35 to allow the Certificate Holder to modify or revise the Certificate using Compliance Filings and Information Reports. Rural Preservation asserts that such modifications/revisions to the

Certificate Conditions must be approved by the Siting Board Chair consistent with PSL §161(1). We need not address this issue here because we fully expect that the Certificate Holder will comply with Article 10's requirements in seeking to depart from any aspect of this Order or the terms of the Certificate Conditions.

XIV. CONCLUSION

Based on the record before us, the arguments of the parties, and all applicable laws and policies, we grant a Certificate of Environmental Compatibility and Public Need to the Applicant, subject to the Certificate Conditions and associated documents attached to this Order.

The Board on Electric Generation Siting and the Environment orders:

1. This Order constitutes the decision of this Siting Board in this proceeding.
2. Subject to the conditions set forth in this Order and appended to it, a Certificate of Environmental Compatibility and Public Need is granted, pursuant to Article 10 of the Public Service Law, to Garnet Energy Center, LLC, for the construction and operation of a solar generating facility with a capacity of 200 megawatts, consisting of fixed or tracking utility-scale arrays of photovoltaic solar generating panels, a 20 megawatt energy storage system, a collection substation, and associated collection lines, roads, laydown yards, parking areas, and fencing, located on 2,289 acres of private land, either leased or purchased from the landowners, and associated facility components to be located in the Town of Conquest, Cayuga County, New York, and connecting to the existing New York Power Authority (NYPA) Clay - Pannell 345 kV transmission line, provided that Garnet Energy Center, LLC files a written

acceptance of the Certificate pursuant to 16 NYCRR §1000.15(a) within 30 days of the date of issuance of this Order or within 30 days after the issuance of the Siting Board's final decision upon a petition for a rehearing, if any.

3. Upon acceptance of the Certificate granted in this Order or at any time thereafter, Garnet Energy Center, LLC shall serve copies of its compliance filings in accordance with the requirements set forth in 16 NYCRR §1002.2(c) and applicable Certificate Conditions. Pursuant to 16 NYCRR §1002.2(d), interested persons and parties may file comments on any compliance filing within 21 days after its service date.

4. Prior to the commencement of construction, Garnet Energy Center, LLC shall comply, to the extent required by law, with those requirements of Public Service Law Section 68 that do not relate to the construction and operation of the Facility.

5. If Garnet Energy Center, LLC decides not to commence construction of the Project or any portion of the Project or decides to transfer the Certificate, it shall so notify the Secretary in writing within 30 days of making such decision and shall serve a copy of such notice upon all parties and all entities entitled to service of the Application or notice of the Application. If Garnet Energy Center, LLC decides to transfer the Certificate, it shall comply with the applicable requirements in seeking approval for such transfer.

6. If the Certificate Holder believes that any action taken, or determination made, by a State or municipal agency in connection with this Certificate is unreasonable or unreasonably delayed, it may petition the Siting Board setting forth in detail the nature, reasons for, and duration of the delay, upon reasonable notice to that State or municipal agency, to seek a resolution of any such unreasonable or unreasonably delayed action or determination. The State or municipal agency may

respond to the petition, within 20 business days, to address the reasonableness of any requirement or delay.

7. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

8. This proceeding is continued.

By the New York State Board
on Electric Generation Siting
and the Environment,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

APPENDIX A

CERTIFICATE CONDITIONS

CASE 20-F-0043 - Application of Garnet 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 Conquest, Cayuga County.

Certificate Conditions

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I. Project Authorization

1. The Certificate Holder is authorized to construct and operate the Facility (or the Project), as described in the Application by Garnet Energy Center, LLC (the Certificate Holder) for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the New York State Public Service Law (PSL) (the Application) and as clarified by the Certificate Holder's supplemental filings, updates, and replies to discovery data requests, and additional exhibits, except as waived, modified, or supplemented by the New York State Board on Electric Generation Siting and the Environment's (Siting Board's) Order Granting Certificate (Certificate) or other permits.
2. The Certificate Holder is responsible for obtaining all necessary permits and any other approvals, land easements, and rights-of-way that may be required for this Facility and which the Siting Board is not empowered to provide or has not expressly authorized. In addition, the Siting Board expressly authorizes the Public Service Commission (Commission) to require approvals, consents, permits, certificates, or other conditions for the construction or operation of the Facility under the PSL, if applicable.
3. If the Certificate Holder believes that any action taken, or determination made, by a State agency, including the New York Power Authority (NYPA), a local agency or their respective staff, in furtherance of such agency's review of any applicable regulatory permits or approvals, or actions or the lack thereof, or by a utility subject to the Commission's jurisdiction, is unreasonable or unreasonably delayed, unreasonably conditioned or unreasonably withheld, the Certificate Holder may petition the Siting Board or the Commission, as the case may be, upon reasonable notice to that

agency, or utility, to seek a determination of any such unreasonable or unreasonably delayed, unreasonably conditioned or unreasonably withheld, action or determination. The permitting agency, State or local agency staff or utility, as the case may be, may respond to the petition, within ten days, to address the reasonableness of its action or determination.

4. Pursuant to Title 16 of the New York Codes, Rules and Regulations (NYCRR) Section 1000.15, the Certificate Holder shall, within 30 days after the issuance of the Certificate, file with the Secretary to the Siting Board either a petition for rehearing or a statement that it accepts and will comply with the Certificate for the Project. Failure of the Certificate Holder to comply with this Condition shall invalidate the Certificate.
5. Decisions on Compliance Filings may be made at the next available session of the Board or the Commission, as the case may be, provided the Compliance Filing is received sufficiently in advance of such sessions that there is adequate time in the circumstances to receive comments and process the matter. If DPS Staff determine that a Compliance Filing requires additional information, details or deliberation, such that the filing will not be decided at the next available session of the Board or Commission, DPS Staff will notify the Certificate Holder, within 30 days of submission of the Filing and inform the Certificate Holder of the information needed to place the filing on the next available session.
6. Commencement of commercial operation or commercial operation date (COD) is defined as the date on which the Facility as a whole first commences generating or transmitting electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations and commissioning of the Project.

7. Commencement of construction is defined as the beginning of unlimited site clearing, site preparation and grading activity, and construction of the Facility and does not include staging, activities related to testing, or surveying (such as geotechnical drilling and meteorological testing), together with such testing, surveying, drilling and similar pre- construction activities, including limited tree clearing to perform such pre-construction activities, to determine the adequacy of the site for construction and the preparation of filings pursuant to these Conditions.
8. Consistent with the applicable Department and Siting Board regulations, construction, including site preparation, may begin in phases or stages provided the Certificate Holder files all applicable Compliance Filings and Information Report filings prior to the commencement of construction for each phase or stage of the Facility, and only after it has received approval of any applicable Compliance Filing by the Board, or by the Commission after the Board's jurisdiction has ceased. Compliance Filings and Information Reports should be filed pursuant to 16 NYCRR Part 1002, commencing the review and public comment process, prior to the issuance of a Certificate. Phases of construction have been identified as (a) Site Preparation, which includes tree and vegetation clearing and grading, installation of soil erosion and sediment control measures and stabilized construction entrances, construction of stormwater management measures, and installation of temporary and permanent roads of the Project and any associated wetland and/or stream crossing (should any be proposed); (b) Commencement of construction (including installation of solar arrays, inverters, collection lines, communication equipment, fencing, and all permanent Project Components); (c) Commencement of construction on the Collection

Substation; (d) Commencement of construction on POI facilities, including the switchyard, and associated interconnection equipment; and (e) Commencement of Operations. Additionally, in an accompanying cover letter, Certificate Holder will identify specific Certificate Conditions and subpart requirements being addressed when submitting Compliance Filings and Information Reports; the cover letter shall also include the identification of the construction phases (as defined in this Condition) being covered by the filings.

9. Facility construction is authorized for an approximately 200-megawatt (MW) solar energy center located in the Town of Conquest, Cayuga County, New York. The Project Components include commercial-scale solar arrays, access roads, inverters, fencing, buried electric collection lines, 20-MW/4-hour duration energy storage system, laydown areas and electrical interconnection facilities. The Project also includes a collection substation and interconnection facilities on land within the Project Area that will tap into the existing New York Power Authority's (NYPA's) existing Clay - Pannell 345 kV transmission line. The proposed interconnection facilities will include a 345- kV switchyard and two 345kV tap lines to be transferred to NYPA to own, operate and maintain.
10. The Certificate Holder has not demonstrated that the feasibility of the Project relies in any way upon the Certificate Holder exercising the power of eminent domain to acquire permanent or temporary real property rights in specific, identified parcels of land for the Facility or for any of the access roads, construction staging areas or interconnections necessary to service the Facility. By granting this Certificate to the Certificate Holder, an entity in the nature of a merchant generator and not in the nature of a public and

fully regulated utility company with an obligation to serve customers, the Siting Board is not making a finding of public need for any particular parcel of land such that a condemnor would be entitled to an exemption from the provisions of Article 2 of the New York State Eminent Domain Procedure Law (EDPL) pursuant to Section 206 of the EDPL. As a Condition of this Certificate, the Certificate Holder shall not commence any proceedings or cause any other entity having the power of eminent domain to commence any proceedings under the EDPL to acquire permanent or temporary real property rights for the Facility or for any of the access roads or construction staging areas necessary to service the Facility without an express amendment to this Certificate granted by the Siting Board finding a public need for such acquisition.

11. This Certificate will automatically expire in seven years from the date of issuance of this Certificate (the "Expiration Date") unless the Certificate Holder has completed construction and commenced commercial operation of the Facility prior to said Expiration Date or has obtained an extension of this deadline from the Secretary of the Siting Board (Secretary) or the Commission, as the case may be.

II. General Conditions

12. Prior to the commencement of construction of the Facility, the Certificate Holder shall file a request/application for a Clean Water Act Section 401 Water Quality Certification with the Secretary, which shall be filed and served and noticed pursuant to 16 NYCRR Part 1000.8(a)(8). This request shall be filed concurrently with the permit application filed with the United States Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. All construction activities regulated under federal law may not commence until a Water Quality Certification has been issued.

13. Upon receipt, all copies of any federal permits and/or approvals required to conduct jurisdictional activities under Sections 401 or 404 of the Clean Water Act associated with various aspects of construction and operation of the Facility shall be filed with the Secretary. If relevant Project plans require any modifications due to conditions of the federal permits, the final design drawings and all applicable Compliance Filings shall be revised accordingly and submitted pursuant to 16 NYCRR Part 1002.
14. If federal permits and/or approvals required to conduct jurisdictional activities under Sections 401 or 404 of the Clean Water Act are denied, the Certificate Holder shall file with the Secretary documentation demonstrating the reasons for the denial and how it plans to proceed with its Project plans in light of the denial.
15. The Certificate Holder shall implement the avoidance, minimization, and mitigation measures as described in the Application and clarified by the Certificate Holder's supplemental filings, updates and replies to discovery data requests or additional exhibits, and the Certificate Conditions adopted in the Siting Board's Order Granting Certificate.
16. The Certificate Holder shall construct and operate the Facility in accordance with the substantive provisions of the applicable local laws as identified in the Application and any others identified by the Board in the Certificate. The Applicant did not request the Board to refuse to apply any local substantive requirements.
17. The Certificate Holder shall construct the collection facilities in accordance with the latest edition of American National Standards Institute (ANSI) for operation. The Certificate Holder shall construct the collector cables in accordance to the latest edition of ANSI (ICEA S-93-639, AEIC CS8) and operate the Facility in a manner that conforms to

all substantive State requirements identified in Exhibit 32 of the Application.

18. The Certificate Holder shall incorporate and implement as appropriate, in all Compliance Filings and construction activities, the ANSI standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized Facility, including features for Facility security and public safety, utility system protection, plans for quality assurance and control measures for Facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and Facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures.
19. The Certificate Holder shall work with NYPA and any successor Transmission Owner (as defined in the New York Independent System Operator (NYISO) Agreement), so that, with the addition of the Facility (as defined in the Interconnection Agreement between the Certificate Holder, NYISO and NYPA), the Facility will have power system relay protection and appropriate communication capabilities so that operation of the NYPA transmission system is adequate under Northeast Power Coordinating Council (NPCC) standards, and meets the protection requirements at all times of the North American Electric Reliability Corporation (NERC), NPCC, New York State Reliability Council (NYSRC), NYISO, and NYPA, and any successor Transmission Owner (as defined in the NYISO Agreement). Certificate Holder shall comply with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and NYPA criteria.
20. The authority granted in the Certificate and any

subsequent Order(s) in this proceeding is subject to the following conditions necessary to ensure adherence with such Order(s):

- a. Within 60 days prior to commencement of construction, as defined in Condition 7, the Certificate Holder shall provide, pursuant to 16 NYCRR Part 1002.4, an Information Report to DPS Staff, with a copy to the Siting Board and the Town of Conquest Supervisors and Cayuga County (County), that identifies the Certificate Holder's construction organizational structure, contact list, and protocol for communication between parties. The Certificate Holder shall provide to DPS Staff the names and contact information of individuals responsible for Project oversight. The Certificate Holder may utilize one or more qualified individuals to satisfy the Project oversight responsibilities associated with the independent, third-party Environmental Monitor. The Environmental Monitor shall also have the experience, be trained or have the qualifications in agricultural matters consistent with the qualifications listed in the New York State Department of Agriculture and Markets (AGM) *Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands (Revision 10/18/2019)*. This filing may be provided prior to the issuance of the Certificate by the Siting Board. The contents of this report will be subject to consultation, if requested, with DPS staff, and /or the Town.
- b. The Certificate Holder shall regard the Department of Public Service Staff (Staff or DPS Staff) representatives, authorized pursuant to PSL §66(8), as the Siting Board's representatives in the field and, after the Siting Board's jurisdiction has ceased, as the Commission's representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that

violate, or may violate, the terms of the Certificate, Compliance Filings, or any other order in this proceeding, such DPS Staff representatives may issue a stop work order for that location or activity. Any stop work orders shall be, to the maximum extent possible, limited to affected portions of the Project;

- c. A stop work order shall expire 24 hours after being issued unless confirmed by the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, including by Order issued by the Chair of the Siting Board or by one Commissioner of the Commission. DPS Staff shall give the Certificate Holder and the Town notice by electronic mail of any application to the Siting Board or Commissioner to have a stop work order confirmed. If a stop work order is confirmed, Certificate Holder may seek reconsideration from the confirming Commissioner, Siting Board, or the whole Commission. If the emergency prompting the issuance of a stop work order is resolved to the satisfaction of the DPS Staff field representative, the stop work order will be lifted. If the emergency has not been satisfactorily resolved, the stop work order will remain in effect;

- d. Stop work authority will be exercised with due regard to potential environmental impact, economic costs involved, possible impact on construction activities, and whether an applicable statute or regulation is violated. Before exercising such authority, DPS Staff representatives will consult wherever practicable with the Certificate Holder's representative(s) possessing comparable authority. Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field. In the event the dispute cannot be resolved, the matter will be brought immediately to the attention of the Certificate Holder's Project Managers and the Director of the DPS Office of Electric, Gas and Water, Environmental Certification and Compliance Section, or their designee. In the event that a DPS Staff representative issues a stop work order, neither the Certificate Holder nor the Contractor will be prevented from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances. The issuance of a stop work order or the implementation of measures as described below may be directed at the sole discretion of the DPS Staff representative during these discussions;
- e. If a DPS Staff representative discovers a specific activity that represents a significant environmental threat that is, or immediately may become, a violation of the Certificate, Compliance Filings, any applicable statute or regulation, or any Order in this proceeding, the DPS Staff representative may -- in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action -- direct the field crews to stop the

specific potentially harmful activity immediately. If responsible Certificate Holder personnel are not on site, the DPS Staff representative will immediately thereafter inform the Certificate Holder's Construction Inspector(s) and/or Environmental Monitor(s) of the action taken. The stop work order may be lifted by the DPS Staff Representative if the situation prompting its issuance is resolved;

- f. If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the DPS Staff representative may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action, direct the Certificate Holder or the relevant Contractors to implement the corrective measures identified in the approved Certificate or Compliance Filings. The field crews shall immediately comply with the DPS Staff representative's directive as provided through the communication protocol identified in a flowchart of proper communications, which will be included in the relevant Facility plans (QA/QC, Site Security Plan, and Complaint Resolution Plan, as appropriate), and made available at the construction site for the Project. To the extent practicable, the DPS Staff representative will immediately thereafter inform the Certificate Holder's Construction Inspector(s) and/or Environmental Monitor(s) of the action taken. DPS Staff will promptly notify the New York State Department of Environmental Conservation (NYSDEC), Division of Environmental Permits, 625 Broadway, Albany, NY 12233-5060 and the Region 7 Division of Environmental Permits, of

any activity that involves a violation of a permit issued by the NYSDEC for the Project pursuant to federally delegated or approved authority, as required by Article 10 and of any violation of the Certificate Conditions related to environmental matters. The field crews shall immediately comply with DPS Staff's directive.

g. The Certificate Holder shall construct and operate the Facility in a manner that conforms to all substantive State requirements in these Certificate Conditions as adopted by the Siting Board and in the Order Granting Certificate, and will adhere to NYPA and NYISO requirements for any additional studies, as well as any design parameters involving relays and other necessary Components per the interconnection agreement.

21. Consistent with 16 NYCRR Part 1002.2, the Certificate Holder may not commence site preparation or construction of any portion of the Facility or interconnections for which the Siting Board has required approval of a Compliance Filing as a condition precedent to such construction until the Certificate Holder has submitted the required Compliance Filing for that portion of the Facility (in line with the construction phases defined per Certificate Condition 8) and received approval of it by the Siting Board, or by the Commission after the Siting Board's jurisdiction has ceased.

III. Notifications

22. At least 14 days prior to the commencement of construction, including any site preparation and tree and vegetation clearing activities, the Certificate Holder shall notify the public as follows:

a. Provide notice by mail to host and adjacent landowners within 2,500 feet of any parcels with Project Components, and persons who reside on such property (if different from the landowner);

- b. Notice by mail to owners and operators of water wells within 500 feet of the final layout;
 - c. Provide notice to the Town of Conquest and Cayuga County officials and emergency personnel;
 - d. Publish notices in The Citizen and The Wayuga Shopper newspapers for dissemination;
 - e. Provide notice for display in public places, which will include, but is not limited to, the Town of Conquest Town Hall, the Port Byron Library, the Project website, and the Project construction trailers/offices; and
 - f. File notice with the Secretary for posting on the Project's DPS Document and Matter Management (DMM) website and post notice on Certificate Holder's website.
23. The Certificate Holder shall write the notice(s) required by Condition 22 in language reasonably understandable to the average person and shall ensure that the notifications will contain the following information:
- a. A map of the Project;
 - b. A brief description of the Project;
 - c. The construction schedule, including days and hours of construction and final transportation routes for all of the relevant construction phase(s);
 - d. The name, mailing address, local or toll-free number, and email address of the Project Development Manager and Construction Manager;
 - e. A description of how to obtain additional information about the Project (e.g., local repositories, Project website);
 - f. The contact information and procedure (e.g., in writing, by telephone, in-person and on-line) for registering a complaint; and
 - g. Contact information for the Secretary to the Siting Board and Commission.

24. Upon distribution of Notice, and prior to commencement of Site Preparation, the Certificate Holder shall notify the Town Supervisor, Town Clerk, and Town Attorney of all areas where information regarding the Project, Project activities, and Project contact information have been posted.
25. The Certificate Holder shall file with the Secretary, at least seven (7) business days prior to Site Preparation, an affirmation that it has provided the notifications required by this Section III and include a copy of the notice(s) under this Section as well as a distribution list.
26. No less than 14 days prior to the end of construction, the Certificate Holder shall notify the entities identified in Condition 22(a) through 22(c) with the contact name, telephone number, email, and mailing address of the Certificate Holder's Operations Manager, and shall file the same with the Secretary.
27. The Certificate Holder shall file a written notice with the Secretary within 14 days of the completion of construction and provide an anticipated date of commencement of commercial operation of the Facility.

IV. Information Reports &

Compliance Filings Requirements

Information Reports

General

28. Documentation demonstrating that all property rights and/or necessary agreements are in place for use of the Facility Site for construction and/or operation (e.g., redacted landowner agreements, options, easements, or "good neighbor" agreements)

shall be filed with the Secretary as an Information Report prior to the commencement of Site Preparation. Protected status may be sought for some or all of these documents.

29. A copy of the Interconnection Agreement between NYISO, NYPA, and the Certificate Holder shall be filed with the Secretary before commercial operation as an Information Report. Any updates or revisions to the Interconnection Agreement shall be submitted to the Secretary throughout the life of the Project. Additionally, except in the event of an emergency, if any interconnection equipment or control system with materially different characteristics is installed throughout the life of the Project, the Certificate Holder shall, at least 90 days before any such change is made, provide information regarding the need for, and the nature of, the change to NYPA and file such information with the Secretary.
30. All Facilities Studies issued by NYPA and the NYISO and any updated facilities agreements will be filed with the Secretary throughout the life of the Facility within 60 days of receipt by the Certificate Holder. Protected status may be sought for these documents.
31. Any System Reliability Impact Study (SRIS) required as part of a future Facility modification or upgrade, performed in accordance with the NYISO Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission, and all appendices thereto, reflecting the interconnection of the modified Facility will be filed with the Secretary within 60 days after receiving any required approvals. Protected status may be sought for these documents.
32. The following information shall be filed as Information Reports prior to the commencement of the construction phase, including site preparation and tree and vegetation clearing activities:

Details and specifications of the selected solar panel modules, tracking system(s) (and associated motors), inverters (including cut sheets (including length, width, height, and material), including third-party certification documenting that the solar panel modules and inverters meet international design standards); the technical/safety manual for the panel modules, tracking system(s), and inverters; and manufacturer specification sheet and warranty that the selected panel modules and inverters do not exceed the total height of the panel modules and inverters presented in the Application.

33. The Certificate Holder shall file with the Secretary within 60 days of the commercial operation date a certification that the collector lines were constructed to the latest editions of ANSI standards as of the date of the issuance of the Certificate in this proceeding. The Facility's electrical collection system shall be designed in accordance with applicable standards, codes, and guidelines as specified in Exhibit 5 of the Application.
34. The Certificate Holder shall file with the Secretary, within one year after the Project becomes operational, a tracking report of the actual number of direct jobs created during the construction and operational phases of the Project, as well as the actual tax payments to local jurisdictions made during the Project.

Permits and Approvals

35. Copies of any and all federal permits and/or approvals required to conduct jurisdictional activities associated with certain aspects of construction and operation of the Facility shall be filed with the Secretary upon receipt of such permits and/or approvals. If, due to conditions of

federal permits and/or approvals, relevant Facility plans require changes that are likely to result in significant adverse environmental impacts or an adverse environmental impact not included in the Application, the design drawings and applicable Compliance Filings shall be revised accordingly and submitted for review and approval pursuant to 16 NYCRR Parts 1002.2 and 1002.3, as appropriate.

36. Upon receipt, copies of any discretionary local or State permits and/or approvals required for construction and operation of the Facility, if such approvals were authorized by the Siting Board and not otherwise included in other filings (e.g., Stormwater Pollution Prevention Plan (SWPPP), 5-acre waiver (if necessary), and NYSDEC's acknowledgment of Notice of Intent for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity), shall be filed with the Secretary as an Information Report. The Certificate Holder shall submit for review the building plans to the Town of Conquest in order to obtain certified compliance with the NYS Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of NYS, and the full substantive provisions of any applicable State or local electrical, plumbing, building or other code. The Town shall have access to the Project Area for purposes of certifying compliance. Said certification shall be filed as an Information Report with the Board. Should any permits or approvals be denied, the Certificate Holder shall file with the Secretary documentation demonstrating the reasons for the denial and how it plans to proceed with its Project plans in light of the denial. The Applicant shall file the building plans with the Town of Conquest and/or the Code Enforcement Officer for the Town of Conquest, who shall be responsible for reviewing and approving building plans, inspecting construction work, and certifying compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction

Code of New York State, and any other applicable State or local code. If necessary, the Code Enforcement Officer may hire consultants to assist with the review and approval, and the Applicant shall fund these consultations.

37. At least 10 days before a distinct construction activity commences, prior to using a route for any Project activities requiring a road/transportation permit, copies of all necessary transportation permits within the Project Area, for that activity, from the owner of the affected State, County, and/or Town roads shall be submitted to the Secretary as an Information Report upon receipt from the issuing authority. Such permits shall include, if applicable, but not be limited to: Copies of fully executed Road Use Agreements (related to phases or overall construction), Highway Work Permit to Work Within Right-of-Way (ROW), Highway Utility Permit to Work Within ROW, Permit to Exceed Posted Weight Limit Roads, Traffic Signal Permit to Work Within ROW, Special Haul Permit for Oversized/Overweight Vehicles, and Divisible Load Permit, and/or any owner/operator required crossing agreements with utility companies for work being done in an affected utility right of way, shall be provided as Information Reports to the Secretary prior to any work being performed relevant to the specific road or utility right of way in those agreements.
38. At least 10 days prior to temporary or permanent modifications to existing overhead utilities, Certificate Holder shall submit to the Secretary as Information Reports, copies of all necessary agreements with utility companies for raising, changing, or relocating overhead wires where necessary to accomplish any construction activities requiring such modifications.
39. The Certificate Holder will provide to the Secretary, as an Information Report, copies of all building permits, along with the final plans

conforming to such design requirements, at least 10 days before construction of a building commences.

Health and Safety

40. The Certificate Holder shall, at least 60 days prior to the commencement of construction, contact all known pipeline operators within the Project Area on which Project facilities are to be located within the pipeline easement and, if applicable, shall reach an agreement with each operator to provide that the collection system will not damage any identified pipeline's cathodic protection system or produce damage to the pipeline, either with fault current or from a direct strike of lightning to the collection system, or the 345-kV interconnection line, specifically addressing 16 NYCRR Part 255.467(g) (External corrosion control; electrical isolation), subject to the provisions of Condition 3 herein. A copy of any agreement (for the reasons listed above or otherwise) so entered into shall be provided to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary as an Information Report prior to any proposed work requiring pipeline owner approved agreements or requirements.
41. The Board hereby delegates to the New York State Department of Transportation (NYSDOT) the authority, pursuant to PSL 172, to issue all approvals, consents, licenses and permits, within NYSDOT's jurisdiction, for the construction and operation of the Project. Approvals shall be filed with the Secretary as an Information Report.

Plans, Profiles, and Detail Drawings

42. As-built drawings in both hard and electronic copies (including final, updated GIS shapefiles) shall be filed with the Secretary within one year following the commercial operation date of the Facility and provided to the Town, DPS and NYSDEC. Drawings will include final locations, subject to

filings made under applicable trade secret protection regulations, of all Project Components, including the final grading plan, elevation plan of switchyard and collection substation, and a profile of the final collection lines and interconnection line locations, and shall include the following:

- a. GIS shapefiles detailing all Components of the Project (PV panel array locations, electrical collection system, inverter/transformers (cabinet outlines), substation, access roads, point of interconnection, any O&M facilities, etc.);
 - b. Collection circuit map; and
 - c. Details, if applicable, for all Project Component crossings of and co-located installations with existing high-pressure pipelines showing cover, separations, any protective measures installed and locations of such crossings and co-located installations.
43. The Certificate Holder shall file an Operation and Maintenance Plan (O&M Plan) for the Facility, including emergency procedures and list of emergency contacts, as an Information Report within 60 days of the commencement of commercial operation.
44. The Certificate Holder shall file annually with the Secretary, the Town, and Cayuga County an updated copy (if modifications have occurred) of its emergency procedures and list of emergency contacts and with documentation of any modifications.

Environmental

45. Prior to the initiation of any horizontal directional drilling (HDD) operations or the installation of any Project structures such as posts, pads foundations or panels, (related to construction phases defined in Certificate

Condition 8), a Final Detailed Geotechnical Engineering Report shall be submitted as an Information Report verifying subsurface conditions within the Project Area, and any HDD locations. The report shall identify appropriate mitigation measures required in locations of highly corrosive soils, soils with a high frost risk, any soils with high shrink or swell potential, and any locations where subsurface karst conditions are observed or suspected. The report shall identify areas of shallow rock that may require blasting operations.

46. If blasting is required, prior to the initiation of any blasting activities, a Final Blasting Plan shall be prepared and filed as an Information Report with the Secretary that describes procedures and timeframes for blasting operations, emergency and safety protocols, and notifications for host communities and property owners (or those living on the property, if different). The Final Blasting Plan shall demonstrate compliance with the following requirements:

- a. Blasting shall be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines Report of Investigation 8507 Figure B-1 and air overpressure shall be under the limits set forth in the Conclusion section in United States Bureau of Mines Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485) to protect structures from damage.
- b. Landowners, or those residing on the property, if different, within a one-half-mile radius of the proposed blasting location shall be notified via electronic mail, U.S. Mail, or by leaving a hardcopy notice at the residence, at least 7 days before the proposed blasting. The Town will also be notified within that timeframe. The notification shall include contact information and procedures for filing a blasting operations

related complaint.

47. A NYSDEC-accepted Stormwater Pollution Prevention Plan (SWPPP), 5-acre waiver (if necessary), NYSDEC's acknowledgement of Notice of Intent for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity in effect at the time shall be filed upon receipt, but in any event prior to Site Preparation, with the Secretary as an Information Report.
48. To maintain environmental compliance and the integrity of the Project, the Certificate Holder will implement an environmental compliance and monitoring program and file it as part of an Information Report prior to the commencement of Site Preparation.

Complaint Resolution

49. The Certificate Holder shall file with the Secretary as a Compliance Filing, the Final Complaint Resolution Plan, for both the construction and operation phases of the Facility, which should be filed prior to the Site Preparation Phase and Operations Phase, respectively. A copy of the Final Complaint Resolution Plan shall also be submitted to the Town and other parties.
50. The Certificate Holder shall handle all noise complaints by following the appended Noise Complaint Resolution Protocol (Appendix C, hereto) and the following Certificate Conditions.
51. The Certificate Holder is required to maintain a log of complaints and complaint resolutions during construction and operation of the Project. The log shall include name and contact information of the person that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint. It will also include a

description of the complaint resolution or indicate that the complaint has not been resolved. The complaint log, which will be maintained by the Certificate Holder, will be made available to the DPS Staff and the Town. Upon request by DPS Staff or the Supervisor for the Town, the Certificate Holder will send the complaint log via email within seven business days to DPS Staff and the Town.

52. All complaints received shall be reported to the Siting Board or the Commission after the Siting Board's jurisdiction has ceased, monthly during construction and during the first three years of commercial operation, and quarterly thereafter, by filing with the Secretary during the first 10 calendar days of each month (or the first 10 calendar days of each quarter after three years) copies of the complaints and if available, a description of the probable cause, the status of the investigation, summary of findings, and whether mitigation measures have been implemented. If no complaints are received, the Certificate Holder shall submit a letter to the Secretary indicating that no complaints were received during the reporting period. A copy of those filings shall be provided simultaneously to the Town.

Compliance Filings

The following plans, drawings, and other documents shall be filed for approval by the Siting Board or Public Service Commission in accordance with the rules for submittal, public comment, and decisions set forth in 16 NYCRR Parts 1002.2 and 1002.3. The Certificate Holder shall implement all requirements of the Compliance Filings, as approved or amended by the Siting Board. Required Compliance Filings shall be filed with the Secretary prior to the commencement of construction of Component facilities related to the filing, in line with the construction phases as defined in Certificate Condition 8, unless otherwise noted.

General

53. Upon the filing of the plans and reports listed in Appendix 2 to the SEEP Guide, entitled the Site Preparation Phase: Clearing and Grading Filing Framework, as a Compliance Filing, and following certification of the Project and approval of said Compliance Filings, including plans and reports, by the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, the Director of the DPS Office of Electric, Gas and Water, Environmental Certification and Compliance Section, or their designee, is authorized to issue a Limited Notice to Proceed to the Certificate Holder to conduct the Clearing and Grading Activities for Site Preparation described in said plans and reports; provided, however, that said plans and reports are consistent with and implement the Certificate Conditions approved by the Board, together with the applicable substantive requirements of the SEEP Guide.
54. Except with respect to clearing and grading activities that are the subject of a separate Compliance Filing that is reviewed and approved by the Siting Board and submitted pursuant to Condition 53 herein, prior to the commencement of construction of the Project pursuant to Condition 8(b), the Certificate Holder shall submit a Site Engineering and Environmental Plan (SEEP) in accordance with Appendix A "Guidance for the Development of Site Engineering and Environmental Plan for the Construction of the Garnet Energy Center Project" (the SEEP Guide), which shall describe in detail the final Facility design and the environmental protection measures to be implemented during construction of the Facility. The Certificate Holder will adhere to the requirements of the SEEP Guide to the maximum extent practicable. Any deviation from the requirements of the SEEP Guide shall be justified in the SEEP and shall be subject to approval by the Siting Board.

The SEEP will include a table outlining the specific Certificate Conditions, Information Reports, and Compliance Filings incorporated into the SEEP with references to the section of the SEEP where those Conditions may be found.

55. Final computer noise modeling and tonal evaluation shall be conducted in accordance with the specifications in the SEEP Guide.
56. A final site-specific construction Quality Assurance and Quality Control Plan (QA/QC Plan), to be developed in coordination with the selected Balance of Plant (BOP) contractor, shall be submitted prior to commencement of construction (however, a compact version may be submitted for approval prior to obtaining the Limited Notice to Proceed for the Site Preparation Phase) as a Compliance Filing.
57. Prior to the commencement of construction activities and based on the final Project layout, a final Decommissioning Plan and proof of financial security shall be submitted to the Secretary as a Compliance Filing that contains the requirements of the Decommissioning Plan filed in Exhibit 29 Appendix 29-1 of the Application, the requirements of the Order, and the information contained in this paragraph. Financial security shall be in the form of letters of credit in the full amount of the decommissioning and site restoration estimate (without inclusion of salvage value offset), and shall be established by the Certificate Holder, to be solely for the benefit of, and held by the Town of Conquest. The letter of credit shall remain in effect for the life of the Project and shall not be subject to claims or encumbrances of the Certificate Holders' secured or unsecured creditors nor considered to be property of a bankruptcy estate. Prior to commencement of construction activities, the Certificate Holder shall execute a decommissioning agreement with the Town

establishing the Town's right to draw the letter of credit if the Certificate Holder defaults on its decommissioning obligations, which also shall be submitted to DPS Staff. Without relinquishing the authority granted to the Siting Board, and the PSC under PSL § 168(7), the Town of Conquest is hereby delegated the authority, pursuant to PSL § 172(1) to enforce the approved Decommissioning Plan. The Decommissioning Plan shall include:

- a. The anticipated useful economic life of the Project;
- b. A final estimate of decommissioning and site restoration in current dollars (no offset for projected salvage value is permitted). To account for inflation and other cost increases, the decommissioning and site restoration estimate contained in the Plan shall be updated and submitted to the Secretary as a Compliance Filing within one year of commencement of operation, and every five years thereafter, based on the final Project layout, by a qualified independent engineer licensed to practice engineering in the State of New York.
- c. Decommissioning and restoration estimates, as determined pursuant to Certificate Condition 57.b above, and proof of financial security adjustments to the letters or credit based on updated estimates will be provided to the Secretary as Compliance Filings, within one year of operation and every fifth year thereafter;
- d. The Certificate Holder shall file as a Compliance Filing with the Secretary, with a copy to the Town, a copy of the final letter of credit in the final decommissioning and site restoration estimate amount, and copies of agreements between the Certificate Holder and the Town regarding decommissioning. The letter of credit shall include provisions indicating that it shall not expire until the Project has been decommissioned.

The same filings will be included within one year of operation and every fifth year thereafter.

- e. The method that the decommissioning estimate will be kept current;
- f. Details of the manner in which the Project will be decommissioned and the site restored;
- g. Decommissioning will commence if (1) the Project's construction has halted for a period of 12 continuous months, unless the 12-month period of inactivity is the result of reasonably unforeseen circumstances or a Force Majeure event as determined by the Commission, or (2) after commencement of commercial operation of the Facility, it has not generated electricity for a period of 12 continuous months, unless the 12-month period of no energy output is the result of a repair, restoration, or improvement to an integral part of the Project that affects the generation of electricity, or is the result of a Force Majeure event, and that repair, restoration, or improvement is being diligently pursued by the Certificate Holder, as determined by the Commission. The Certificate Holder shall file notice with the Secretary if it is anticipated that repairs or completion of construction (or similar) will extend beyond a 12-month period, as detailed in Certificate Condition 148; and procedures and timeframes for providing written notice to the Town, DPS, NYSDEC, AGM, and adjoining and participating landowners of planned decommissioning and site restoration activities prior to commencement of those activities. Where former agricultural lands will be returned to their former agricultural state, the Certificate Holder will follow the restoration of agricultural lands according to the *Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands Revision 10/18/2019* and any updates to such *Guidelines* to the maximum extent

practicable. At the time of decommissioning, the Certificate Holder will consult with AGM on the implementation of the applicable version of the *Guidelines*.

Health & Safety

58. An Emergency Response Plan (ERP) that shall be implemented during Facility construction, operation, and decommissioning shall be submitted as a Compliance Filing (separate plans may be submitted per listed phases, and prior to start of such phases). It shall address, amongst other potential contingencies, provisions for the notification of emergency situations or in the event of damage to Project equipment. The Certificate Holder shall offer training drills with emergency responders at least once per year. Copies of the final plan shall be provided to DPS Staff, the Town, the NYS Division of Homeland Security and Emergency Services, and local emergency responders that serve the Facility. The Certificate Holder may submit separate emergency procedures for construction and operation, if preferred. Emergency procedures for construction must be submitted prior to the commencement of construction and emergency procedures for operation must be submitted prior the commencement of commercial operation.
59. The Final Site Security Plans for Facility Construction and Operations shall be submitted as a Compliance Filing. Copies of the final plan shall be provided to the DPS Staff, NYS Division of Homeland Security and Emergency Services, Cayuga County Emergency Management, the Town, and local emergency responders that serve the Facility. The Certificate Holder may submit separate Site Security Plans for construction and operation (prior to commencement of each). Security procedures for construction must be submitted prior to the commencement of construction and security procedures for operation must be submitted before

the commencement of commercial operation.

60. A Final Health and Safety Plan shall be submitted prior to commencement of construction (however, compact versions may be submitted for approval prior to commencement of construction, operation and as part of the decommissioning & site restoration compliance filing requirements listed in Certificate Condition 57) as a Compliance Filing and shall be implemented during Facility construction, operation, and decommissioning. The Certificate Holder may submit separate health and safety procedures for construction and operation. Health and safety procedures for construction must be submitted before the commencement of construction and health and safety procedures for operation must be submitted prior to the commencement of commercial operation.
61. A detailed Facility Exterior Lighting Plan shall be filed prior to the first construction phase, as defined in Certificate Condition 8, that requires exterior lighting, addressing all exterior lighting requirements for subsequent construction and operational phases as a Compliance Filing. The Lighting Plan will be included on the final design drawings and shall address:
 - a. Security lighting needs at the collection substation and switchyard;
 - b. Prior to each construction phase requiring lighting, plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the substation or any other areas to be lighted;
 - c. Lighting should be designed to provide up to a 3.4 foot-candle average to eliminate unnecessary light trespass beyond the collection substation and switchyard, or other sites requiring lighting, and to provide safe working conditions at appropriate locations; and

d. Exterior lighting of all Project facilities design shall be specified to avoid off-site lighting effects, by:

(i) Use of task lighting as appropriate to perform specific tasks; task lighting shall be designed to be capable of manual or auto-shut off switch activation rather than motion detection;

(ii) Full cutoff fixtures, with no drop- down optical elements (that can spread illumination and create glare), shall be required for permanent exterior lighting to minimize potential impacts to the surrounding public; and

(iii) Manufacturer's cut sheets of all proposed lighting fixtures shall be provided.

Transportation

62. The Certificate Holder will file a final Route Evaluation Study (for overall construction or per phase as listed in Certificate Condition 8) as a Compliance Filing (or reference to the originally filed Study of the Application, if unchanged; in this case, a Compliance Filing will not be required). The final Route Evaluation Study will include mapping for final transportation routes for Project Component deliveries.

63. The Certificate Holder will file a Traffic Control Plan (for overall construction or per phase as listed in Certificate Condition 8) as a Compliance Filing. Traffic Control Plans shall be developed and submitted covering all construction phases or for each phase of construction based on anticipated traffic flow impacts and proposed controls and mitigation measures required in addressing such impacts.

Plans, Profiles, and Detail Drawings

64. Maps, site plans and profile figures, and construction details for the Facility to be constructed shall be submitted as a Compliance Filing prior to the commencement of construction (pertaining to the relevant phase of construction). Shapefile data shall be provided to DPS and NYSDEC Staff for the locations of solar panels, low-medium transformers and inverters, collection substation, grading, collection lines, interconnection facilities, associated mounting features (concrete pads, foundations, etc.), designated construction and laydown areas, access ways, and other Project Components. Final design drawings, site plans, and construction details will conform to the SEEP Guide and include setback dimensions that adhere to the following requirements for Project Component locations:

- a. 50-foot minimum setback to edge of public road right-of-way;
- b. 250-foot minimum setback non-participating occupied residences;
- c. 100-foot minimum setback to non-participating residential property lines;
- d. 50-foot minimum setback to non-participating non-residential and/or vacant property lines.

65. Maps showing the locations for construction trailers/offices and location of access to public roads will be submitted as a Compliance Filing prior to the placement of such trailers and offices.

Visual Impacts

66. The Certificate Holder shall submit as a Compliance Filing the final Facility design, which shall incorporate the visual mitigation described in Exhibit 24 and depicted in the Preliminary

Landscape Plan included in Appendix 11-2 of the Application and, as discussed in the Order, include any measures that have been incorporated in the Preliminary Landscape Plan to address potential glare from solar panels at residential receptors, including but not limited to those identified in its Application and the Order.

- a. Additionally, collection lines shall be placed underground (unless the Certificate Holder demonstrates a lack of engineering feasibility for any location) to decrease additional aboveground impacts. This configuration allows continued use of the land within the Project Site and helps minimize any impediments to the land uses that have created the rural character of the Visual Study Area.
- b. Minimized vegetation clearing outside of the arrays.
- c. Vegetative buffers: plantings of native/indigenous species included in proposed buffer.
- d. The Certificate Holder will retain a qualified Landscape Architect, Certified Arborist, Certified Nursery & Landscape Professional (CNLP), or ecologist to inspect the screen plantings for five years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The Certificate Holder will remove and replace plantings that fail in materials, workmanship or growth, whether due to herbivorous grazing, weather, mechanical incidents, or other cause, during the current or next suitable planting season, following the completion of installing the plantings. At the end of the first five years following the commencement of commercial operation, the Certificate Holder shall submit a list to the Town of plantings and location where plantings

failed and replacements have been installed.

- e. The Certificate Holder will review the visual mitigation plantings as part of routine maintenance following the five-year monitoring period to evaluate the health condition of the plantings.
- f. In the circumstance that the Certificate Holder will need to remove and replace plantings that fail, equipment operation required to remove and replace plantings will be consistent with the New York State Department of Agriculture and Market's ("AGM's") Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands (Revision 10/18/2019).
- g. Final Planting Plan details showing the location and specific vegetation types to be planted at each designated visual mitigation area in accordance with specifications and planting layout depicted in the Application and, as discussed in the Order, providing details of landscape buffers, screening, and other visual mitigation measures for the seven (7) dwellings and three (3) sections of County Route 17B identified in the Application as well as mitigation measures for other affected residential receptors. The Final Planting Plan shall be prepared by the Applicant's Landscape Architect in consultation with DPS Staff. A distinct, site-specific module will be developed and implemented at each designated visual mitigation buffer for the foregoing areas and receptors.
- h. Any mitigation plantings that were installed to address complaints of residents regarding glare from solar panels shall be maintained in accordance with these specifications

- 67. Final plan for the collection substation and collection line circuits' configuration and

location map, indicating locations of overhead and underground installations and the number of required circuits per circuit-run, shall be submitted as part of the Compliance Filing design plans (described in Certificate Condition 64). This plan shall be filed prior to construction of the collection substation and installation of collection lines. A breakdown of the number of feet per installation shall be included in a legend (including installation distances for single, double, triple circuits, etc.).

68. Prior to the installation of collection lines, and 345 kV electric lines, final details of any proposed overhead collection lines, and any single and multiple-circuit overhead 345 kV electric line layouts shall be submitted as a Compliance Filing, as applicable. Each Project circuit layout (single, double, triple, etc.) shall include, if applicable, the following drawings (may be included in the compliance filing design plans described in Certificate Condition 64):
 - a. "Collection and transmission line corridor Clearing Diagram";
 - b. "Riser Dead-End Structure Diagram";
 - c. "Tangent Structure Diagram";
 - d. "Angle Structure Detail";
 - e. "Clearing Diagram-Adjacent to Roadway Detail";
 - f. Final layout details of any required guy support systems.
69. Cross sections including clearing widths shall be provided for each proposed underground collection circuit layout (single, double, etc.). These details shall be provided, prior to collection line installation, and can be filed as part of the compliance filing design plans described in Certificate Condition 64.

70. Maps showing anticipated installation methods (i.e., description of the trenching or trenchless method) to be performed during construction of underground collection lines. To the extent the contractor determines, during construction activities, that installation methods should differ from that which is depicted on the site plans, such change in upland areas shall be addressed through the process set forth in 16 NYCRR Part 1002.2(j). as provided in Certificate Condition 122(g), The Certificate Holder shall file as a Compliance Filing a Wetlands Mitigation Plan consistent with the requirements in the Order. If the Project layout changes from that approved in the Certificate, a revised Wetland Restoration and Mitigation Plan shall be developed addressing potential new impacts to State and federal protected wetlands and their associated adjacent areas, not previously addressed by the Wetlands Mitigation Plan filed pursuant to Certificate Condition 122 herein satisfying applicable State regulations, including without limitation, the weighing standards in 6 NYCRR Part 663 and using DEC's Freshwater Wetlands Regulation and Compensatory Mitigation Guidelines. If the Certificate Holder proposes changes to an approved Compliance Filing involving the crossing of State-protected wetlands and associated wetland adjacent areas or streams, it shall first consult with the DPS Staff representative, the Project Environmental Monitor, and NYSDEC staff representative, and then comply with 16 NYCRR Part 1002.2(j). Such changes must be consistent with federal and State regulations.

Environmental

71. Final wetland, wetland adjacent area, and stream impact drawings, site plans, and construction details shall be submitted in the Compliance Filing and incorporate and accurately depict all mapped and unmapped wetlands and adjacent areas within the

Project Area, methods for minimization of impacts to each wetland, wetland adjacent area, and stream. The plan shall include a table that identifies all wetlands and streams within the Project area and provides the following information for each individual resource:

- a. Wetland types and NYSDEC stream classifications; and wetland identifications and classifications, if applicable;
- b. Identification and assessment of methods to minimize impacts, including crossing methods and identification of any time of year restrictions, as applicable; and
- c. References to the location of each resource shown in the final design drawings, site plans, and construction details.

72. Prior to the Site Preparation Phase, a Timber Salvage Plan shall be filed as a Compliance Filing.

73. Prior to installation of any permanent road/stream crossings, a site specific "Stream Crossing Plan" shall be submitted in the Compliance Filing. The "Stream Crossing Plan" must include detailed site-specific plan, profile and cross-sectional view plans that reference the State stream and/or wetland ID and the delineated stream and/or wetland ID and describe and illustrate the layout and alignment of each crossing, and the proposed crossing method. At a minimum, the plan must include:

- a) The alignment of roads, bridges, and culverts;
- b) The location, quantity, and type of any fill associated with construction;
- c) The location and installation details of any dewatering measures;

- d) Drainage and flow calculations; and
 - e) A description of the dry crossing methods that will be used to install the crossing.
74. If trenchless methods are not constructible or not feasible for proposed collection line stream crossings, the Certificate Holder shall submit as a Compliance Filing, prior to such crossing, a "Site-Specific Constructability Assessment." The "Site-Specific Constructability Assessment" shall be conducted by an experienced and qualified, independent professional engineer licensed in New York State and shall include a detailed analysis of the site-specific conditions that lead to the conclusion that all trenchless crossing methods are not constructible or not feasible at the particular stream crossing.
75. Plans for the creation, modification or improvement of any permanent access road stream crossing, prior to the commencement of the Site Preparation Phase, shall be included in a Compliance Filing and must meet the requirements contained in the SEEP Guide.
76. An Invasive Species Management and Control Plan (ISMCP) shall be submitted prior to Site Preparation as a Compliance Filing. The Final ISMCP shall include pre-construction invasive species control (if necessary), construction materials inspection and sanitation, invasive species treatment and removal, and site restoration in accordance with the Facility's final approved Storm Water Pollution Prevention Plan (SWPPP). Post-construction invasive species monitoring shall be conducted for a period of no less than five years following completion of Project related activities on site. A post-construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5, following completion of construction and restoration. Monitoring will be conducted per the ISMCP with intention to achieve the goals outlined in the ISMCP, including the goals to prevent

construction activities from resulting in no net increase at the Project Area of (1) the number of invasive species present and (2) the areal distribution of invasive species. The MP shall collect information to facilitate evaluation of ISMCP effectiveness. At the conclusion of the MP, a report shall be submitted to DPS Staff, NYSDEC and AGM, and filed with the Secretary, that assesses how well the goal of no net increase of invasive species per the recommendation of the Invasive Plant Species Survey Baseline Report (Baseline Species Report), due to construction of the Facility, is achieved.

77. An Agricultural Area Plan shall be submitted as a Compliance Filing prior to the commencement of construction to identify any programs, policies, and procedures implemented consistent with the New York State Department of Agriculture and Markets (AGM) *Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands Revision 10/18/2019* to the maximum extent practicable. In the event that the Certificate Holder determines that any aspect of the Guidelines are not practicable, justification for departing from the Guidelines shall be identified in the Plan and the Certificate Holder will work with AGM and DPS Staff to reach an agreement to implement a reasonable alternative.
78. If, after the conclusion of the MP phase, all invasive species control requirements have not been achieved, the Certificate Holder must evaluate the likely reasons for these results in consultation with NYSDEC, AGM, and DPS and submit an "Invasive Species Remedial Plan" to the Secretary for approval. The "Invasive Species Remedial Plan" must describe the likely reasons for not achieving NYSDEC requirements, describe the actions necessary to correct the situation, and the schedule for conducting the remedial work. Once approved, the "Invasive Species Remedial Plan" will be

implemented according to the approved schedule.

79. A plan for vegetation maintenance shall be included as part of the O&M Plan to be submitted as a Compliance Filing prior to the commencement of commercial operation, and shall address specific standards, protocols, procedures and specifications for the vegetative management of onsite collection substation, collection systems, access roads and panel locations with the following information addressed:
 - a. Vegetation management recommendations based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;
 - b. Herbicide use and limitations, specifications and control measures;
 - c. Inspection and target treatment schedules and exceptions;
 - d. Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents;
 - e. Review and response procedures to avoid conflicts with future use encroachment or infrastructure development;
 - f. Wetland and stream protection areas, principles and practices;
 - g. Landowner notification procedures; and
 - h. Periodically assess effectiveness of plan and adjust accordingly.
80. A Spill Prevention, Containment and Control (SPC) Plan to minimize the potential for unintended releases of petroleum and other hazardous chemicals during Facility construction and operation shall be filed prior to commencement of Site Preparation in

the Compliance Filing. The SPC Plan shall be applied to all construction activities and contain procedures for loading and unloading of fuel and oil, discharge or drainage controls, procedures in the event of discharge discovery, a discharge response procedure, a list of spill response equipment to be maintained on-site (including a fire extinguisher, shovel, tank patch kit, and oil-absorbent materials), methods of disposal of contaminated materials in the event of a discharge, and spill reporting information. Any spills shall be reported in accordance with State and/or federal regulations.

81. Prior to the initiation of any HDD operations, an Inadvertent Return Plan for any HDD operations shall be submitted as a Compliance Filing. The plan shall assess the potential impacts for inadvertent returns at the proposed drilling locations, establish measures for minimizing the risk of adverse impacts to nearby environmental resources, and contain details as outlined in Section B of SEEP Guide. Biodegradable drilling solutions shall be described therein and shall be used for HDD to minimize harm to aquatic species in the event of a drilling frac-out. The Certificate Holder agrees to consult with NYSDEC concerning the type of biodegradable solutions. HDD exit and entry points shall be located a minimum of 50 feet from the edge of the stream/wetland or 100 feet from the edge of a NYSDEC protected wetland and associated wetland adjacent area, unless the Certificate Holder demonstrates to DPS Staff that such minimum distances are not feasible. At a minimum, the plan shall include procedures to address inadvertent surface returns (frac-out), a response procedure, and a list of spill response equipment to be maintained on-site. All equipment and provisions of the plan shall be readily accessible at the locations where HDD technology is used during construction.

82. Cultural and Recreational Resources Protection Measures shall be submitted as a Compliance Filing prior to the commencement of the Site Preparation Phase and contain the following:

- a. Plans to avoid or minimize impacts to archaeological and historic resources. Construction, including site preparation, clearing or other disturbance, shall not be allowed in any areas that have not been evaluated or inventoried and assessed by the Certificate Holder and New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) for the presence of historic and archaeological properties. The Certificate Holder shall indicate in the final SEEP all measures for avoidance of archaeological sites and cemeteries identified within the Facility site and identify whether a Phase II assessment is warranted for any impacted resources where avoidance is not feasible. The mapped locations of all identified archaeological sites and cemeteries within 100 feet of proposed Facility-related impacts shall be identified as "Environmentally Sensitive Areas" or similar on the final Facility construction drawings and marked in the field by construction fencing with signs that restrict access at the distance(s) prescribed in a NYSOPRHP-approved Avoidance Plan.
- b. Final Unanticipated Discovery Plan, establishing procedures in the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction. The plan will include a provision for immediate work stoppage of all ground-disturbing construction-related activities within 100 feet of the discovery of possible archaeological or human remains; the Certificate Holder will promptly notify DPS Staff indicating details of any such discovery of possible archaeological or human remains. Evaluation of

such discoveries, if warranted, shall be conducted by an independent Registered Professional Archaeologist, qualified according to New York Archaeological Council Standards. Work shall not resume in the area of the discovery of such remains until written permission is received from the NYSOPRHP. If the archaeologist determines that an archaeological resource has been discovered, additional information will be provided to the New York States Office of Parks, Recreation, and Historic Preservation/State Historic Preservation Office (NYSOPRHP/SHPO) following the archaeologist's site visit. The additional information will either: (a) explain why the archaeologist believes the resource to be non-significant with respect to the State/National Register of Historic Places (S/NRHP); or (b) explain why the archaeologist believes the resource to be significant with respect to the S/NRHP and propose a scope-of-work for evaluating the significance of the resource and evaluating Facility-related impacts to it. In the latter case, the NYSOPRHP will be advised that unless an objection is received within five business days, the archaeologist will consider the proposed scope-of-work to have been accepted by the NYSOPRHP and proceed with its implementation.

- c. If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the NYSOPRHP and DPS Staff to determine if Phase II investigations or mitigation is warranted. The results of any Phase II investigations and/or identification of mitigation measures will be included in the plans.
- d. No cemetery or burial ground shall be disturbed by the construction or operation of the Project.
- e. If required, a Cultural Resources Mitigation and

Offset Plan, either as adopted by a federal permitting agency in a subsequent National Historic Preservation Act (NHPA) §106 review, or as proposed in the Application and as revised in further consultation with NYSOPRHP in the event that the NHPA §106 review does not require that the mitigation plan be implemented, or as further supplemented pending any negotiations among parties. Proof of mitigation funding awards for offset project implementation to be provided within two years of the start of construction of the Facility shall be included.

- f. A plan indicating the locations of existing recreational use areas, publicly accessible trails, snowmobile trails, trailhead parking areas or associated access driveways that are affected by the Facility construction or operation and identifying any such recreational use trails/parking areas and driveways that require re-routing or implementation of avoidance measures, and the details of such proposed re-routing or avoidance measures.

Noise and Vibration

- 83. The Certificate Holder shall present to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary within 60 days of the start of the Commencement of Civil Construction Phase as defined in Certificate Condition 8 as Compliance Filings:

- a. Final drawings for the Solar Generating Facility, incorporating any changes to the design, including:
 - (i) Location of all noise sources and receptors identified with Geographic Information Systems (GIS) coordinates and GIS files;

- (ii) Proposed grading and noise source heights and ground elevations;
 - (iii) Site plan and elevation details of substation Components as related to the location of all relevant noise sources (e.g., transformers, emergency generator, HVAC equipment, if any).
 - (iv) Any identified mitigations, specifications, and appropriate clearances (e.g., for sound walls, barriers, and enclosures, if any).
 - (v) Sound information from the manufacturers for all noise sources (e.g., Transformers, inverters, HVAC equipment, emergency generators, if any).
- b. Revised sound modeling with the final specifications of equipment selected for construction to demonstrate that the Project is modeled to meet the following sound goals for residences and boundary lines existing as of the date of the order as noted:
- (i) 35 dBA Leq-1-hour maximum equivalent continuous average sound level from the Substation transformer(s) outside any permanent or seasonal non-participating residence within the 35 dBA noise contour from any substation transformer(s), on the presumption that a 5 dBA prominent tone penalty applies to a basic design goal of 40 dBA.
 - (ii) 45 dBA Leq-1-hour maximum equivalent continuous average sound level from the Facility outside at any permanent or seasonal non-participating residences from other daytime-only operational sound sources associated with the Facility, such as inverters and medium voltage

transformers. If the sound emissions from these sources are found to contain a prominent discrete tone at any non-participating residence whether through modeling, calculation, or pre-construction field testing, then the sound levels at the receptors shall be subject to a 5 dBA penalty; i.e., a reduction in the permissible sound level to 40 dBA Leq-1-hour.

- (iii) 55 dBA Leq-1-hour maximum equivalent continuous average sound level from the Facility across any portion of non-participating property, except for portions delineated as wetlands and utility rights of way. This shall be demonstrated with modeled sound contours and discrete sound levels at worst-case locations. No penalties for prominent tones will be added in this assessment.
- (iv) 50 dBA Leq-1-h, maximum equivalent continuous average sound level from the Facility outside any participating residence. No penalties for prominent tones will be added in this assessment.
- (v) Any noise sources, other than the ones identified in Certificate Conditions 83(b)(i) and 83(b)(ii) (e.g., tracking systems, motors, emergency generators), that exceed the design goals specified in Certificate Conditions 83(b)(i) during the nighttime; 83(b)(ii) during the daytime; or 83(b)(iii) and 83(b)(iv) (nighttime or daytime), or approach those goals within 10 dBA, will be included in the final computer model modeling subject to the design goals indicated in this section, as applicable to the time of the day those noise sources will be operating (e.g., daytime, nighttime).

For these noise sources a tonal analysis will be conducted as specified in Condition 83(b)(ii) and the SEEP Guide.

c. Final computer noise modeling and tonal evaluation shall be conducted in accordance with the specifications in the SEEP Guide.

84. The Certificate Holder shall comply with the following Conditions regarding construction noise:

a. Comply with the substantive provisions of all applicable local laws regulating construction noise;

b. Maintain functioning mufflers on all transportation and construction machinery; and

c. Respond to noise and vibration complaints according to the Noise Complaint Resolution Protocol (Appendix B).

85. The Certificate Holder must design and build the Facility to comply with all Certificate Conditions on Noise and Vibration. No post-construction noise testing will be required except for testing that may be provided as specified in the Noise Compliant Resolution Protocol.

V. Facility Construction, Operation, and Maintenance

General

86. At least 60 days prior to the start of construction, the Certificate Holder shall become a member of Dig Safely New York (DSNY). The Certificate Holder shall require all contractors, excavators, and operators associated with its facilities to comply with the requirements of the Commission's regulations regarding the protection of underground facilities (16 NYCRR Part 753) to assure public safety and to prevent damage to public and private property.

87. The Certificate Holder shall require all contractors, excavators, and operators associated with its facilities to comply with all requirements of the Commission's regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217). The Certificate Holder shall be responsible for contractually enforcing such compliance.
88. The Certificate Holder will provide funding for an independent, third-party Environmental Monitor to oversee compliance with these Certificate Conditions and report to DPS Staff. The Certificate Holder's environmental compliance construction team will actively monitor all construction activities. All Certificate Conditions will be tracked to ensure compliance and oversight of the construction effort. The environmental compliance and monitoring program will be implemented in five environmental compliance phases:
 - a. Environmental Compliance Preparation Phase: Established Environmental Monitors will review the Certificate Conditions and any environmental permits and prepare an environmental management program that will be used for the duration of the construction and operation of the Project. This program will identify all environmental requirements for construction and restoration included in all Project-related certificates, permits, and approvals; and will be used as a resource for the management of environmental issues that may occur. The Environmental Monitor shall perform daily inspections of construction work sites. In addition, the Environmental Monitor will consult with DPS Staff on a schedule requested by DPS Staff. Compliance audits shall be conducted with DPS Staff as necessary. When soliciting input from the DPS Staff, the Certificate Holder shall identify one or more candidates and provide qualifications

and contact information for the Environmental Monitor. The Environmental Monitor shall have the qualifications of an agricultural and Environmental Monitor consistent with the AGM guidelines, entitled *Guidelines for Solar Energy Projects- Construction Mitigation for Agricultural Lands (Revision 10/18/19)* (2019), and the Environmental Monitor must be trained to identify and properly report on threatened and endangered (TE) species during construction of the Project, per Certificate Conditions 99-105.

- b. Environmental Compliance Training Phase: The Environmental Monitor will conduct mandatory environmental training sessions for all contractors and subcontractors before they begin working at the Project Area. The purpose of this training will be to explain the environmental compliance program in detail, prior to the start of construction, and to assure that all personnel on site are aware of the environmental requirements for construction of the Project. Likewise, the corporate environmental compliance team will provide construction staff training concerning Certificate and permit conditions and compliance requirements.
- c. Environmental Compliance Coordination Phase: Prior to construction, the Environmental Monitor along with associated construction contractors will conduct an on-site walk down of areas to be impacted by construction. Work area limits will be defined by flagging, staking, or fencing prior to construction. This walk down will also aid in the identification of any landowner preferences and concerns. This walk down will locate sensitive resources, clearing limits, and proposed wetland and waterbody crossings and impacts. The placement of sediment and erosion control features will also be identified. The walk down will serve as a critical means of

identifying any required changes in the Project design in a timely manner in order to avoid future delays to construction timeframes.

d. Environmental Compliance Construction Phase: The Environmental Monitor will conduct daily inspection of work areas and submit monthly monitoring reports to DPS Staff, as necessary. The Environmental Monitor will conduct inspections of all areas requiring environmental compliance during construction activities, with an emphasis on those activities that are occurring within or in close proximity to jurisdictional/sensitive areas. The Environmental Monitor will conduct daily operation meetings with contractors to coordinate scheduling, establish daily monitoring priorities, and address compliance issues.

e. Environmental Compliance Restoration Phase: When the construction phase of the Project is nearing completion in select areas, the monitor will work with the contractors to locate areas that require restoration. The Environmental Monitor will provide guidance in accordance with the Project environmental restoration plans when needed, coordinate the proper restoration efforts of the specific area, and incorporate the monitoring of these restoration areas in their daily task list. The Environmental Monitor shall submit monthly reports to DPS Staff on the status and success of such restoration activities. As these areas approach final restoration, the Environmental Monitor will document the results and, in consultation with DPS Staff, determine if further restoration effort is needed or if the restoration area can be removed from the daily inspection list.

89. At least 14 days before the commencement of construction, the Certificate Holder shall hold a

pre-construction meeting with DPS Staff, AGM, NYSDOT, the Town and the County and their respective Highway Superintendents, and NYSDEC. The Certificate Holder may elect to combine the previously described meeting with the listed parties and NYPA or conduct a separate meeting with NYPA at least 14 days before the commencement of construction activities affecting facilities owned or to be owned by NYPA. The Certificate Holder's construction contractor and the environmental compliance monitor shall be required to attend these meetings. The Certificate Holder shall adhere to and provide the following material regarding such meeting(s):

- a. An agenda (to be distributed prior to the meeting), the location, and an attendee list shall be agreed upon between DPS Staff and the Certificate Holder prior to the meeting;
- b. Maps showing designated travel routes, construction worker parking and access road locations and a general project schedule will be available at the meeting for the attendees;
- c. The Certificate Holder shall supply draft minutes from this meeting to a representative of DPS Staff, AGM, DOT, the Town, the County, NYSDEC, and NYPA for corrections or comments, and thereafter the Certificate Holder shall issue the finalized meeting minutes to all attendees; and
- d. If, for any reason, the Certificate Holder's contractor cannot finish the construction of the Project, and one or more new Certificate Holder's contractors are needed, there shall be another preconstruction meeting with the same format as outlined above.

- 90. Construction work hours shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday, with the exception of construction and delivery

activities which may need to occur during extended hours beyond this schedule on an as- needed basis. Post installation and HDD will be limited to daytime hours. Construction work hour limits apply to site preparation, facility construction, all construction-related activities including the delivery and unloading of materials, and maintenance and repairs of construction equipment at outdoor locations. Since these activities can result in extensive noise, vehicles idling for more than five (5) minutes or any unnecessary periods at roadside locations, and related disturbances are not allowed. Crews will be allowed to assemble in Project Area laydown yards and conduct pre and/or post workday meetings (e.g. morning plan of the day and/or safety brief, evening progress meeting) outside of the aforementioned windows as these activities usually do not create a level of noise that may be considered disturbing.

91. If for safety reasons, emergency situations, or due to continuous operation requirements, the Certificate Holder may seek a limited extension of the timeframe and/or work hours for construction activities and shall notify and consult with DPS Staff, the Town, neighboring property owners as soon as such extensions are intended to be sought, and shall provide the reasons to extend such timeframe and the duration of such extension. DPS Staff shall approve or disapprove the extension of the timeframe for construction activities upon a demonstration of compelling reasons for the extension, and may impose conditions or limitations on any extension granted; and
 - a. If, due to safety or continuous operation requirements, construction activities are approved to occur beyond the allowable work hours, the Certificate Holder shall notify DPS Staff, the Town and affected landowners. Such notice shall be given at least 24 hours in advance, unless such construction activities are

required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than 24 hours in advance. In such cases, as much advance notice as is practicable shall be provided.

- b. As provided herein, notice of planned extra-hours construction shall be provided to residents of areas that may be affected by the noise, traffic or other aspects of construction, and appropriate measures taken to avoid, minimize and mitigate such impacts. Thirty days prior to the commencement of construction, the Certificate Holder shall compile a list of cellphone numbers/electronic mail addresses/home phone numbers and addresses, to the extent reasonably available, of residents within 500 feet of the Project boundary lines ("Resident List"). The Certificate Holder will contact the Town representatives, and Resident List, assuming the aforementioned contact information has been provided to the Certificate Holder, as soon as practicable before the extended hour construction activity is to take place. This list shall not be filed with the Secretary nor in the Compliance Filing, nor publicized in any manner except for the use of the Certificate Holder, its employees, its contractors and their respective employees, to implement the requirements of this Condition.

- 92. In the event that petroleum-impacted soil is encountered during construction activities (i.e., identified through staining, discoloration, odor, etc.) at the site, the following procedures will be implemented:

- a. The Certificate Holder's contractor will immediately suspend ground intrusive work in the vicinity of the petroleum impacted material and notify the Certificate Holder Project

Supervisor;

- b. The Certificate Holder will notify the property owner as soon as practicable;
- c. The Certificate Holder will notify the NYSDEC Region 7 Regional Engineer, DPS, and NYSDEC's Spill Hotline (1-800-457-7362) of the petroleum impacted material should the property owner not be located within 2 hours of the discovery or if conditions exist at the site which are determined to be immediately dangerous to public safety, health or the environment. In an emergency situation, the Certificate Holder will take necessary actions to contain the impacted material until appropriate emergency spill response services arrive;
- d. In non-emergency situations and under the direction of the EPC Contractor Project Supervisor, the excavated impacted material will be segregated and temporarily stored on the site until the material can be delivered to the disposal facility. Stockpiles will be placed on 20-mil polyethylene sheeting and will be covered with heavy-duty tarps specifically manufactured for this purpose and secured with heavy sandbags. All impacted material will be managed and transported in accordance with applicable laws and regulations, including but not limited to, 6 NYCRR Parts 360 and Part 364;
- e. Construction equipment which comes in contact with the impacted material will be washed with potable water and a detergent and rinsed with potable water (as necessary) to remove impacted material adhered to the tires, tracks, undercarriage, and other parts of vehicle exteriors. The wash water and solids from the decontamination activities will be collected, contained, tested, removed from the site, and ultimately properly disposed of at a licensed and approved facility. Decontamination will be

performed on a decontamination pad specifically set up for that purpose. The pad will be curbed and lined with an impermeable membrane to contain the used cleaning solution, including any overspray, and any impacted debris removed during the cleaning process;

- f. Used cleaning solution and impacted materials will be collected and transported by a waste hauler with a valid 6 NYCRR Part 364 Waste Transporter Permit;
- g. The Certificate Holder and Project engineer will adjust ground intrusive construction activities at the site to avoid working within the limits of petroleum impacted material discovered during construction. If the limits of impacted material cannot be avoided, the Project owner, in consultation with the property owner, will evaluate options for planning and implementing remediation activities, which may be required, including identification or adequate staging areas where impacted soils would be temporarily stockpiled. If the Project owner elects to undertake the remediation activities, the work will be performed under a plan prepared by the Certificate Holder and approved by the NYSDEC Region 7 Regional Engineer;
- h. The Certificate Holder and its contractors shall have a decontamination pad in the event that oil or gas infrastructure is encountered;
- i. The Certificate Holder shall consult with the DPS Gas Safety Staff if abandoned gas lines are identified as soon as practicable, considering cell coverage and internet service availability in the field.; and
- j. Performance of any site clean-up, including containment or remediation of any existing contamination, to plug any existing orphaned wells or to cap, plug, remove or otherwise

contain pipelines that it might discover is subject to all applicable laws. EPC Contractor Project Supervisor agrees to notify the affected landowner, the NYSDEC Energy Project Management Bureau and NYSDEC Region 8 Regional Minerals Manager (who oversees Region 7) of the discovery of any unplugged oil or gas well as soon as practicable considering cell coverage and internet service in the field. GPS coordinates for, and access to the newly discovered well location, will be provided by the EPC Contractor Project Supervisor, to the NYSDEC Region 8 Regional Minerals Manager, and NYSDEC Division of Environmental Permits, Energy Project Management Bureau, subject to the requirements of this Certificate.

93. Any debris or excess construction materials shall be removed to a facility duly authorized to receive such material. No burying or burning of construction debris or excess construction materials will be allowed.

Environmental

94. Tree and vegetation clearing shall be limited to the minimum necessary for Facility construction. SEEP documents, including the Tree Clearing and Grading Compliance Filing shall indicate the limits of tree and vegetation clearing, and also specify tree and vegetation protection measures to avoid disturbance of treed and vegetated areas necessary for visual screening, including but not limited to, the seven dwellings and three roadway segments identified in the Application and in the Order that require such screening mitigation.

95. The Certificate Holder shall plan, construct and mitigate the Facility consistent with the AGM *Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands Revision 10/18/2019*, to the maximum extent practicable in

consultation with AGM and DPS Staff. This Condition also requires the Certificate Holder to locate electric interconnect cables and transmission lines underground in agricultural land and interconnect cables and transmission lines installed above ground outside agricultural field boundaries, where practicable. The Certificate Holder and/or Environmental Monitor will consult with AGM and DPS Staff during construction when deviation from the Guidelines may be necessary. Mitigation measures shall include full restoration of temporarily disturbed agricultural land.

96. Post-construction monitoring and remediation and/or restoration of agricultural land impacted by the Facility will be conducted for a period of no less than two years following completion of initial restoration. The monitoring and remediation phase shall be used to identify lingering agricultural impacts associated with construction requiring mitigation and/or follow-up restoration. The Environmental Monitor will identify any issues through on-site monitoring of all agricultural areas impacted by construction and will keep open correspondence between contacts with respective farmland operators and AGM in order to properly mitigate issues.
97. Blasting, if necessary, and post driving operations in locations where geotechnical investigations confirm the presence of subsurface karst features shall be limited or performed under specific procedures recommended for those locations by a geotechnical engineer.
98. Water Supply Protection:
 - a. Post driving activities shall be prohibited within 100 feet of any existing, active potable water supply well;
 - b. If required, blasting shall be prohibited within 1,000 feet of any known existing, active water supply well or water supply intake on a non-

participating property.

c. 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:

(i) collection lines or access roads within 100 feet of an existing, active potable water supply well on a non-participating parcel;

(ii) post installations within 200 feet of an existing, active potable water supply well on a non-participating parcel;

(iii) HDD operations within 500 feet of an existing, active potable water supply well on a non-participating parcel; and

d. Should the NYSDOH certified laboratory testing conclude that the water supplied by an existing, active potable 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.

Threatened and Endangered Species

For the purposes of Conditions 99-105 of this Certificate, Project Area shall be defined as those areas that are owned or controlled by the Certificate Holder as indicated in the SEEP, including areas that would be

disturbed or occupied by Project Facilities, including access roads, laydown areas, and trees that are immediately adjacent to the limits of disturbance or fence line. In addition, the Certificate Holder may request and NYSDEC will supply the Certificate Holder the identity of the DEC office(s) for notifications required by Conditions 99-105 where notification must be made within 24 hours of the discovery of a Threatened or Endangered (TE) species. The office(s) identified may be revised as necessary. The Certificate Holder may file the information with the Secretary as an Information Report Filing.

99. If at any time during construction of the Project (including site restoration measures upon commissioning of the Facility), a nest or roost of any federally or State-listed TE bird species is discovered and confirmed by the onsite Environmental Monitor or if any federally or State-listed TE bird species is observed by an agent of the Certificate Holder displaying roosting or breeding behavior for that species within 500 feet of the Project Area, the following actions will be taken: NYSDEC and DPS Compliance Staff will be notified within 24 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior; an area at least 500 feet in radius around the nest or roost of the TE species will be posted and avoided (for eagles, the avoided area shall be at least one-quarter (1/4) mile in radius if there is no visual buffer, or an area of at least six hundred and sixty (660) feet in radius if there is a visual buffer), and will remain in place until notice to continue construction, ground clearing, grading, or restoration activities at that site is granted by NYSDEC. The nest or roost will not be approached under any circumstances unless authorized by NYSDEC. The Environmental Monitor's observation may also include a recommendation pertaining to: (1) if

the discovered TE species nest or roost has the potential to be impacted by construction or restoration activities; (2) if the avoided area radius can be reduced according to the species identified and the associated construction, disturbance, or restoration activities; and 3) what measures are suggested to protect the nest or roost and to provide a timeline for the implementation of such measures. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

100. If at any time during operation of the Project, a nest or roost of any federally or State-listed TE bird species is discovered and confirmed by the Certificate Holder or if any federally or State-listed TE bird species is observed displaying roosting or breeding behavior for that species within 500 feet of the Project Area (or one quarter mile for eagles), the following actions will be taken: NYSDEC and DPS Compliance Staff will be notified within 24 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior, an area of at least 500 feet in radius around the nest or roost of the TE species will be posted (for eagles, the avoided area shall be at least one-quarter (1/4) mile in radius if there is no visual buffer, or an area of at least six hundred and sixty (660) feet in radius if there is a visual buffer) and disturbance, restoration or maintenance activities within such radius will cease until approval to continue such activities is granted by NYSDEC except if necessary for the protection of human life and property. The nest(s), nest tree(s), or roost(s) will not be approached under any circumstances unless authorized by the NYSDEC. The Certificate Holder's observation may also include a recommendation pertaining to: (1) if the discovered TE species nest or roost has the potential to be impacted by operation and maintenance activities; (2) if the

avoided area radius can be reduced according to the species identified and the associated operation and maintenance activities and, (3) what measures are suggested to protect the nest or roost and to provide a timeline for the implementation of such measures. Notwithstanding the above, consistent with the aforementioned recommendations described in the preceding sentence, nothing prohibits the Certificate Holder from repairing the Project in order to permit the continued generation and delivery of electricity from the Project so that it can continue to deliver renewable energy to meet its contractual obligations and/or contribute to satisfying New York State's renewable energy targets or goals, consistent with the substantive requirements of 6 NYCRR Part 182, as implemented by the applicable Certificate Conditions herein.

101. If any dead, injured, or damaged federally or State-listed TE species, or their eggs or nests thereof, are discovered at any time during the life of the Project within the Project Area by the Certificate Holder, Environmental Monitor, or other agent of the Certificate Holder will contact NYSDEC and U.S. Fish and Wildlife Service (USFWS) to arrange for recovery and transfer of the specimen(s) within 24 hours. The following information pertaining to the find shall be recorded:

- a. Species;
- b. Age and sex of the individual(s), if known;
- c. Date of discovery of the animal, eggs, or nest;
- d. Condition of the carcass, or state of the eggs, nest or live animal;
- e. GPS coordinates of the location(s) of the discovery (if the reporting individual does not have GPS available the report must include the nearest Project Component and crossroads location);

- f. Name(s) and contact information of the person(s) involved with the incident(s) and find(s);
- g. Weather conditions at the site for the previous 48 hours;
- h. Photographs, including scale and of sufficient quality to allow for later identification of the animal, eggs, or nest; and
- i. An explanation of how the mortality/injury/damage occurred, if known.

Electronic copies of each record, including photographs, will be provided to NYSDEC and USFWS within 24 hours of discovery. If an animal is found injured and alive, the Certificate Holder will make arrangements to have the animal transferred, as soon as possible, to a rehabilitator licensed to care for the injured species. All discovered portions of specimen(s) will be covered in place until NYSDEC or USFWS retrieves the specimen(s) or provides direction otherwise. If the discovery is followed by a non-business day, the Certificate Holder will ensure all the information listed above is properly documented for transfer. Once authorized by NYSDEC or USFWS, after all information has been collected in the field, the fatality specimen(s) will be placed in a freezer, or in a cooler on ice until transported to a freezer, until it can be retrieved by the proper authorities, unless directed otherwise.

102. During construction, restoration, maintenance, and operation of the Facility, the Certificate Holder shall maintain a record of all observations of New York State TE species as follows:

- a. Construction: During construction the onsite Environmental Monitor shall be responsible for recording all occurrences of TE species. All occurrences shall be reported in the bi-weekly

monitoring report submitted to the DPS and NYSDEC and shall include the information described below. If a TE avian species is demonstrating breeding or roosting behavior for that species, it will be reported to NYSDEC within 24 hours.

- b. Operation and Maintenance: During regular operation and maintenance, the Certificate Holder will be responsible for training O&M staff to focus on identifying the following TE bird species: short-eared owl (*Asio flammeus*), northern harrier (*Circus hudsonius*), upland sandpiper (*Bartramia longicauda*), Henslow's sparrow (*Ammodramus henslowii*), and sedge wren (*Cistothorus stellaris*). The Certificate Holder will keep a record of observations of these species and report each observation to NYSDEC within 7 days of the observation.
- c. Reporting Requirements: All reports of TE species shall include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); GPS coordinates of each individual observed (if reporting individual does not have GPS available the report must include the nearest Project Component and cross roads location); behavior(s) observed; identification and contact information of the observer(s); and the nature of and distance to any Project construction, maintenance, or restoration activity;
- d. In consultation with the landowner, all temporary disturbance or modification of grassland habitat that occurs as a result of construction, restoration, or maintenance activities will be restored to pre-existing grassland habitat conditions by re-grading and re-seeding with an appropriate, native/indigenous seed mix after disturbance and construction activities are completed unless returning to agricultural production or

otherwise agreed to by NYSDEC and AGM. These areas shall include, but are not limited to, temporary roads, material and equipment staging and lay-down areas, areas between and beneath the solar panels, and collection line ROWs.

103. If at any time during the life of the Project any northern long-eared bat (*Myotis septentrionalis*) (NLEB) maternity roost trees are discovered within 500 feet of the Project Area, NYSDEC will be notified within 24 hours of discovery.

a. During the construction and restoration phase, an area at least 500 feet in radius around the roost tree will be posted and avoided and will remain in place until notice to continue construction, ground clearing, grading, maintenance, or restoration activities, as applicable, at that site is granted by NYSDEC, which authorization shall not be unreasonably delayed. The Certificate Holder's observation may also include a recommendation pertaining to: (1) if the NLEB maternity roost tree has the potential to be impacted by construction, maintenance, or restoration activities; (2) if the avoided area radius can be reduced according to site-specific conditions and the associated construction, maintenance, or restoration activities; and (3) what measures are suggested to protect the species and to provide a timeline for the implementation of such measures. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

b. During the operation phase, an area at least 500 feet in radius around the roost tree will be posted and maintenance activities will cease until notice to continue such non-essential maintenance activities is granted by NYSDEC. The Certificate Holder's observation may also include a recommendation pertaining to: (1) if

the NLEB maternity roost tree has the potential to be impacted by maintenance activities; (2) if the avoided area radius can be reduced according to site-specific conditions and the associated operation or maintenance activities; and (3) what measures are suggested to protect the species and to provide a timeline for the implementation of such measures. Notwithstanding the above, consistent with the aforementioned recommendations described in the preceding sentence, nothing prohibits the Certificate Holder from repairing the Project in order to permit the continued generation and delivery of electricity from the Project so that it can continue to deliver renewable energy to meet its contractual obligations and/or contribute to satisfying New York State's renewable energy targets or goals, consistent with the substantive requirements of 6 NYCRR Part 182, as implemented by the applicable Certificate Conditions herein. All authorizations required by NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

104. The Certificate Holder shall leave uncut all known NLEB roost trees and any trees within a 150-foot radius of a documented summer occurrence and 0.25 miles of documented winter occurrence. If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within 150 feet of the tree shall be suspended and NYSDEC shall be notified as soon as possible, and in that event, the Certificate Holder shall have an Environmental Monitor present on site during the aforementioned tree clearing activities. If any bat activity is noted, a stop work order for tree clearing shall immediately be issued and shall remain in place until such time as NYSDEC and DPS staff have been consulted and both agencies authorize resumption of work. All authorizations required by NYSDEC shall not be unreasonably

withheld, unreasonably conditioned, or unreasonably delayed.

105. A Post-Construction Avian Monitoring (Monitoring Plan) shall be developed in consultation with NYSDEC and a final, NYSDEC-accepted Monitoring Plan filed prior to the start of Project operation. The Monitoring Plan shall include breeding and wintering bird surveys, and include details of the studies (i.e., start and end dates; transect and point count locations; frequency, duration and scope of monitoring; methods for observation surveys; reporting requirements, etc.). The Monitoring Plan will be used to gather data regarding use of the Project Area by breeding and wintering birds, including State-listed species, after construction, and will include at least one multi-season survey during the first three years of Project operation. Findings from the survey conducted will not trigger additional surveys or additional mitigation and will not result in changes to operations of the Project. Results of monitoring will be submitted in a report to NYSDEC under appropriate confidentiality protections. Nothing herein shall prohibit the Certificate Holder from filing the Monitoring Plan Compliance Filing with the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, prior to acceptance by the NYSDEC staff.

Wetlands and Streams, Vegetation, and Invasive Species

106. If any federal wetland/stream permits are required for the construction, operation and/or maintenance of the Facility, the Certificate Holder shall meet all federal standards and conditions of the permit(s) as well as any conditions and regulatory requirements issued under the Section 401 Water Quality Certification and 6 NYCRR Part 608 in consultation with DPS staff and DEC. All necessary precautions shall be taken to preclude contamination of any wetland or waterway by

suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, or any other environmentally deleterious materials associated with the Project.

107. The Certificate Holder shall submit a Notice of Intent to Commence Construction to the Region 7 Division of Environmental Permits, NYSDEC Region 7 Headquarters, 615 Erie Blvd. West, Syracuse, NY 13204-2400, the NYSDEC Energy Project Management Bureau, Division of Environmental Permits, 625 Broadway, Albany; DPS; and the Town at least 72 hours in advance of the commencement of construction and shall also notify them in writing within 10 business days of the completion of work.
108. All construction activity, including operation of machinery, excavation, filling, grading, clearing of vegetation, disposal of waste, street paving, and stockpiling of material, is to occur within the Project site as depicted on Project plans. No construction activity is authorized to occur within areas to be left in a natural condition or areas not specifically designated by this Certificate. Staking and/or flagging construction limits (i.e., ROW, off- ROW access roads, and extra work areas) shall occur prior to any ground disturbance.
109. During construction, erosion control devices and measures as described in the SWPPP, including, but not limited to, straw bales or silt fences shall be installed to prevent erosion of excavated material or disturbed soil. All erosion control devices, shall be installed in accordance with construction techniques described in 2016 New York State Standards and Specifications for Erosion and Sediment Control (Blue Book), including placing the straw bales and silt fence in a shallow trench, backfilling the toe of the silt fence and securing the straw bales with stakes. All erosion and sediment control practices shall be installed

prior to any grading or filling operations, or other ground disturbance. They shall remain in place until construction is completed and the area is completely restored to pre-existing conditions. In order to minimize the risk of introduction of invasive species, use of hay bales is strictly prohibited. All disturbed soils within protected freshwater wetlands and the associated adjacent areas must be seeded with a native/indigenous seed mix appropriate to the site.

110. All equipment and machinery shall be stored and staged at least 100 feet from any stream, waterbody or wetland or within a designated laydown yard overnight at the end of each workday.
111. Fuel or other chemical storage tanks shall be contained and located at all times in an area more than 300 feet landward of any protected mapped or unmapped wetland, or stream or waterbody that are waters of the State. If the above requirement cannot be met by the Certificate Holder, then the storage areas must be designed to completely contain any and all potential leakage.
112. All mobile equipment, excluding dewatering pumps, must be fueled in locations that are a minimum of 100 feet from the top of a stream bank, wetland, or other waterbody. Dewatering pumps operated closer than 100 feet from the stream bank, wetland, or waterbody must be on an impervious surface with absorbents capable of containing any leakage of petroleum products.
113. Construction vehicles and equipment will be equipped with a spill kit that is appropriate for the volume of fuel carried by the vehicle or equipment. Any leaks must be stopped and cleaned up immediately. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the DPS, NYSDEC's Spill Hotline (1-800-457- 7362), and the Town within two hours according

to the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance. In an emergency situation, the contractor will work to contain the impacted material until appropriate emergency spill response services arrive.

114. If inadvertent drilling fluid surface returns occur in wetlands or streams, the NYSDEC's Division of Environmental Permits, Energy Project Management Bureau, NYSDEC's Region 7 Bureau of Ecosystem Health, and DPS Staff shall be notified within 2 hours or as soon practicable, considering internet and cell phone coverage in the area. A written monitoring report describing the location, estimated volume, and cleanup efforts shall be submitted to NYSDEC and DPS Staff within 24 hours of the occurrence.
115. All equipment used on banks of regulated streams or in protected wetlands and associated 100-foot adjacent areas must be inspected daily for leaks of petroleum, other fluids, or contaminants. A spill kit must be on hand at the immediate work site and any equipment observed to be leaking must be removed from the work site, and leaks must be contained, stopped and cleaned up immediately.
116. All fill material shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, metal objects, and all invasive species. The introduction of materials toxic to aquatic life is expressly prohibited.
117. Trenchless methods for installing buried cables through wetlands will be used. In the event that trenchless methods are not practicable, the Certificate Holder will consult with DPS Staff and DEC Staff proceeding with trench construction through wetlands, which will include excavating for installation purposes and backfilling in one

continuous operation. DPS Staff and DEC Staff may in their discretion agree to trench construction and the details of collection line trench installations and designated areas for staging, construction machinery arrangements, and bore pits will be submitted on revised design drawings and undertaken in accordance with the detailed trenching operations outlined below:

- a. Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of possible turbid trench water from entering the wetland;
- b. Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction;
- c. All wetland topsoil up to a maximum of 12 inches deep shall be removed first and temporarily placed onto a geo-textile blanket running parallel to the trench, if necessary;
- d. Wide-track or amphibious excavators shall be used for installations in protected wetlands;
- e. Subsoil dug from the trench shall be sidecast on the opposite side of the trench from the topsoil, on another geo-textile blanket running parallel to the trench, if necessary;
- f. The length of the trench to be opened shall not exceed the length that can be completed in one day. This length of trench generally should not exceed 1,500 feet in a wetland;
- g. If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until DPS and NYSDEC are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by the agency staffs, which approval shall not be unreasonably

delayed, unreasonably withheld or unreasonably conditioned;

- h. Only the excavated wetland topsoil and subsoil shall be utilized as backfill;
 - i. When backfilling occurs, the subsoil shall be replaced as needed, and then covered with the topsoil, such that the restored topsoil is the same depth as prior to disturbance;
 - j. All excess materials shall be completely removed to upland areas more than 100 feet from the wetland or a designated stockpile location and suitably stabilized;
 - k. The duration of work in wetlands will be minimized to the maximum extent practicable.
118. Turbid water resulting from dewatering operations, including water that has infiltrated the construction site, shall not be discharged directly to or allowed to enter any protected wetland, stream, or waterbody within the Project Area unless such dewatering activity is occurring in a wetland. Turbid water resulting from dewatering operations shall be baffled or otherwise discharged directly to settling basins, filter bags, or other New York State Standards and Specifications for Erosion and Sediment Control (2016) approved practices, or to an upland vegetated area prior to discharge to any wetland, stream or other water body within the Project area. All other necessary measures shall be implemented to prevent erosion and any visible increase in turbidity or sedimentation downstream of the work site.
119. Visibly turbid discharges from blasting, if necessary, land clearing, grading or excavation and construction activities or dredging operations shall not enter any surface water body. All necessary measures shall be implemented to prevent

any visible increase in turbidity or sedimentation downstream of the work site as identified in the SWPPP.

120. Markers used to delineate/define the boundary of protected freshwater wetlands and streams, and also the demarcated limits of disturbance for the Project shall be left in place and remain undisturbed until completion of construction activities and restoration of the impacted area.
121. Vegetative cover across all disturbed soil areas shall conform with SWPPP requirements and must be established by the end of the first full growing season following construction.
122. The Applicant shall submit as a Compliance Filing a Wetlands Restoration and Mitigation Plan, which shall include: maps identifying all mapped and unmapped wetlands and adjacent areas within 100 feet within the Project Area; the number of acres of wetlands impacted by construction and/or operation of the Project; details of restoration measures to return impacted wetlands to pre-existing conditions; an evaluation of horizontal directional drilling for all wetland and stream crossings; identification of any crossings that lack engineering feasibility for the use of HDD; a compensatory mitigation strategy to address wetland and adjacent area impacts, including the number of acres to be restored and/or replaced. The Wetlands Restoration and Mitigation Plan should be consistent with the criteria set forth in the Order and in DEC's Regulated Wetlands and Compensatory Mitigation Guidelines.

All State-protected freshwater wetlands and associated 100-foot adjacent areas disturbed due to construction activities shall be restored to pre-existing conditions and documented cover type and in accordance with the following requirements:

- a. Restoration to pre-construction contours must

be completed within 48 hours within protected freshwater wetland boundaries and any 100-foot adjacent area boundaries, as applicable. Within 14 days of the completion of grading, the area shall be seeded with native/indigenous vegetation at densities as existed prior to construction. Seeding shall be completed to help stabilize the soils with an appropriate native/indigenous wetland species mix such as an Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL- FACW, or equivalent), unless returning to agricultural production or otherwise agreed to by DEC, as applicable, in the aforementioned 100-foot adjacent areas;

- b. Restored areas shall be monitored for 5 years or until an 80 percent cover of native species has been reestablished over all portions of the replanted area, unless the invasive species baseline survey indicates a smaller percentage of native species existed prior to construction;
- c. In areas dominated by trees and shrubs, monitoring for woody vegetation establishment will take place during the growing season and over a 5-year period. If at the end of the fifth year the 80% cover requirement has not been established or the proportion of invasive species described in the baseline survey has increased, then the Certificate Holder shall consult with DEC and take such further actions that may be necessary to restore the area to pre-existing conditions;
- d. These replanted areas shall also be monitored for invasive species consistent with Certificate Conditions 76 and 78.
- e. If at the end of five years the restored areas do not meet the above criteria for success, then monitoring and corrective action shall continue until the criteria are met.

- f. The Certificate Holder shall develop the Wetlands Restoration and Mitigation Plan ("Plan") to address impacts to wetlands consistent with the Siting Board's Order, including but not limited to, all mapped wetlands and adjacent areas, (including but not limited to, W-BTF-1, W-BTF-9, W-BTF-12, W-BTF-14, W-BTF-15, W-BTF-16, W-BTF- 17, W-JJB-1, W-JJB-3, W-JJB-4, W-JJB-5, W-JJB-6, W-JJB-8, W-NSD-5, W-NSD-7, W-NSD-9, W-NSD-18, and PW-26), and all unmapped wetlands and adjacent areas, as detailed in Section B.17.d.v of the SEEP Guide, as well as the 100 foot adjacent areas to NYS Regulated Wetland V-19, NYS Regulated Wetland C-33, NYS Regulated Wetland C-33, NYS Regulated Wetland V- 20, NYS Regulated Wetland M-4, and NYS Regulated Wetland W-1, as detailed in Section B.17.d.v of the SEEP Guide.
- g. The Certificate Holder shall work with DEC to develop the final Wetland Restoration and Mitigation Plan and shall submit the Wetland Mitigation Plan for DPS and DEC review, comment, and approval at least three months before the commencement of construction. Any comments from the DPS or DEC staffs shall be submitted within 20 days of service of the Proposed Plan on them by the Certificate Holder. If, after five years, monitoring demonstrates that the wetland mitigation is still not meeting the goals and standard of the Plan, the Certificate Holder shall develop a Wetland Mitigation Remedial Plan in consultation with DPS and DEC staffs, wherein restoration and/or mitigation shall be revised or adjusted.
- h. If the Project layout changes from that approved in this Certificate, a revised Wetland Restoration and Mitigation Plan addressing potential new impacts to wetlands, not previously addressed by the Certificate Conditions herein, shall be developed by the Certificate Holder in

coordination with the DEC and DPS to satisfy applicable State regulations, including without limitation, the weighing standards in 6 NYCRR Part 663. If federally regulated wetlands are to be impacted by the new Project layout that have been not previously addressed in the Certificate Conditions herein, the Certificate Holder shall submit the revised Wetlands Restoration and Mitigation Plan to, and obtain any additional applicable approvals from, the US Army Corps of Engineers.

123. All construction debris (e.g., building materials, excess sediment, refuse from the work site) from the Project shall be completely removed prior to completion of restoration from protected wetlands and all associated 100- foot adjacent areas (upland), as applicable, and disposed of at a permitted waste disposal facility authorized to receive such material.
124. The following is prohibited from protected freshwater wetlands and associated 100-foot wetland: a) the burning or burying of cleared vegetation or slash, b) depositing of logs or large branches, however, small branches (slash) that are cut in a lop and drop method or piled within wetland and adjacent areas may be left in place, in a manner that does not temporarily or permanently alter the hydrology of the wetland.
125. Permanent alteration of wetland hydrology is prohibited.
126. To control the spread of invasive species during Facility site clearing and timber removal, the Certificate Holder will:
 - a. Assure crews are trained to identify the Asian Longhorned Beetle (*Anoplophora glabripennis*) and the Emerald Ash Borer (*Agrilus planipennis*) and any other insects that the NYSDEC identifies as a potential problem in accordance with 6 NYCRR

Part 575, Prohibited and Regulated Invasive Species. If these insects are found, they must be reported to the NYSDEC Region 7 Division of Lands and Forests;

- b. Material Inspection: Includes the use of products such as seed, mulch, topsoil, fill, sand, and stone that are free of invasive species. Movement of these materials both into and out of the Project Area should be limited to minimize the possibility of spreading invasive species. Importation of these materials should be limited by reusing excavated products to the maximum extent practicable. Imported construction materials should be obtained from reputable sources and thoroughly inspected for the presence of invasive species prior to transportation or use on the site. Materials should be used as soon as practicable to limit the amount of time they are stockpiled;
- c. Targeted Species Treatment and Removal: Targeted removal is used in instances where invasive species are encountered during construction and cannot be avoided. Removal in that instance would prevent spread of the species to other areas of the Project Area. Targeted removal includes options such as hand-pulling, burning, cutting, burying, excavating, or herbicide application shall be carried out in accordance with Part 325 of 6 NYCRR, Application of Pesticides, by a duly licensed DEC applicator. Removal methods will be determined based on the species and density of the encountered invasive. Invasive species that are removed should be either left in the infested area or placed in a secure container for proper disposal offsite;
- d. Sanitation: As it relates to invasive species control, sanitation includes the cleaning of clothing and equipment prior to movement or use within the Project Area. Seeds and viable plant

parts can easily be transported to different locations on clothing and equipment. Cleaning should be conducted both prior to equipment arriving on site and prior to it leaving, to prevent the spread of invasive species into and off of the work site within the Project Area; and

- e. Restoration: Invasive species spread most readily in disturbed soil and stabilizing the site quickly will limit the amount of time that invasive species have to get established in a particular area. Therefore, once construction is complete, disturbed areas should be regraded and stabilized (with seed and mulch) as quickly as practicable. Once the site is regraded, native/indigenous seed mixes should be applied along with seed free mulch to reestablish vegetative cover. BMPs should also be implemented in accordance with the Stormwater Pollution Prevention Plan to prevent erosion and limit the potential for spread of invasive species bearing soil offsite.

127. On-site waste concrete containment from concrete truck clean out activity and/or any wash water from trucks, equipment or tools, must be contained in a manner that will prevent it from escaping into waterbodies, water channels, streams, and wetlands. If a discharge occurs, NYSDEC Region 7 Division of Environmental Permits, DPS, and the Town shall be contacted within 2 hours. Disposal of waste concrete or wash water is prohibited within 100 feet from any waterbody or wetland or to any area that drains to a waterbody or wetland.

128. All streams that will be crossed by collection lines will be done via HDD. If it is later determined that a stream cannot be crossed via HDD, then the restored stream channel shall be equal in width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and

downstream of the project area. The planform of any stream shall not be changed.

129. If any shrubs growing within 50 feet of streams need to be cut in the process of constructing overhead power line crossings, they shall be cut to ground level with root systems left in place. Except for stumps and root systems in an overhead power line right of way, stumps and root systems shall not be damaged to facilitate stump sprouting. Trees shall not be felled into any stream or onto the immediate stream bank. All trees and shrubs cut within 50 feet of the stream shall be left on the ground.
130. Clearing of natural vegetation shall be limited to that material which poses a hazard or hindrance to the construction activity. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion. Trees shall not be felled into any stream or onto the immediate stream bank.
131. HDD will be used for collection line installation under streams and wetlands to avoid impacts on water quality, habitat, and stream bed stability.
 - a. Erosion and sediment controls will be used at the entry and exit points of HDD, so that drilling fluid shall not escape the drill site and enter streams or wetlands. The disturbed area will be restored to original grade and reseeded upon completion of directional drilling;
 - b. Drilling fluid circulation for HDD installations shall be maintained to the extent practical. If inadvertent surface returns occur in upland areas, the fluids shall be immediately contained and collected. If the amount is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally. If the amount of

surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control. If inadvertent drilling fluids surface returns occur in, or may flow into, an environmentally sensitive area (i.e., wetlands and water bodies) the returns shall be monitored and documented as described in the Inadvertent Return Plan. Drilling operations must be suspended if the surface returns pose a threat to the resource or to public health and safety. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource and such removal will be undertaken in consultation with DPS and NYSDEC. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area the NYSDEC Region 7 Division of Environmental Permits shall be notified immediately and a monitoring report, as described in the Inadvertent Return Plan, shall be submitted within 48 hours of the occurrence; and

- c. While conducting HDD operations under DEC protected wetlands and streams and waterbodies, the Certificate Holder will maintain close monitoring for possible "frac-outs" that would result in the release of drilling fluids to sensitive areas as described in the Inadvertent Return Plan. The Certificate Holder will maintain a HDD spill response plan and the necessary response equipment will be kept on-site for the duration of the drilling. All releases of drilling fluids to sensitive areas (e.g., aforementioned protected wetlands and their 100- foot adjacent areas, regulated streams) shall be reported to the NYSDEC Region 7 Division of Environmental Permits and DPS Staff within 2 hours or as soon as practicable considering internet and cell phone coverage in the area.

132. If, based on the results of the "Site-Specific Constructability Assessment" described in Certificate Condition 74, and the Board approves stream crossings using trenched methods, then all in-stream work shall only occur in dry conditions. Trenches shall be opened for the installation and backfilled in one continuous operation. Before trenching through stream banks occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of possible turbid trench water from entering the stream. Intermittent and ephemeral streams must be crossed during times of no flow, while perennial streams must be crossed using a temporary water control device such as a dam and pump or cofferdam to isolate the work area and redirect the water around the work site or using the flume method. Temporary water control devices/cofferdams for perennial streams must adhere to the following:

- a. Specifications: Any temporary cofferdam shall be constructed of clean materials such as sheet piling, jersey barriers, inflatable dams, or sandbags that will not contribute to turbidity or siltation of the waterbody or wetland, and non-erodible materials, so that failure will not occur at Q2 or higher flow conditions. An upstream or interior membrane shall be installed to control percolation and erosion. Sandbags shall be of the filter fabric type, double bagged and individually tied to prevent sand leakage and only clean sand (e.g., free of debris, silt, fine particles or other foreign substance) shall be used as fill. They shall be placed and removed manually to prevent spillage. Straw bale sediment control basins are prohibited;
- b. Fill materials must not come from the waterbody or wetland;
- c. The water control structure/cofferdam shall not impair downstream water flow in the waterbody or

water flow into and/or out of a wetland;

- d. If exposed for an extended period of time, excavated or temporarily stockpiled soils or other materials should be covered and protected to reduce runoff of fines which may cause a turbidity problem and to prevent rainwater from soaking the materials and rendering them unsuitable for backfill;
- e. The work area shall remain isolated from the rest of the stream or wetland until all work in the streambed or bank, or wetland is completed, concrete is thoroughly set and the water clarity in the coffered area matches that of the open water;
- f. If a dam and pump diversion is used as part of a dry open-cut crossing, the pump and diversion must be monitored continuously from time of installation until crossing is completed, streambed restored, and diversion is removed;
- g. Dewatered sections of stream cannot exceed 50 linear feet (measured from the inside edges of the cofferdams) for each stream crossing unless the Certificate Holder has prior written approval from the NYSDEC Region 7 Division of Environmental Permits, which approval shall not be unreasonably delayed, unreasonably conditioned or unreasonably withheld and shall be subject to the terms of the dispute resolution procedures contained in Certificate Condition 3 herein;
- h. If approved dewatering measures fail to divert all flow around the work area, in-stream work must immediately stop until dewatering measures are in place and properly functioning again.
- i. All temporary water control structures shall be removed in their entirety upon completion;

- j. All fish trapped within the cofferdam shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream, before the dewatering process;
 - k. Dewatering within the coffer(s) shall be performed so as to minimize siltation and turbidity. Water taken from the coffered area will be passed through settling basins, filter bag, or well-vegetated upland areas more than 100 feet from the stream bank to prevent the discharge of turbid water into any wetland regulated stream, river or waterbody. The pump discharge must be directed against a solid object (concrete slab, stone or steel container), or other effective method to prevent erosion by dissipating energy; and
 - l. Depth of buried cables must be sufficient to prevent exposure during future high flow events.
133. To reduce thermal impacts to exposed streams, if applicable, native woody plants will be planted at stream crossings disturbed by construction activities. Plant cover will be restored to its pre-construction condition. For stream crossings that are disturbed by construction activities that have, pre-construction, 50% or greater woody plant cover, a minimum of 50% woody plant cover will be established on such stream banks disturbed by Project construction by the end of the two full growing seasons following construction. Planting may be done at top of bank and/or among rocks along toe of slope. Restoration of these select riparian areas will be monitored along the same time frames as the ISMCP, per the provisions of Certificate Condition 76 herein, by the appointed Environmental Monitor to document the proper establishment of cover, survivorship of species, and mitigate any unforeseen issues with the revegetation effort. Copies of the stream restoration assessments produced by the Environmental Monitor will be

provided to DPS and NYSDEC.

134. Stream beds shall be restored to original elevation, width, and gradient. All other areas of soil disturbance above the ordinary high-water elevation shall be stabilized with natural fiber matting, seeded with an appropriate perennial native/indigenous conservation seed mix, and mulched with straw within two days of final grading. Mulch shall be maintained until suitable vegetation cover is established. Destroyed bank vegetation shall be replaced with shrub willow or silky dogwood planting, native trees, or other suitable species.
135. Construction in streams protected under Environmental Conservation Law (ECL) Article 15 shall comply with work period restrictions established in consultations with NYSDEC that are protective of fish spawning and migration. Dates for the seasonal work period restrictions (both cold water fisheries and warm water fisheries) on in-stream work during Facility construction, shall be included in the plans filed in the Compliance Filings and noted on final construction detail drawings.
136. Except where crossed by permitted access roads or through use of temporary matting, streams shall be designated "No Equipment Access" or similar on the final Project construction drawings, and the use of motorized equipment shall be prohibited in these areas.
137. A buffer zone of 100 feet, referred to as "Restricted Activities Area" or similar on the final Facility construction drawings, shall be established where Facility construction traverses regulated streams, State protected wetlands, streams, and other bodies of water that are waters of the State. Restricted Activities Areas shall be marked in the field. Restrictions will include: no deposition of slash within or adjacent to a waterbody; no accumulation of construction debris

within the area; herbicide restrictions within 100 feet of a State-protected wetlands or a regulated stream, (or greater as required per manufacturer's instructions); no degradation of stream banks; no equipment washing or refueling within the area; no storage of any petroleum or chemical material; and no disposal of excess concrete or concrete wash water.

138. Any work in State-protected streams or restoration authorized by the Certificate, including the installation of structures and bed materials, shall not result in an impediment to passage of native aquatic organisms, including fish, or cause a significant hydraulic restriction. Any work in State-protected streams (excluding dewatering practices associated with dry trench crossings) and restoration shall be constructed in a manner which maintains low flow conditions and preserves water depths and velocities similar to undisturbed upstream and downstream reaches necessary to sustain the movement of native aquatic organisms.
139. Legible "protected area" signs, exclusionary fencing, colored flagging, and/or erosion controls pursuant to the approved SWPPP shall be installed along the approved work area to protect and clearly identify the boundaries of non-work areas associated with wetlands, waterbodies, and wetland/waterbody setbacks (e.g., Additional Temporary Work Space setbacks, refueling restrictions, etc.). This shall be done prior to any disturbance or vehicular traffic through such areas. Signs, fencing, and silt fence must be removed following completion of the Project and after all disturbed areas are appropriately stabilized and planted as described in the SWPPP and in Certificate Conditions.
140. Where any temporary or permanent access roads are to be constructed through wetlands, a layer of geotextile fabric shall be placed across the

wetland after removal of vegetation and before any backfilling occurs. Where installation of access roads is to be constructed through wetland:

- a. Temporary access roads shall use construction matting or similar material;
- b. Permanent access roads shall use a layer of geotextile fabric and at least six inches of gravel or crushed stone placed in the location of the wetland crossing after vegetation and topsoil is removed. Permanent access roads may require equalization culverts to maintain hydraulic connectivity;
- c. Permanent access roads in wetlands shall be designed to maintain hydrological connectivity of the wetland and be designed to the minimum size needed for operational and maintenance activities, including emergency access requirements.

VI. Facility Operation

- 141. The Certificate Holder shall operate the Facility in accordance with the Interconnection Agreement, approved tariffs and applicable rules and protocols of NYPA, NYISO, NYSRC, NPCC, NERC, and successor organizations.
- 142. The Certificate Holder shall operate the Facility in full compliance with the applicable reliability criteria of NYPA, NYISO, NPCC, NYSRC, NERC, and successors. If it fails to meet the reliability criteria at any time, the Certificate Holder shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Board, or the Commission after the Board's jurisdiction has ceased, by filing with the Secretary and NYPA with a copy of the NYISO notice.
- 143. The Certificate Holder shall obey unit commitment and dispatch instructions issued by NYISO, or its

successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, the Certificate Holder shall obey dispatch instructions issued by NYPA, or its successor, in order to maintain the reliability of the transmission system.

144. For purposes of this Condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Company is located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines and standards, NYSRC criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to the Certificate Holder, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility. Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream

electrical equipment) the Facility shall be exclusively connected to the New York transmission system via the facilities identified and authorized in these Certificate Conditions.

145. The Certificate Holder shall work with NYPA engineers and safety personnel on testing and energizing equipment in the authorized collection substation and interconnection switchyard. A testing protocol shall be developed and provided to NYPA for review and acceptance subject to the provisions of Condition 3 herein. The Certificate Holder shall file with the Secretary a copy of the final testing design protocol within 30 days of NYPA acceptance.
146. If NYPA or the NYISO bring concerns to the Commission, the Certificate Holder shall be obligated to address those concerns and shall make any necessary modifications to its Interconnection Facility if the Certificate Holder, NYISO and NYPA agree that such facilities are causing, or have caused, reliability problems to the New York State Transmission System subject to the provisions of Condition 3 herein.
147. If, subsequent to the completion of construction and testing of the Facility, no electric power is generated and transferred out of such plant for a period of more than 12 months, the Commission may consider advising the Siting Board that the amendment, revocation or suspension of the Certificate may be appropriate.
148. In the event that a malfunction of the Facility causes a significant reduction in the capability of such Facility to deliver power, the Certificate Holder shall promptly file with the Secretary and provide to NYPA copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. The Certificate Holder shall

provide monthly reports to the Secretary and NYPA on the progress of any repairs. Decommissioning will commence if the Project has not generated electricity for a period of 12 continuous months; however, decommissioning is not required if the 12-month period of no energy output is the result of a repair, restoration or improvement to an integral part of the Project that affects the generation of electricity, or is the result of a Force Majeure event, and that repair, restoration or improvement is being diligently pursued by the Certificate Holder. If such events arise, the Certificate Holder shall file a notice with the Secretary describing the issue. If equipment failure is not completely repaired within nine months of its occurrence, the Certificate Holder shall provide a detailed report to the Secretary, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, the Certificate Holder shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued.

149. In the event of a fire or other catastrophic event involving the solar panels, Battery Energy Storage Systems, and/or any associated equipment, the DPS Chief of Electric Safety and Reliability will be notified within 12 hours following such an event. The Town's designated representative, and local emergency agencies/responders shall also be notified within 12 hours following such an event. The Certificate Holder will make every reasonable effort to report before 12 hours.

APPENDIX B

GUIDANCE FOR THE DEVELOPMENT OF SITE ENGINEERING AND ENVIRONMENTAL PLAN

GARNET ENERGY CENTER PROPOSED SEEP GUIDE CASE 20-F-0043

APPENDIX B

**GUIDANCE FOR THE DEVELOPMENT OF SITE ENGINEERING AND ENVIRONMENTAL
PLAN
FOR THE CONSTRUCTION OF THE GARNET ENERGY CENTER PROJECT**

The proposed Garnet Energy Center Certificate Conditions require the submission of a Site Engineering and Environmental Plan (SEEP).

The SEEP is intended to meet the requirements of the Commission's Order, the Certificate Conditions, and the New York State Code of Rules and Regulations (NYCRR) 16 NYCRR Parts 1002.3 and 1002.4, and should describe in detail the final Facility design and the environmental protection measures to be implemented during construction of the Garnet Energy Center (Facility). The SEEP shall include a description of existing and proposed conditions at the Facility, plan and profile drawings illustrating the linear and non-linear Components of the Facility, construction access and clearing requirements, protective measures for streams, wetlands, and protected habitats, identification of sensitive receptors, agricultural lands, and protocols to protect previously unknown cultural resource sites during construction.

The SEEP is not intended to be a reiteration of the materials contained in the Application, but instead is intended to demonstrate compliance with the construction avoidance, minimization, and mitigation measures, as described in the Application, and as clarified by the Certificate Holder's supplemental filings, the Order Granting Certificate, and the Certificate Conditions.

For reference, the SEEP will include a table outlining the specific Certificate Conditions incorporated into the SEEP with references to the section of the SEEP where those conditions may be found. If the SEEP Specifications conflict with any of these Certificate Conditions, or if the Certificate Conditions require more information than required by the SEEP specifications, the Certificate Conditions shall be controlling. Plan sheets will be generated showing the location and design details for all Facility Components, including linear facilities such as electric collection lines, transmission lines, and associated access roads; communications lines; and temporary and permanent access roads, staging/laydown areas, and fencing. Plans also shall indicate the location and size of all major structures, features, and buildings, photovoltaic (PV) arrays, inverters, substations, switchyards, and point of interconnection (POI) locations, including associated access roads, visual mitigation plantings, and the limits of disturbance for work area associated with any Component of the Facility. Plans shall include plan-view drawings or photo-strip maps, and illustrations including but not limited to the information provided in Section A.1.

This SEEP Guide includes the minimum requirements for the specific Certificate Conditions incorporated into the SEEP. The Certificate Holder's adherence to this SEEP Guide will be achieved to the maximum extent practicable. Any deviation from the relevant and applicable requirements of the SEEP Guide attached to this order shall be justified in the SEEP and shall be subject to approval by the Siting Board as applicable.

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Definitions

Adjacent or Contiguous: located on the same parcel of real property or on separate parcels of real property separated by no more than 500 feet.

Linear Project Components: electric collection lines and temporary and permanent access roads.

Non-Linear Project Components: collection substation, commercial-scale solar arrays, inverters, fencing, electrical interconnection facilities, and temporary laydown yard/staging area(s).

Facility or Project Area: The parcels hosting Project Components.

Project Components: Linear Project Components and Non-Linear Project Components.

Section A – Plans, Profiles and Detail Drawings

Section A of the following SEEP Guide addresses the requirements for development of final facility engineering details; site plans for construction, restoration, visual mitigation plantings, and environmental control measures; plan and profile drawings of the development site and Project Components; and maps of the Project Area and the overall Facility setting as appropriate to demonstrate compliance with the Certificate of Environmental Compatibility and Public Need for the Garnet Energy Center.

As indicated in Certificate Condition 8, construction may begin in phases or stages provided the Certificate Holder files all applicable compliance and informational filings prior to the commencement of construction for each phase or stage of the Facility. Compliance Filings and Informational Reports may be filed pursuant to 16 NYCRR Part 1002, commencing the review and public comment process, prior to the issuance of a Certificate. Phases of construction have been identified as:

- (a) Site Preparation, which includes tree clearing and grading, installation of soil erosion and sediment control measures and stabilized construction entrances, construction of stormwater management measures, and installation of temporary and permanent roads of the Project and any associated wetland and/or stream crossing (should any be proposed);
- (b) Commencement of Civil Construction (including installation of solar arrays, inverters, collection lines, fencing, and all permanent Project Components);
- (c) Commencement of Civil Construction on Collection Substation; Commencement of Civil Construction on POI facilities, including the switchyard and associated interconnection equipment; and
- (d) Commencement of Operations.

Plan sheets will be submitted showing the location and design details for all Project Components, including linear facilities such as electric collection lines, buried electric collection lines, and temporary and permanent access roads. Plans shall also indicate the location and size of all major structures, features, commercial-scale solar arrays, inverters, collection substation, switchyard and POI locations, including associated access roads, storage and laydown areas, fencing and the limits of disturbance for work area associated with any Component of the Facility. Plans shall include plan-view drawings or photo-strip maps, and illustrations including but not limited to all of the following information:

1. Plan and Profile Details

Solar Arrays and Related Non-Linear Components:

For all proposed solar array locations and other Non-Linear Project Components, the Certificate Holder shall provide site plans, profiles, and detail drawings (scale minimum 1 inch = 200 feet)¹ including (all items listed below shall be filed as Compliance Filings unless otherwise noted; should there be a discrepancy between the Certificate Conditions and SEEP, the type of filing shall be determined as listed in the Certificate Conditions):

- a. A copy of the American Land Title Association (ALTA) survey showing locations of existing utility infrastructure shall be submitted as an Information Report prior to Site Preparation as defined in Certificate Condition 8(a).
- b. *Solar Array and Inverter Specifications* including details and specifications of the selected commercial-scale solar array and inverter model(s) (including a specification sheet) to be provided as an Information Report prior to Commencement of Civil Construction as defined in Certificate Condition 8(b). A description of the PV panels and inverter model(s) selected for the Facility including any manufacturer provided information regarding the design, safety, and testing information for the panels and inverters to be installed during construction.
- c. *Collection Substation Descriptions* including a description of the collection substation for the Facility to be provided as an Information Report prior to Commencement of Civil Construction on Collection Substation as defined in Certificate Condition 8(c). This shall include any available manufacturer provided information regarding the design, safety, and testing information for the collection substation to be installed during construction.
- d. *POI Descriptions* including A description of the switchyard and associated electric interconnection facilities selected for the Facility to be provided as an Information Report prior to Commencement of Civil Construction on POI facilities as defined in Certificate Condition 8(d). This shall include any available manufacturer provided information regarding the design, safety, and testing information for the switchyard and electric interconnection facilities to be installed during construction
- e. *A Collection Substation Foundation Drawing Set* shall be provided as a compliance filing per Certificate Condition 64 prior to Commencement of Civil Construction on Collection Substation as defined in Certificate Condition 8(c) and will include plan, elevation, and section details for each foundation type proposed; the foundation type at the collection substation location shall be specified in the Foundation Drawing Set; and applicable criteria regarding foundation design shall be listed and described in the drawings and details. Additionally, the Foundation Drawing Set shall describe general concrete testing and monitoring procedures with reference to standards that the Certificate Holder will comply with (including reference to specific standards of the American Concrete Institute (ACI), International Building Code (IBC), and any other authorities). This set will also show and describe concrete chute washout locations and any other cleaning activities (e.g., equipment cleaning for control of invasive species).
- f. *A POI Foundation Drawing Set* shall be provided as a compliance filing per Certificate Condition 64 prior to Commencement of Civil Construction on POI facilities as defined in Certificate Condition 8(d) and will include plan, elevation, and section details for each foundation type proposed; the foundation type at the switchyard location shall be specified

¹ Contour lines at appropriate scale are desirable on the plan view or photo-strip map if they can be added without obscuring the required information.

in the Foundation Drawing Set; and applicable criteria regarding foundation design shall be listed and described in the drawings and details. Additionally, the Foundation Drawing Set shall describe general concrete testing and monitoring procedures with reference to standards that the Certificate Holder will comply with (including reference to specific standards of the American Concrete Institute (ACI), International Building Code (IBC), and any other authorities). This set will also show and describe concrete chute washout locations and any other cleaning activities (e.g., equipment cleaning for control of invasive species).

- g. *Construction Limit Detail Set* showing limits of clearing, temporary and permanent grading, and laydown space required for solar panel installation; Stormwater Pollution Prevention Plan (SWPPP) details should be indicated. These requirements shall be submitted prior to the Site Preparation phase and shall be submitted for each subsequent phase of construction (or can be submitted for all phases) as listed in Certificate Condition 8.
- h. *Planting Plan* to be provided prior to Commencement of Civil Construction as defined in Certificate Condition 8(b). This plan shall show the location, placement, number, specific vegetation type, height at the point of planting, as well as maximum height to be planted at each designated visual mitigation area in accordance with the specifications and planting layout depicted in the Final Landscape Screening Plan will be developed and implemented at each designated visual impact area.
- i. *Temporary Yard Package* shall be submitted prior to the use of any areas listed herein prior to commencement of specified construction phase/Limited Notice to Proceed activities and will include the location and boundaries of any areas proposed to be used for fabrication, designated equipment parking, staging, access, lay-down, conductor pulling, and equipment storage areas. Indicate any planned fencing, surface improvements or screening of storage and staging areas. Demonstrate setback distances appropriate to Facility design; and conformance with applicable requirements of the Certificate.
- j. If an on-site concrete batch plant will be used during construction, the Certificate Holder shall provide the following prior to the commencement of the Civil Construction phase: (information required per subpart “iv” below shall be provided for any concrete that will be used for the Facility, regardless of whether a concrete batch plant is proposed):
 - i. Final details and site plan of the concrete batch plant location, size, access, and layout, at a reasonable scale to show all Components (including conveyor layout, equipment, tanks, drainage system, settlement, catchment pits, flush systems, and *stockpile* areas) and proximity of its location to other Facility Components and existing features;
 - ii. Final layouts showing all proposed Components of the concrete batch plant drainage system, including arrows representing potential water flow to any proposed catchment pits, etc.
 - iii. Temporary lighting that avoids offsite light trespass;
 - iv. General concrete testing procedures, including a plan outlining the Certificate Holder’s monitoring and testing of concrete procedures in conformance with the Building Code of New York State, ACI, ASTM International, and any other applicable specifications.
 - v. The locations or description of locations for concrete chute washout and any other cleaning activities (e.g., equipment cleaning for control of invasive species).

Linear Project Components:

All Linear Project Components, including electric collection lines, and temporary and permanent access roads, site plan and profile figures, shall include profile drawings of the Project centerline.

The following information shall be included in the Linear Components Package and will be provided as Compliance Filings (unless otherwise noted) prior to the Commencement of Civil Construction (or earlier phase) as defined in Certificate Condition 8(b) unless otherwise noted below (this set may be included as part of the final site plan and profile drawings or submitted as stand-alone plans) (scale of site plan and profile drawings to be minimum 1 inch = 200 feet)²

- a. *Collection System Circuits Map* for the collection substation and collection line circuits' configuration indicating locations of all overhead and underground installations and the number of required circuits per circuit-run.
- b. Final design and details of single and multiple electric circuit underground collection lines.
Each typical Project circuit layout (single, double, triple, etc.) shall include a cross-section and plan view showing clearing and right-of-way (ROW) widths needed for accommodating circuit installations.
- c. Final section details of single and multiple-circuit overhead 34.5kV electric collection line layouts, if proposed. Each Project circuit layout (single, double, triple, etc.) shall include typicals for all overhead structures, proposed guying, and associated clearing.
- d. The boundaries of any new, existing, and/or expanded utility ROW or road boundaries, and where linear Facility lines or cables are to be constructed overhead or underground; plus, any areas contiguous to the Facility or street within which the Certificate Holder will obtain additional rights. Requirements of this sub-part shall be provided prior to Limited Notice to Proceed activities for the Site Preparation phase.
- e. The location of each Facility structure (showing its height, material, finish and color, and type), structural foundation type (e.g., concrete, direct bury) and dimensions, fence, gate, down-guy anchor, and any counterpoise required for the Facility (typical counterpoise drawings will suffice recognizing that before field testing of installed structures the Certificate Holder may be unable to determine the specific location of all required counterpoise), conductors, insulators, splices, and static wires and other Components attached to Facility structures including lighting with specific details indicating height and direction of mounted lighting, the proposed optical path, and intensity. The preceding information specific to Project Collection Substation and POI facilities will be submitted prior to the Civil Construction for Collection Substation and POI facilities phases, respectively.
- f. Each Facility access road will be identified by a unique name designation. Each access road will be shown on a scaled drawing indicating the width used during construction and the proposed width post- construction on the restoration plan. Temporary and permanent cut and fill contours for each road shall also be shown at two-foot contours. Access controls such as gates shall be indicated, with typical or specific design indicated as applicable to individual sites and identifying construction and material details of gates and berms. This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.
- g. Discuss the types of access roads or paths that will be used including consideration of:
 - i. Temporary installations (e.g., corduroy, mat, fill, earthen road, geotextile underlayment, gravel surface, etc.);
 - ii. Permanent installations (e.g., cut and fill earthen road, geotextile underlayment, gravel surface, paved surface, etc.); and
 - iii. Use of existing roads, driveways, farm lanes, etc.

² Contour lines at appropriate scale are desirable on the plan view or photo-strip map if they can be added without obscuring the required information.

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This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.

- h. For each temporary and permanent access type, provide a typical installation plan view, cross section with appropriate distances and dimension and identification of material. Where existing access ways will be used, indicate provisions for upgrading for Facility construction. Demonstrate accommodation of planned or proposed future access to sites including accommodating access for emergency response vehicles and lands within or adjacent to the facilities locations (and landowner requested improvements (e.g., access roads across linear facilities such as wires, pipes, or conduits.)). This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.
- i. Indicate the associated drainage and erosion control features to be used for access road construction and maintenance. Provide re-vegetation materials specifications. Provide diagrams and specifications (include plan and side views with appropriate typical dimensions) for each erosion control feature to be used, such as:
 - i. Check dam (for ditches or stabilization of topsoil);
 - ii. Water bar (for water diversion across the access road);
 - iii. Roadside ditch without turnout and seeding trap;
 - iv. French drain;
 - v. Diversion ditch;
 - vi. Culvert (including headwalls, aprons, etc.);
 - vii. Sediment retention basin (for diverting out-fall of culvert or side ditch); and
 - viii. Silt fencing.

This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.

- j. Indicate the type(s) of stream and/or wetland crossing method to be used, as applicable, in conjunction with temporary and permanent access road construction. Provide diagrams and specifications (include plan and side view with appropriate dimensions, alignment, slope, extent of clearing) for each crossing device and rationale for their use. Requirements of this sub-part shall be provided prior to the proposed stream or wetland crossing (to be provided prior to the Site Preparation phase as defined in Certificate Condition 8(a)). Stream crossing methods and design may include but not be limited to:
 - i. Timber mat or other measures to prevent soil compaction;
 - ii. Culverts including headwalls and outlet aprons;
 - iii. Bridges (either temporary or permanent); and
 - iv. Fords.
- k. All diagrams and specifications should include material type and size to be placed in streams and/or wetland and on stream or on wetland approaches. This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.
- l. Identify existing utility and non-utility structures on or adjacent to the Facility, indicating those to be removed or relocated, if necessary (include circuit arrangements where new structures will accommodate existing circuits, indicate methods of removal of existing

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facilities, and show the new locations, types and configurations of relocated facilities). Depict each Facility conductor's clearance from the nearest adjacent overhead electric transmission or distribution lines and communications lines.

- m. Indication of existing underground utility or non-utility structures, including, but not limited to, gas, water, telecommunication or electric cable, or pipeline. The relationship of the Facility to adjacent fence lines; roads; railways; airfields; property lines; hedgerows; fresh surface waters; wetlands; other water bodies; significant habitats; associated facilities; water springs; adjacent buildings; water wells; or structures; major antennas; oil or gas wells, pipeline facilities, and compressor and pressure-limiting and regulating stations. Regarding encroachment of existing utility rights-of-way by Project Components, the following additional information shall be provided (required information listed at i. through v. shall be provided as Information Reports prior to commencement of the proposed related activity):
 - i. Results of any cathodic protection impact studies prior to installation of Project Components requiring such study;
 - ii. Any existing utility required approval documentation (including a statement that Facility installations meet existing utility owner technical and safety requirements and copies of all relevant technical and safety manuals) from each existing utility that will be co-located with or that will be crossed by Project Components, requirements shall be provided prior to installation of related Project component,;
 - iii. Details of any required existing utility owner approved crossing plans (crossed by Project Components) showing methods, separation of existing utility and Project Components, cover, installation of protection measures, and workspace, including any bore pits or similar features, requirements shall be provided prior to installation of related Project components;
 - iv. Details of existing utility owner approved co-location installations (with Project Components) showing separation distances of existing utilities and Project Components and any required or recommended protection measures, requirements shall be provided prior to installation of related Project components; and
 - v. Details and descriptions of existing utility owner approved methods regarding Project construction equipment crossing of existing utilities approved by each existing utility owner. Requirements of this sub-part shall be provided prior to any Project construction equipment crossings (of existing utilities).
- n. The location, design details, and site plan of any proposed Project Components, generator sites, collection station, control building, new or expanded switching station, substation, or other terminal or associated utility or non-utility structure (attach plan³ - plot, grading, drainage, and electrical – and elevation views with architectural details at appropriate scales). Indicate the color and finish of all structures; the locations of temporary or permanent access roads, parking areas, construction contract limit lines, property lines, designated floodways and flood-hazard area limits, relocated structures, and details of any plans for waste disposal. This information will mostly be provided prior to the Site Preparation phase with the exception of those Project Components proposed to be constructed during the Civil Construction phase (including installation of solar arrays, inverters, collection lines, communication equipment, fencing) and the Civil Construction of POI facilities phase (including the collection substation, switchyard, and associated POI facilities) which shall be provided prior to the commencement of their respective phases.

³ 1" = 50' scale with 2-foot contour lines.

- o. Prior to commencement of Civil Construction of Collection Substation and Civil Construction of POI facilities phases, provide an exterior lighting plan for each phase, which addresses:
 - i. Security lighting needs at the collection substation and switchyard;
 - ii. Plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the substation or any other areas to be lighted;
 - iii. Lighting should be designed to provide up to a 3.4 foot-candle average to eliminate unnecessary light trespass beyond the collection substation and switchyard and to provide safe working conditions at appropriate locations; and
 - iv. Exterior lighting design shall be specified to avoid off-site lighting effects, by:
 1. Use of task lighting as appropriate to perform specific tasks; task lighting shall be designed to be capable of manual or auto-shut off switch activation rather than motion detection;
 2. Full cutoff fixtures, with no drop- down optical elements (that can spread illumination and create glare), shall be required for permanent exterior lighting to minimize potential impacts to the surrounding public; and
 3. Manufacturer's cut sheets of all proposed lighting fixtures shall be provided.

2. Stormwater Pollution Prevention

The plan drawings will include the acknowledged SWPPP plans and drawings, and indicate the locations and details of soil erosion and sediment control measures and any proposed permanent stormwater management controls developed in accordance with the New York Standards and Specifications for Erosion and Sediment Control (e.g., stabilized construction entrances, drainage ditches, silt fences, check dams, and sediment traps) in effect at the time the Certificate is issued. Such plan and drawings shall include contingencies for construction during extreme weather events (e.g., a 100-year storm) to avoid and minimize the cumulative impacts of multiple proximate disturbed areas. A construction sequencing plan that identifies the order of operations for installation of appropriate erosion and sediment controls best management practices prior to conducting ground-disturbing activities (including vegetation clearing) will be included in the SWPPP and denoted on appropriate drawings and plans. The construction sequencing plan will include processes related to stream crossings, installation of riprap and culverts, and trenching. This information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.

3. Vegetation Clearing and Disposal Methods

Vegetation clearing is proposed to occur in the Site Preparation phase as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.

Identify on the plan and profile drawings:

- a. the locations of sites requiring trimming or clearing of vegetation including both above and below ground (i.e., stumps) and the geographic limits of such trimming or clearing;
- b. the specific type and manner of cutting, disposition or disposal method for vegetation (e.g., chip; cut and pile; salvage merchantable timber, etc.);
- c. the disposal locations of all vegetation (including stumps) to be cut or removed from each site;
- d. any geographical area bounded by distinctly different cover types requiring different cut-vegetation management methods;

- e. any geographical area bounded at each end by areas requiring distinctly different cut-vegetation methods due to site conditions such as land use differences, population density, habitat or site protection, soil or terrain conditions, fire hazards, or other factors;
- f. site specific vegetation treatment or disposal methods, including any property-owner required details such as log storage or wood chip piling areas, or “no-herbicide” zones;
- g. areas requiring danger tree removal (i.e., trees with cracks or decay in proximity of a utility ROW or substation);
- h. the location and details of any areas where specific vegetation protection measures will be employed, including those measures to avoid damage to specimen trees, stands of desirable species, important screening trees, hedgerows etc.; and
- i. identification of invasive species within/adjacent to the area of clearing, and specific disposal methods required for invasive species pursuant to the Invasive Species Management and Control Plan (ISMCP).

4. Building and Structure Removal

- a. Indicate the locations of any structures to be acquired, demolished, moved, or removed. Provide plans for site access; and plans and standards for control of dust, runoff, and containment of any debris or other waste materials related to removals. This information shall be submitted prior to commencement of the Site Preparation phase.

5. Streams and Other Waterbodies

Stream and waterbody information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and will consist of:

- a. The name, NYSDEC ID, water quality classification, and location of all rivers and streams (whether perennial or intermittent), and drainages within the construction area or crossed by any proposed Linear Facility Component or access road constructed, improved or maintained for the Facility. On the plan and profile drawings, indicate:
 - i. Stream crossing method and delineate any designated streamside “protective or buffer zone” in which construction activities will be restricted to the extent necessary to minimize impacts on rivers and streams;
 - ii. The activities to be restricted in such zones; and
 - iii. Identify any designated floodways or flood hazard areas within the Facility, or otherwise used for Facility construction or the site of associated facilities. Provide topographic and flood hazard area elevations (if determined by engineering study); and specifications for facilities to be located within designated flood hazard or floodway zones; and design engineering and construction measures to demonstrate conformance with local ordinances, avoid damage to facilities, or avoid increasing flood elevation at any other location due to Facility installation and operation.
- b. The location of any known potable water sources, including springs and wells on or within 100 feet of the Facility Components and 500 feet of horizontal directional drilling (HDD) locations, indicating on a site-by-site basis, precautionary measures to be taken to protect each water source.

6. Wetlands

Wetland information shall be submitted prior to Site Preparation as defined in Certificate Condition

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8(a) and will consist of:

- a. All Federal and State protected wetlands, and associated 100-foot adjacent areas (“adjacent areas”) located within the Facility or crossed by or adjacent to any access road to be constructed, improved, used or maintained for the Facility shall be depicted on plan drawings. Each wetland will be identified by both a project identification number and by the New York State Department of Environmental Conservation (NYSDEC) designation, as applicable and appropriate.
- b. Indicate the community type (e.g., emergent, scrub-shrub, forested), location, and identification code(s) of any federal or State-protected wetland, within or adjoining the Facility and its

Components, as determined by site investigation and delineation.

- c. Identify crossing methods and buffer/impact limits for all wetlands on plan drawings.
- d. Prior to Commencement of construction as defined in Certificate Condition 8(b), the perimeter of wetlands and associated buffers (those not to be disturbed by construction activities) shall be flagged in the field to clearly identify clearance/disturbance limits and other wetland areas to be avoided during construction.
- e. A flagging plan indicating colors and schematics identifying different wetland impact types shall be included.

7. Land Uses

Land use information shall be submitted prior to Site Preparation as defined in Certificate Condition 8(a) and will consist of:

- a. Agricultural Areas:
 - i. Indicate the locations of sites under cultivation or in active agricultural use including rotational pasture, pasture, hayland, and cropland. Designations and descriptions will be those in current use by the NYS Department of Agriculture and Markets (NYSAGM).
 - ii. Indicate the location of any known unique agricultural lands including maple sugarbush sites, organic muckland, and permanent irrigation systems, as well as areas used to produce specialty crops such as vegetables, berries, apples, or grapes.
 - iii. Indicate the location of vulnerable soils in agricultural areas that are more sensitive than other agricultural soils to construction disturbance due to factors such as slope, soil wetness, or shallow depth to bedrock.
 - iv. Indicate the location of all known land and water management features including subsurface drainage, surface drainage, diversion terraces, buried water lines, and water supplies.
 - v. Designate the site-specific techniques (in accordance with *NYSAGM Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands [Revision 10/18/2019]*) to be implemented to minimize or avoid construction-related impacts to agricultural resources.
 - vi. In areas of proposed access roads, laydown areas, and workpads where access is required for continued agricultural activities, ensure sufficient access for farm operators (crossings or turn-offs) for the site-specific agricultural equipment and/or livestock.

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b. Sensitive Land Uses and Resources:

- i. Identify and indicate the location of known sensitive land uses and resources that may be affected by construction or maintenance of the Facility or by construction-related traffic (e.g., hospitals, emergency services, sanctuaries, schools, and residential areas).
- ii. For noise sensitive sites, show the locations of existing participating and non-participating residences and boundary lines as of the date of the Order. Identify locations and specifications of measures to mitigate construction noise as required by the Certificate.

c. Geologic, Historic, and Scenic or Park Resources:

- i. Indicate the locations of geologic, historic, and existing or planned scenic or park resources and specify measures to minimize impacts to these resources (e.g., specified setback distances, vegetation protection, fencing, signs).

d. Recreational Areas:

- i. indicating the locations where existing recreational use areas, publicly accessible trails, snowmobile trails, trailhead parking areas or associated access driveways would be affected by the Facility location, site clearing, construction, operation, maintenance, or management of the Facility and identify how the trails/parking areas and driveways will be re-routed or avoided entirely.

e. Ecologically and Environmentally Sensitive Areas

- i. Indicate the general locations of any known ecologically and environmentally sensitive sites (e.g., archaeological sites; rare, threatened, and endangered species or habitats; agricultural districts; wetlands and other water bodies; and special flood hazard areas) that are adjacent to the Facility or within 100 feet of any Facility Component to be constructed, improved or maintained for the Facility. Specify the measures that will be taken to protect these resources (e.g., fencing, flagging, signs stating “Sensitive Environmental Areas, No Access” or “Avoidance Area”).
- ii. Measures for avoidance of archaeological sites identified within the Facility shall be indicated on the final site plans. The mapped locations of all identified archaeological sites within 100 feet of proposed Facility-related impacts shall be identified as “Avoidance Areas” or similar on the final Facility construction drawings and marked in the field by construction fencing with signs that restrict access.

f. Invasive Species

- i. Identify the location(s) of prohibited invasive plant species pursuant to 6 NYCRR Part 575 and identified in the ISMCP and the results of pre-construction invasive species surveys as required by the Certificate, and the prescribed method(s) to control the spread of the identified species on the site during construction and restoration. The need for an “Invasive Species Remedial Plan” as described in the Certificate Conditions will be determined in consultation with NYSDEC.

g. Vegetation Controls and Herbicides

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- i. Areas where no herbicide is allowed (wetlands, streams, adjacent areas to wetlands and streams, organic farms, etc.) will be labeled on the site plans and construction drawings. In areas where herbicides are allowed, such use will be conducted by NYSDEC certified pesticide applicators in accordance with all label restrictions and notification requirements.
- h. Visual Mitigation Landscaping and Buffers
 - i. The location of visual mitigation planting areas and specific planting modules proposed will be shown on the site plans. The Landscape Screening Plan will include the species composition, which shall be native/indigenous species only, planting plans and specification for each of the mitigation modules.
 - ii. Planting Plans will identify the locations of existing vegetation to be retained as visual screening, with specification of protection measures to avoid construction damages and retain such vegetation.

Section B – Description and Statement of Objectives, Techniques, Procedures, and Requirements

The narrative portion of the SEEP and referenced Compliance Filings (unless otherwise noted) for the Facility shall include, but need not be limited to, all of the following information, and shall address the requirements of 16 NYCRR Part 1002.3. Chapters or sections of the document shall identify whether it is addressing a specific certificate condition.

1. Facility Location and Description

This section of the SEEP should contain:

- a. A brief description of the final Facility location; and
- b. A description of the construction hours and schedule as presented in the Certificate Conditions.

2. Environmental Compliance and Monitoring Plan

The SEEP shall include copies of the final *Environmental Compliance and Monitoring Plan* including a project communications plan. The *Environmental Compliance and Monitoring Plan* (EC&MP) shall include the names, titles, qualifications and contact information of all individuals responsible for ensuring minimization of environmental impact by the Project and for enforcing compliance with environmental protection provisions of the Certificate and the Compliance Filings, including, but not limited to:

- a. Certificate Holder's project manager;
- b. Engineering Procurement Construction project manager;
- c. Full-time (when appropriate)⁴ environmental monitor;
- d. Full-time construction supervisor;
- e. Part-time or full-time agricultural environmental monitor, if separate from environmental monitor; and

⁴ The Plan will identify any times when a part-time monitor may be used.

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- f. Part-time health and safety inspector.

The Certificate Holder may utilize one or more qualified independent third-party individuals to satisfy the Project oversight responsibilities associated with the environmental monitor and the agricultural inspector.

The *Environmental Compliance and Monitoring Plan* shall also include:

- a. Protocols for supervising demolition, vegetation clearing, use of herbicides, construction, and site restoration activities to ensure minimization of environmental impact and compliance with the environmental protection provisions specified by the Certificate.
- b. Specify responsibilities for personnel monitoring all construction activities, such as clearing, sensitive resource protection, site compliance, change notices, etc.
- c. Include a statement that the Certificate Holder has made compliance with the SEEP an obligation of its contractors and has provided a copy to those employees and contractors engaged in demolition, clearing, construction and restoration.
- d. Describe the procedures to “stop work” in the event of a Certificate violation.
- e. The company’s designated contact including 24/7 emergency phone number, for assuring overall compliance with Certificate Conditions.
- f. Ensure that required safety procedures and worksite hazards are communicated to site inspectors in a documented tailboard meeting prior to entry onto the site of work on such Certificate Holder’s Project Components.
- g. A procedure for providing the New York State Department of Public Service (NYSDPS) Staff, NYSAGM, NYSDEC, and the Town with construction schedules indicating construction activities and location schedules, including a procedure for providing scheduling updates.
- h. The Certificate Holder shall provide at least a two week notice to the associated farm operator (landowner or leased operator) prior to project staking/flagging for construction activity to provide an opportunity for the producer to harvest crops.

3. Complaint Resolution Plan

The SEEP shall include a copy of the final *Complaint Resolution Plan* (plan can be submitted per construction phase, or for entirety of construction and operation of the Project) which shall include protocols provided below. A copy of the Noise Complaint Resolution Protocol is provided as Appendix B of the Certificate Conditions.

- a. Communication between parties, including a flowchart of proper communications;
- b. Notifying the Town, host, and adjacent landowners, and the public of the complaint procedures;
- c. Registering a complaint;
- d. Identifying and including procedures that may be unique to each phase of the project (e.g., tree clearing, construction, operation, decommissioning) or type of complaint.

- e. Responding to complaints in a consistent and respectful manner;
- f. Logging and tracking of all complaints received, and resolutions achieved and making access by the Town of Conquest and NYSDPS to the complaint log upon request except that confidential information will be protected and not disclosed;
- g. Actions the Certificate Holder will take if a complaint remains unresolved, including reporting to the Town and NYSDPS Staff any complaints not resolved within 60 days of receipt;
- h. Mediating complaints not resolved within 60 days, assuming the complainant and nature of the complaint are amenable to resolution; and
- i. Providing annual reports of complaint resolution tracking to NYSDPS Staff that shall also be filed with the Secretary.

4. Health and Safety Plans

The SEEP shall include copies of the following final plans for construction (listed plans may be filed separately for construction phases or provided for all construction phases and operation of the Project):

- a. The *Final Emergency Response Plan* that shall be implemented during Facility construction. Copies of the final plan also shall be provided to NYSDPS Staff, the NYS Division of Homeland Security and Emergency Services, Cayuga County Emergency Management Office, the Town, and local emergency responders that serve the Facility. The plan will also address follow-up inspections for panels and substation facilities following emergency events for high winds, tornadoes, and hurricanes.
- b. Copies of the *Final Site Security Plan* also shall be provided to NYSDPS Staff, NYS Division of Homeland Security and Emergency Services, the Town, and local emergency responders that serve the Facility. The plan shall include, but not be limited to, the following:
 - i. posting signs at the edges of the ROW in those locations where the collection lines intersect public roads; and
 - ii. working with the County Sheriff, and local law enforcement officials in an effort to prevent trespassing.
- c. The *Final Health and Safety Plan* that shall be implemented during Facility construction.
- d. A final site-specific construction *Quality Assurance and Quality Control Plan* (QA/QC Plan), to be developed in coordination with the selected Balance of Plant (BOP) contractor.

5. General Construction

- a. Provide a copy of the SWPPP as an Information Report prior to Site Preparation which will include an Erosion and Sediment Control Plan and will specify appropriate measures that will be used to minimize fugitive dust and airborne debris from construction activity as outlined in the *New York State Standards and Specifications for Erosion and Sediment Controls* (DEC, 2016a). The Erosion and Sediment Control Plan will also contain trenching details including:
 - i. In locations where electric collection lines and transmission lines will be installed by open trenching, particularly along or across areas of steep slopes, the Erosion and Sediment

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Control Plan will describe measures to address temporary erosion contingencies (e.g., stormwater events with open trench) and erosional risks that will extend the life of the Facility (e.g., “piping” erosion after backfilling of the trench). Related subsurface drainage to relieve hydraulic pressure behind trench plugs or breakers for the life of the facility will also be addressed.

- ii. The following measures to address in-trench erosion will be implemented, as necessary:

1. Trench Plugs:

Temporary trench plugs will be placed in the excavated trench to impede the flow of water down the trench. Hard plugs (unexcavated earth segments of the ditch line) will be maintained adjacent to streams and wetlands to protect those resources until cable installation activities occur. Soft plugs (replaced trench spoil, fill, sandbags) will be spaced in the trench in sloping areas to reduce erosion and trench slumping. Hay or straw bales will not be used as material for temporary trench plugs.

After cable installation, permanent sandbag or alternative trench breakers will be installed and spaced according to Appendix 1 “Trench Breaker Spacing” before backfilling. At the request of landowners or at the discretion of the environmental inspector or construction supervisor, un-disturbed areas (“hard plugs”) will be left in place until cable installation commences, to accommodate equipment crossings. Hard plugs should be a minimum of 50 feet in length for areas where cable splices will occur. For animal and vehicle crossings of the trenchline area, a plug 25 to 30 feet in length should suffice.

2. Trench Breakers:

Trench breakers may be constructed of sandbags or alternative materials. Impervious materials may be used to retain water in the wetlands. Trench breakers should be installed at all wetland edges. The location of these impervious trench breakers will be determined in the field based on locations identified in the construction plan documents. Trench breakers should also be installed up to the top of bank of each waterbody crossing.

3. Backfill:

Backfill operations will commence immediately after cable installation operations and will continue until completed. When backfilling the trench, the following will apply:

- a) Only on-site, native material should be used in backfill operations unless the native material does not meet specifications, or ledge rock is encountered in the trench. Imported material may be brought in to protect the cables and achieve depth-of-cover requirements. Imported backfill must be free of invasive species pursuant to ISMCP.
- b) Where topsoil has been segregated from trench spoil, backfill will be done in reverse order with trench spoil returned first.
- c) Excess spoil will be spread throughout areas adjacent to or in close proximity to the trench. Under no circumstances will excess spoil be spread along the ROW or stockpiled in a manner that permanently changes the soil profile.

- d) Trench breakers made of foam, sandbags, or other impervious materials shall be installed at the edge of all wetlands. For those areas where conditions and topography warrant, and the Certificate Holder identifies prior to the start of construction, the installation of trench breakers at the upland/wetland boundaries is appropriate to minimize changes to hydrologic regime in the wetlands such as drainage from the wetland.
- b. Prior to Site Preparation, Certificate Holder shall submit a Spill Prevention, Containment and Control (SPC) Plan for construction to minimize the potential for unintended releases of fuels, waste oils, petroleum products, or hazardous materials during Facility construction and operation. The SPC Plan shall be applied to all relevant construction activities and address the following:
 - i. General Information about water bodies, procedures for loading and unloading of oil, discharge or drainage controls, procedures in the event of discharge discovery, a discharge response procedure, a list of spill response equipment to be maintained on-site (including a fire extinguisher, shovel, tank patch kit, and oil-absorbent materials), a statement that methods of disposal of contaminated materials in the event of a discharge will follow the appropriate requirements, and spill reporting information. A statement that any spills shall be reported in accordance with State, local and/or federal regulations with a list of the specific applicable reporting requirements including phone numbers and time requirements.
 - ii. Storage, handling, transportation, and disposal of petroleum, fuels, oils, or hazardous materials which may be used during, or in connection with, the construction, operation, or maintenance of the Facility.
 - iii. Avoiding spills and improper storage or application.
 - iv. Reporting, responding to and remediating the effects of any spill of petroleum, fuels, and oil in accordance with applicable State and Federal laws, regulations, and guidance, and include proposed methods of handling spills of petroleum, fuels, oils, or hazardous materials which may be stored or utilized during the construction and site restoration, operation, and maintenance of the Facility.
 - v. Providing of SPC Plan to the Town and local emergency responders; notifying the Town and local emergency responders of locations of hazardous substance storage.

6. Clean up and Restoration Package

The Certificate Holder's program for clean-up and restoration following construction will be described in the Site Restoration Plan to be filed as a Compliance Filing within 30 days of Commencement of Operations as defined in Certificate Condition 8(e), and will include at a minimum:

- a. The removal and restoration of any temporary roads or staging areas; the finish grading of any scarified or rutted areas; the removal of waste (e.g., excess concrete), scrap metals, surplus or extraneous materials or equipment used; and
- b. Plans, standards and a schedule for the restoration of vegetative cover, including but not limited to, specifications indicating:
 - i. design standards for ground cover, including:
 - 1. species mixes and application rates by site;
 - 2. site preparation requirements (soil amendments, stone removal, subsoil treatment, or drainage measures); and
 - 3. acceptable final cover % by cover type.

- ii. planting installation specifications and follow-up responsibilities, if needed;
 - iii. a schedule or projected dates of any seeding and/or planting if needed.
- c. To address temporary impacts to wetlands, the Certificate Holder will restore wetland and adjacent areas using native/indigenous wetland seed mixes which shall be specified.
- d. If subject to continued agricultural use, restoration seeding will be consistent with pre-existing crop species or as requested by landowner.

7. Transportation

- a. The SEEP shall include copies of the Road Use Agreements (which may also be provided as stand-alone Information Reports prior to using roads subject to the executed Road Use Agreements with the Town of Conquest and Cayuga County) with Cayuga County and the town.

The SEEP will include copies of any crossing agreements with utility companies as discussed above in Section A.1.M. Should a final utility or New York Power Authority (NYPA) crossing agreement not be in place prior to the start of the Site Preparation phase, then the Certificate Holder shall provide a copy of a letter sent to NYPA or the applicable utility, as the case may be, wherein the Certificate Holder commits to comply with the applicable substantive requirements of NYPA or the utility for the proposed crossing, identified within such letter, and agrees to reimburse said entity for any damage caused by the Certificate Holder to NYPA/ utility structures, as the case may be during the Site Preparation phase. Additionally, if a final utility or New York Power Authority (NYPA) crossing agreement is not in place prior to the start of the Site Preparation phase, the Certificate Holder shall provide informal acknowledgements and agreements from NYPA or such existing utility owners (in the form of email or letter from NYPA or relevant utility owner).

- b. The SEEP shall attach a Traffic Control Plan prior to affecting traffic patterns related to such plans that identifies:
 - i. The delivery route(s) in the Town of Conquest for oversize or over length equipment or materials and the route(s) for delivery of earthen materials and concrete.
 - ii. The plan shall describe the delivery of materials to the facilities site and shall indicate mitigation measures to manage traffic during construction and operation.
 - iii. Copies of all permits (submitted as Information Reports) associated with the delivery of such equipment and materials shall be provided prior to using a route to haul equipment or materials requiring a permit.
 - iv. The Certificate Holder shall not permit construction vehicles or construction equipment to park or idle at public roadside locations for unnecessary periods of time.

8. Construction Vegetation Clearing and Disposal Methods

Vegetation clearing is proposed to occur in the Site Preparation phase as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework.

For vegetation clearing during construction, the phased or overall SEEP regarding such activity shall:

- a. Describe the specific methods for the type and manner of cutting and disposition or disposal methods for cut vegetation.
- b. Indicate specifications and standards applicable to salvage, stockpiling or removal of material.
- c. Identify ownership of cleared vegetation based on landowner agreements (as applicable).

- d. The SEEP shall describe clearing measures to be implemented during construction (e.g. time of year restrictions, distance buffers, etc.) to avoid and minimize impacts to Threatened and Endangered species and habitats as outlined in the Certificate Conditions.
- e. Specify the locations where herbicides are to be applied. Provide a general discussion of the site conditions (e.g., land use, target and non-target vegetation species composition, height and density) and the choice of herbicide, formulation, application method and timing. Provide lists of desirable and undesirable vegetation species.
- f. Describe the procedures that will be followed during chemical application to protect non- target vegetation, streams, wetlands, sources of potable water supply (i.e., wells and reservoirs) and other water bodies, and residential areas and recreational users on or within 100 feet of the ROW.

9. Plans, Profiles, and Detail Drawings

See Section A of the SEEP Guide for the details to be provided on the Plans, Profiles and Detail Drawings.

10. Land Uses

The SEEP shall attach the *New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (Revision 10/18/2019)* which shall describe the programs, policies, and procedures to mitigate agricultural impacts. If required by the issued Certificate, a description of avoidance, minimization or mitigation for impacts to any other sensitive land uses not covered by other sections of the SEEP.

11. Final Geotechnical Engineering Report

- a. The SEEP shall attach a final Geotechnical Engineering Report prior to Commencement of Civil Construction as defined in Certificate Condition 8(b) and shall be submitted as an Informational Filing per Certificate Condition 45.

12. Inadvertent Return Plan

- a. The SEEP shall attach an *Inadvertent Return Plan* showing all locations where HDD or other trenchless method(s) are proposed. The plan shall assess potential impacts from frac-outs, establish measures for minimizing the risk of adverse impacts to nearby environmental resources, and require the following:
 - i. Prior to conducting HDD or other trenchless method typical material safety data sheets will be provided to NYSDPS and NYSDEC staff, and the Town.
 - ii. Drilling fluid circulation shall be maintained to the extent practical.
 - iii. If inadvertent returns occur in upland areas, the fluids shall be immediately contained and collected.
 - iv. If the amount of drilling fluids released is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally.
 - v. If the amount of surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control.

- vi. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area (i.e., wetlands and water bodies) the returns shall be monitored and documented.
- vii. Drilling operations must be suspended if the surface returns may result in a violation of water quality standards or Certificate Conditions.
- viii. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource. Prior to the removal of fluids from environmentally sensitive areas NYSDPS and NYSDEC Staff will be notified and consulted.
- ix. If inadvertent drilling fluid surface returns occur in an environmentally sensitive area NYSDPS and NYSDEC Staff shall be notified immediately, and a monitoring report shall be submitted within 48 hours of the occurrence. The monitoring report shall include:
 - a. Name and telephone number of person reporting;
 - b. Location of the release;
 - c. Date and time of release;
 - d. Type and quantity, estimated size of release;
 - e. How the release occurred;
 - f. The type of activity that was occurring around the area of the release;
 - g. Description of any sensitive areas, and their location in relation to the release;
 - h. Description of the methods used to clean up or secure the site; and
 - i. Listing of the current permits obtained for the project.
- x. The plan shall establish protocols for recovery of inadvertent releases, handling and disposal.
- xi. Any drilling fluid inadvertently discharged must be removed from agricultural areas.

13. Final Blasting Plan

- a. Prior to any blasting activities, the SEEP shall attach a site-specific *Final Blasting Plan* (if blasting is required) designed to protect surrounding structures, including groundwater wells. If detailed design determines that blasting is required, the *Blasting Plan* shall include:
 - i. Setbacks;
 - ii. Blasting safety protocols;
 - iii. Notification procedures for the public, adjacent landowners (or those residing on the property), and emergency responders;
 - iv. Water well survey protocols; and
 - v. Seismic monitoring protocols.

14. Visual Mitigation

- a. Prior to the Commencement of construction as defined in Certificate Condition 8(b), the SEEP shall attach a Final Landscape Screening Plan, consistent with the requirements identified in the Order and Certificate Conditions, and may be based on the mitigation section presented in the Visual Impact Assessment (and Solar Glint and Glare analysis) that meets or exceeds the Certificate Conditions, and shall include:
 - i. Details showing the location and specific vegetation type to be planted at each designated landscape screening area, including identified receptors, in accordance with the specifications and planting layout depicted in the Final Landscape Screening Plan as prepared by the Certificate Holder's Landscape Architect. A distinct, site-specific module will be developed and implemented at each designated visual impact area.
 - ii. A construction timeline and schedule including:
 - a) Installation guidelines, and
 - b) Field assessment.
 - iii. Maintenance/replacement program.

The Final Landscape Screening Plan will be implemented (i.e., planting will occur) in conjunction with the installation of the solar panel arrays, to the extent practicable., with planting to occur during the spring or fall planting season.

15. Cultural Resources

- a. Prior to Site Preparation as defined in Certificate Condition 8(a) and as noted in the Appendix 2 Site Preparation Filing Framework, the SEEP shall attach a *Final Unanticipated Discovery Plan*, establishing procedures to be implemented in the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction.
- b. If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) and NYSDPS Staff to determine if a Phase II assessment is necessary and mitigation is warranted. The identification of mitigation measures will be discussed with the Town and included in the plans.

16. Threatened and Endangered Species

- a. Prior to Site Preparation as defined in Certificate Condition 8(a), the SEEP shall identify those areas that are owned or controlled by the Certificate Holder which constitute the "Project Area" for the purposes of the Threatened and Endangered Species Certificate Conditions (numbers 99-105), including: areas that would be disturbed or occupied by Project Facilities, access roads, laydown areas, and trees that are immediately adjacent to the limits of disturbance or fence line.

17. Wetlands and Waterbodies

A Wetland Restoration and Mitigation Plan detailing the restoration methods and the locations of restoration measures within identified wetlands will be attached to the SEEP.

- a. Prior to Site Preparation as defined in Certificate Condition 8(a), the SEEP shall include a table listing all delineated federal and State protected wetlands, streams, vernal pools and other waterbodies located within or adjacent to Project Area. For each resource, the following information will be provided: centroid coordinates of the resource, location within/relative to the

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Project Area (i.e., associated site plan and profile drawing sheet number and reference location); stream name (as applicable), delineated feature identification code, community type, NYSDEC Stream Classification (as applicable), NYSDEC Freshwater Wetland designation (as applicable) NYSDEC Water Index Number (for streams), specific construction activities or crossing method affecting the resource, specify the crossing distance across the resource or to the associated Project construction area.

- b. A description of construction activities within delineated federal wetlands, and State-protected wetlands, streams, and other waterbodies outlining the following requirements, where applicable:
 - i. Where any access roads in wetlands are to be constructed through wetlands
 - 1. Temporary access roads shall use construction matting or similar material; and
 - 2. Permanent access roads shall use a layer of geotextile fabric and at least six inches of gravel shall be placed in the location or the wetland crossing after vegetation and topsoil is removed.
 - 3. Permanent access roads in wetlands shall be designed to maintain hydrological connectivity of the wetland and be designed to the minimum size needed for operational and maintenance activities, including emergency access requirements.
 - ii. The Certificate Holder shall utilize free span temporary equipment bridges or culverts designed to NYSDEC and/or US Army Corps of Engineers (USACE) standards where applicable to cross all delineated streams with flow at the time of the proposed crossing. This will outline how:
 - 1. Bridges or culverts may not be dragged through the stream and must be suitably anchored to prevent downstream transport during a flood.
 - 2. Fill may not be placed within the stream channel below bankfull elevation and placement of abutments or fill is authorized only above and outside bankfull boundaries.
 - 3. Geotextile fabric must be placed below and extending onto the bank and suitable side rails built into the bridges to prevent sediment from entering the stream.
 - iii. If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until NYSDPS and NYSDEC Staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by NYSDPS and NYSDEC;
 - iv. Low weight to surface area equipment shall be used and/or equipment shall be placed on temporary matting as needed to minimize soil compaction and erosion;
 - v. Work areas shall be isolated from flowing streams by use of sandbags, cofferdam, piping or pumping around the work area. Waters accumulated in the isolated work area shall be discharged to an upland settling basin, silt sack, vegetated field or level wooded area to provide for settling and filtering of solids and sediments before water is returned to the stream. Return waters shall be as clear as the flowing water upstream from the work area. Temporary dewatering structures (i.e., cofferdams, diversion pipes, etc.) and associated fill shall be completely removed, and the disturbed area shall be regraded and restored immediately following the completion of work;
 - vi. All fish trapped within cofferdams shall be netted and returned, alive and unharmed, to the water outside the confines of the cofferdam, in the same stream; and
 - vii. All excess materials shall be completely removed to upland areas more than 100 feet from protected wetlands, and protected streams shall be suitably stabilized.
 - viii. Logs and large branches will not be deposited into any protected freshwater wetland or 100-foot adjacent area, including unmapped wetlands greater than 12.4 acres that

NYSDEC has stated are eligible for inclusion in the State wetland map and their associated adjacent areas. However, small branches that are cut in a drop and lop method within wetland and adjacent areas may be spread out and left in place, in a manner that does not alter the hydrology of the wetland and does not materially restrict or limit the wetland's functions and values in any capacity.

- c. Description of construction activities to facilitate utility crossings that will temporarily impact delineated federal wetlands, and protected wetlands and adjacent areas (within 100 feet), streams, and other waterbodies, including a site-specific assessment of constructability for all utility crossings that cannot use trenchless methods; specific plans with the alignment for each wetland crossing; the extent of clearing and ground disturbance; description of methods used to minimize soil disturbance and compaction; and adherence to the following requirements:
- i. Excavation, installation, and backfilling must be done in one continuous operation;
 - ii. Work within wetlands should be conducted during dry conditions without standing water or when the ground is frozen, where practicable;
 - iii. Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of turbid trench water from entering wetlands or waterbodies;
 - iv. Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction as described in Section B.5;
 - v. Only excavated wetland topsoil, hydric soils, and subsoil shall be utilized as backfill at wetland restoration areas;
 - vi. Wetland topsoil shall be removed and stored separately from wetland subsoil and temporarily placed onto a geo-textile blanket;
 - vii. The length of the trench to be opened shall not exceed the length that can be excavated, cables installed and backfilled in one day. This length of trench generally should not exceed 1,500 feet in a wetland; and
 - viii. When backfilling occurs in wetlands, the subsoil shall be replaced as needed, and then covered with the topsoil, such that the restored topsoil is the same depth as prior to disturbance.
- d. Description of restoration measures for protected wetlands, including:
- i. Contours shall be restored to pre-construction conditions within 48 hours of final backfilling of the trench within protected wetlands and adjacent areas;
 - ii. Immediately upon completion of grading, wetland and adjacent areas shall be seeded and/or replanted with native/indigenous shrubs and herbaceous plants at pre-construction densities. Seeding with an appropriate native/indigenous wetland species mix (e.g., Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW), or equivalent), or seeding with crop species mix consistent with existing, continued agricultural use, shall be completed to help stabilize the soils;
 - iii. The restoration areas of protected wetlands shall be monitored for a minimum of 5 years or until an 80% cover of plants with the appropriate wetland indicator status has been reestablished over all portions of the restored area. At the end of the first year of monitoring, the Certificate Holder shall replace lost wetland and/or wetland adjacent area plantings if the survival rate of the initial plantings is less than 80%; and
 - iv. If at the end of the second year of monitoring as provided in iii above, the criteria for restoration plantings (80% cover, 80% survival of plantings) are not met, then the Certificate Holder must evaluate the reasons for these results and submit an approvable Wetland Planting Remedial Plan (WPRP) for NYSDEC and NYSDPS approval. The WPRP must including the following:

- 1. Analysis of poor survival;

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2. Corrective actions to ensure a successful restoration; and
 3. Schedule for conducting the remedial work. Once approved, the WPRP will be implemented according to the approved schedule.
- e. Streams S-BTF-1, S-BTF-7B, S-BTF-10, S-JJB-3, and S-NSD-3 will be impacted by the construction of access roads. A site-specific Stream Crossing Plan shall be provided as a compliance filing prior to Site Preparation as defined in Certificate Condition 8(a) for each permanent access road-stream crossing and shall include detailed plan, and cross-sectional view plans; stream profile, drainage area and flow calculations; and location, quantity and type of fill. Bridges that span the stream bed and banks should be utilized where practicable. If a bridge is not practicable, culverts can be utilized and shall be designed as follows (to the maximum extent practicable):
- i. Sized per NYSDEC and/or USACE culvert sizing criteria;
 - ii. To safely pass the 1% annual (100-year return) chance storm event to the extent practical and consistent with avoiding/minimizing unnecessary adverse impacts. In cases where sizing a culvert to pass the 1% annual chance storm event is not practical or would result in unnecessary, adverse impacts, the Certificate Holder must demonstrate that although the culvert pipe cannot safely pass the 1% annual chance storm event, the stream crossing itself can do so safely (e.g. through the use of an armored high water crossing);
 - iii. To contain native streambed substrate or equivalent using an open bottom arch, three-sided box culvert, or round/elliptical culvert with at least 20% of the culvert height embedded beneath the existing grade of the stream channel at the downstream invert;
 - iv. Shall be a single culvert structure with a minimum width of 1.25 times (1.25X) the bankfull width of stream channel;
 - v. The slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert shall be used, where practicable;
 - vi. Shall facilitate downstream and upstream passage of aquatic organisms; and
 - vii. Water handling plan describing the measures to direct stream flow around the work area and measures to dewater the isolated work area.
- f. Streams S-BTF-1, S-BTF-7B, S-BTF-10, S-JJB-3, and S-NSD-3 will be impacted by the construction of access roads. If it is later determined that a stream crossing cannot be avoided, a description of stream restoration will be included in compliance filings prior to Site Preparation as defined in Certificate Condition 8(a) demonstrating adherence with the following:
- i. The restored stream channel shall be equal in width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the location of the stream channel disturbance. The planform of any stream shall not be changed;
 - ii. Any in-stream work or restoration shall not result in an impediment to passage of aquatic organisms;
 - iii. Any in-stream work (excluding dewatering practices associated with dry trench crossings) and restoration shall be constructed in a manner which maintains low flow conditions and preserves water depths and velocities similar to undisturbed upstream and downstream reaches necessary to sustain the movement of native aquatic organisms. Any in-stream habitat or grade control structures shall not create a drop height greater than 6-inches;
 - iv. All disturbed stream beds must be restored to original elevation, width, and gradient, and adequately stabilized;
 - v. All other areas of soil disturbance above the ordinary high-water elevation, or elsewhere, shall be stabilized with natural fiber matting, seeded with an appropriate perennial

- native/indigenous conservation seed mix, and mulched with straw within two (2) days of final grading. Mulch shall be maintained until suitable vegetation cover is established; and
- vi. Destroyed bank vegetation shall be replaced with appropriate native shrubs, live stakes, and/or tree plantings as site conditions dictate.
- g. A wetland mitigation is required by the Siting Board in the Order and the SEEP shall attach a copy of the final Wetlands Restoration and Mitigation Plan, developed in coordination with NYSDEC, NYSDPS Staff, and USACE addressing impacts to federally protected wetlands and State-protected wetlands. The Wetlands Restoration and Mitigation Plan shall:
 - i. Describe all activities that will occur within Federal and State-protected wetlands and their associated adjacent areas, and federal wetlands.
 - ii. For each protected wetland and associated adjacent areas, indicate the type of activity (e.g., construction, filling, grading, vegetation clearing, and excavation) and summarize how the activity is consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f).
 - iii. Describe how impacts to wetlands, adjacent areas, associated drainage patterns and wetland functions will be avoided, and how impacts will be minimized.
 - iv. Describe the precautions or measures to be taken to protect all other wetlands (e.g., Town, vernal pool, or federal wetlands) associated drainage patterns, and wetland functions, including describing the measures to be taken to protect stream bank stability, stream habitat, and water quality including, but not limited to: crossing technique; crossing structure type; timing restrictions for in-stream work; stream bed and bank restoration measures; vegetation restoration measures; and other site-specific measures to minimize impacts, protect resources, and manage Facility construction.
 - v. Include the creation of compensatory wetlands at a ratio that is consistent with State and federal regulations, with guidance from the DEC Freshwater Wetlands Regulation Compensatory Mitigation Guidelines;
 - vi. Provide a project construction timeline;
 - vii. Describe construction details for meeting all requirements contained in these proposed certificate conditions;
 - viii. Describe performance standards that meet state and federal requirements for determining wetland mitigation success;
 - ix. Include specifications for post construction monitoring after completion of the wetland mitigation. After each monitoring period, the Certificate Holder shall take corrective action for any areas that do not meet the above referenced performance standards to increase the likelihood of meeting the performance standards. If monitoring demonstrates that the wetland mitigation is still not meeting the established performance standards, the Certificate Holder must submit a Wetland Mitigation Remedial Plan (WMRP). The WMRP must include the following:
 - a) Evaluation for why performance standards are not being achieved;
 - b) Corrective actions to ensure successful mitigation; and
 - c) Schedule for conducting the remedial work.

Once approved, the WMRP will be implemented according to the approved schedule.

- h. Map(s) showing where HDD is planned for installation of buried cables and collection lines under wetlands or streams, including location of boreholes and associated erosion/pollution controls.
- i. Where trenchless crossings of buried collection are not proposed, include a plan of construction methods, practices, and BMPs to be employed for conventional trenching through wetlands.
- j. Similarly, if conventional trenching is proposed for any stream crossing, prepare a site specific

plan showing the appropriate dry-crossing technique and BMPs to be employed.

18. Invasive Species Control Plan

- a. Prior to the Site Preparation Phase, the SEEP shall attach a Final ISMCP, based on the pre-construction invasive species survey of invasive species conducted within the Project Area during the previous growing season. The ISMCP shall include:
 - i. Measures that will be implemented to minimize the introduction of prohibited invasive species pursuant to 6 NYCRR Part 575 and control the spread of existing invasive species during construction (i.e., as a result of soil disturbance, vegetation clearing, transportation of materials and equipment, and/or landscaping/re-vegetation). Control measures may include construction materials inspection and sanitation, mechanical/chemical treatment, and site restoration, among others.
 - ii. A post-construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5 following completion of construction and restoration. The MP shall collect information to facilitate evaluation of ISMCP effectiveness and inform potential remedial action.

19. Sound

- a. Prior to Commencement of Civil Construction, Certificate Holder will identify locations and specifications of measures to mitigate construction noise (e.g., blasting, piling, HDD), if necessary.
- b. Specify procedures to be followed to minimize noise impacts related to Project Area clearing and construction of the Facility. Indicate the types of major equipment to be used in construction and Facility operation; sound levels at which that equipment operates; days of the week and hours of the day during which that equipment will normally be operated; any exceptions to these schedules; and any measures to be taken to reduce audible noise levels caused by either construction equipment or Facility operation.
- c. Final computer noise modeling shall be conducted by using:
 - i. The ISO-9613-2 Sound Propagation Standard with no meteorological correction (Cmet);
 - ii. All noise sources operating at maximum sound power levels, as applicable to the daytime and nighttime periods;
 - iii. A maximum ground factor of $G=0.5$;
 - iv. A factor of $G=0$ for waterbodies, if any;
 - v. A height evaluation of 1.5 meters for all receptors;
 - vi. A temperature of 10 degrees Celsius and 70% Relative Humidity; and
 - vii. At a minimum, the sound results (Broadband, dBA, and at the full-octave frequency bands from 31.5 Hz up to 8,000 Hz (dB)) will be reported.
 - viii. Sound power level information from the manufacturers or as obtained from pre-construction field tests for all noise sources. Supporting information from the manufacturer or the field tests will be provided. If no sound information is available for electric transformers, sound power levels can be estimated by using the algorithms recommended by the Electric Power Plant Environmental Noise Guide (Volume 1, 2nd edition. Edison Electric Institute. Bolt Beranek and Newman Inc. Report 3637. 1983 Update)).
- d. Sound modeling results shall conform to the following:
 - i. Results shall be included in a report that shall include among others, sound results in

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tabular and graphical format.

- ii. Sound contours shall be legible and rendered above a map that shall include all sensitive sound receptors and boundary lines (differentiating participating and non-participating parcels); noise sources within the Sound Study Area (including transformer(s), inverters, and other noise sources, if any); collection lines and solar arrays.
 - iii. Sound contours shall be rendered at a minimum, until the 30 dBA noise contour is reached, in 1 dBA steps.
 - iv. Full-size, hard copy maps (22" x 34") in appropriate scale shall be submitted to NYSDPS Staff.
 - v. Only properties that have a signed contract with the Certificate Holder prior to the date of filing shall be identified as "participating."
 - vi. GIS files used for the final computer noise modeling, including noise source and receptor locations and heights, topography, final grading, boundary line, and participating status shall be forwarded to NYSDPS Staff in digital media.
 - vii. Final computer noise modeling files shall be delivered to NYSDPS Staff by digital means.
- e. For noise sources, other than the substation transformer(s) (e.g., inverters, Medium to Low Voltage transformers) and for non-participating receptors exceeding a sound level of 40 dBA L_{eq} as modeled above, a prominent tone analysis will be presented subject to the following requirements:
- i. The "prominent discrete tone" constant level differences (Kt) in American National Standards Institute (ANSI) S12.9-2013/Part 3 Annex B, section B.1, will be used as follows; 15 dB in low-frequency one-third-octave bands (from 25 up to 125 Hz); 8 dB in middle-frequency one-third-octave bands (from 160 up to 400 Hz); and 5 dB in high-frequency one-third-octave bands (from 500 up to 10,000 Hz).
 - ii. The analysis will use one-third octave band information from the manufacturers (from 20 Hz up to 10,000 Hz, if available). If no manufacturers information is available, sound information can be based on field test(s). The field test(s) will report at a minimum sound pressure and sound power levels and clear explanations about how the test was conducted and Sound Power Levels were obtained. The analysis will be performed for a single noise source (e.g., central inverter) or a group of noise sources (inverters/transformer package), depending on available sound power level information.
 - iii. For the purposes of tonality assessment, calculations will include the following Attenuations as specified in ANSI/ASA S12.62/ISO 9613-2: 1996 (MOD). Acoustics – Attenuation of Sound During Propagation Outdoors-Part 2: General Method of Calculation:
 - a) Attenuation due to geometrical divergence (A_{div})⁵,
 - b) Atmospheric absorption for a temperature of 10 degrees Celsius and 70% Relative Humidity (A_{atm})⁶

⁵ A_{div} can be assumed to be the same at all 1/3 octave bands and/or be omitted from analysis.

⁶ The same full-octave band atmospheric attenuation coefficients indicated in Table 2 of ANSI S12.62, can be used for the three adjacent one-third octave bands corresponding to each full-octave band.

- c) Attenuation to the ground effect ($A_{gr}^{7,8}$),
 - d) Attenuation due to a barrier (A_{bar}) if any⁹,
 - e) No miscellaneous attenuations (A_{misc}) will be included.
- iv. If no manufacturers information or pre-construction field tests are available to demonstrate that noise sources are not tonal as defined herein, sounds will be assumed to be tonal and the broadband overall (dBA) noise level at the evaluated position as determined with computer noise modeling shall be increased by 5 dBA for evaluation of compliance with applicable Certificate Conditions in the Order.

20. Operations Schedule and Timing

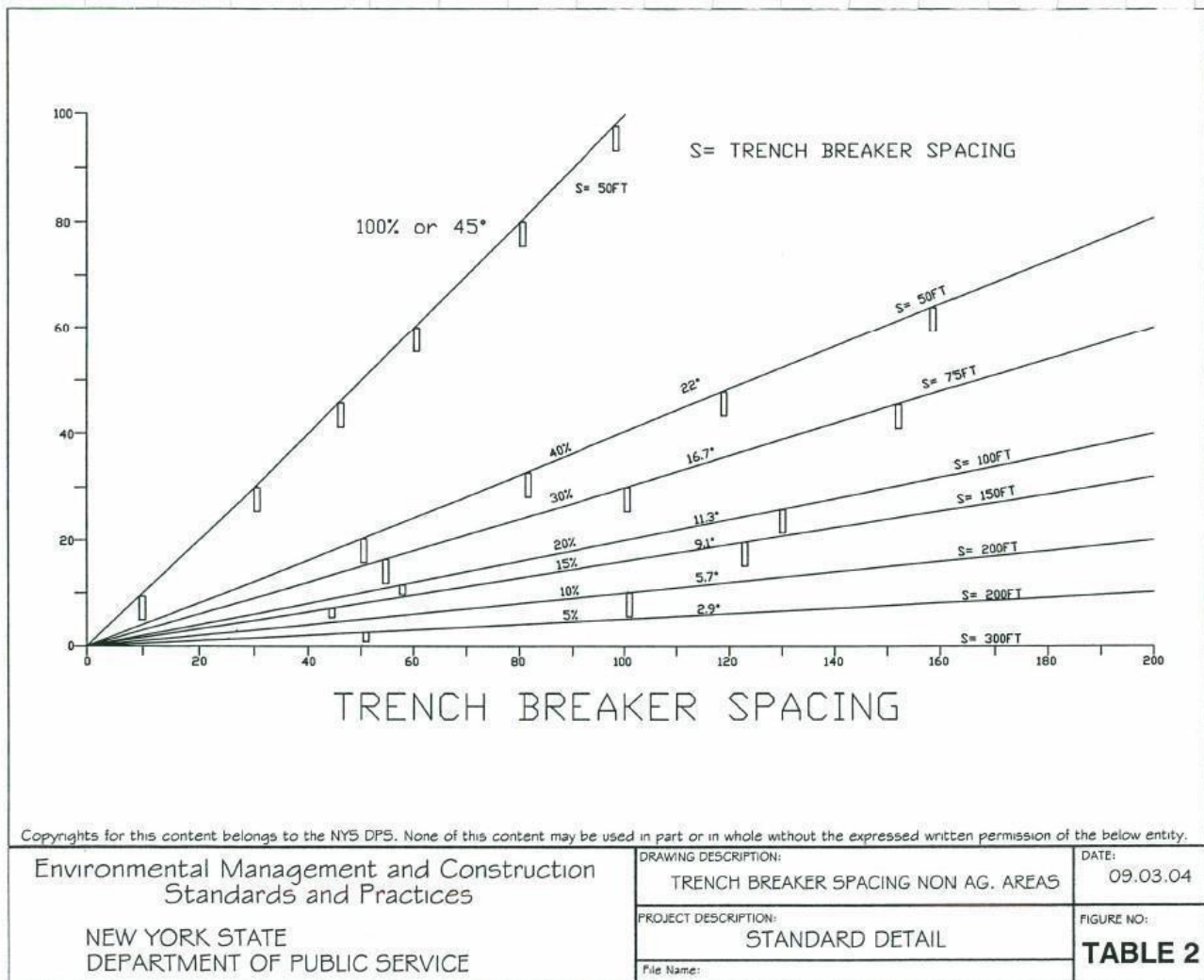
- a. This section of the SEEP should include a discussion of Pre-Operational and Post-Operational Filings and Expected Timing of Submissions.
- b. The Facility Operations & Maintenance (O&M) Plan will include, at a minimum, a flowchart of proper communications and proper protocol for communications among parties, as relevant to the operations and maintenance of the Facility.
- c. A long-range Facility and Corridors Management Plan shall be filed within one year after the Commencement of Operations as defined in Certificate Condition 8(e). The plan shall address specific standards, protocols, procedures and specifications including:
 - i. Vegetation management recommendations based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;
 - ii. All proposed chemical and mechanical techniques for managing undesirable vegetation;
 - iii. Where feasible, to limit the introduction and spread of invasive species, the New York Utility Company Best Management Practices for Invasive Species Transportation Prevention (Environmental Energy Alliance of New York [Jan 2015]) will be employed;
 - iv. Herbicide use, limitations, specifications, and notification requirements will be included. In areas where herbicides are allowed, such use will be conducted by NYSDEC certified pesticide applicators in accordance with all label restrictions and notification requirements;
 - v. Substation Fence-line Clearances, and Overhead Wire Security Clearance Zone specifications, indicating applicable safety, reliability and operational criteria;
 - vi. Review and response procedures to avoid conflicts with future use encroachment or infrastructure development;
 - vii. Host landowner notification procedures;
 - viii. Inspection and target treatment schedules and exceptions;
 - ix. Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents; and
 - x. Wetland and stream protection areas, principles and practices.

⁷ The same full-octave band attenuations as indicated in Table 3 of ANSI S12.62, can be used for the three adjacent one-third octave bands corresponding to each full-octave band.

⁸ Calculations will use the maximum height of the equipment as the height of the noise source.

⁹ Should the analysis show that a barrier will be needed, the barrier will be implemented before the start date of operations

Appendix 1 – Trench Breaker Spacing



Appendix 2 – Site Preparation Filing Framework

Site Preparation Filing FRAMEWORK

Consistent with Certificate Condition 53, upon the filing of the plans and reports listed in this appendix, entitled the Site Preparation Filing Framework, as a compliance filing, and following certification of the Project and approval of said plans and reports by the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, the Director, Office of Electric, Gas, and Water of the New York State Department of Public Service (NYSDPS), or their designee, is authorized to issue a Limited Notice to Proceed to the Certificate Holder to conduct the Clearing and Grading Activities described in said plans and reports; provided, however, that said plans and reports are consistent with and implement the applicable Certificate Conditions approved by the Board.

The purpose of this Site Preparation Filing Framework is to commence the Site Preparation phase as defined at Certificate Condition 8(a), which includes tree clearing and grading, installation of soil erosion and sediment control measures and stabilized construction entrances, construction of stormwater management measures, and installation of construction access roads and any associated wetland and/or stream crossing (should any be proposed); The following provides a brief summary of the construction activities proposed for this Site Preparation phase of work.

Site Preparation (Limited Notice to Proceed) Construction Activities

Access to the Project Area will be established prior to beginning clearing, grading, and construction activities. Construction limits, sensitive areas, and existing utilities will be staked/flagged prior to construction, and erosion and sediment controls will be installed prior to soil disturbance activities. Stabilized construction entrances and construction access roads will be installed as indicated on the Tree Clearing and Grading Drawings. Timber matting will be placed in areas requiring tree clearing where access is not available from the construction access roads, in environmentally sensitive areas, or in soft soil areas where rutting and significant soil disturbance is a concern (if necessary). Refer to the Tree Clearing and Grading Drawings for the proposed location of timber matting for tree clearing and grading work. Equipment required for construction of temporary and permanent access roads, tree clearing, grading, and general construction will arrive at the Project as it is required for the current phase of construction.

Tree clearing activities will commence as access to tree clearing areas is being established, following best management practices and SWPPP guidelines. As trees are cleared, the timber will be stockpiled at the locations indicated in the approved Timber Salvage Plan. Access roads will be graded and stabilized prior to loading and hauling away the trees. Upon completion of clearing activities, the site will be graded and stormwater management measures will be constructed as detailed in the Grading Plans.

Subsequent Construction Activities

Array construction will commence upon completion of clearing and grading activities. If final solar array and electrical design compliance filing approval is not sought by the Certificate Holder concurrent with this grading and clearing filing, then a second compliance filing for the construction of the solar energy Components including the final array layout, inverter locations and collection line routes, consistent with the SEEP and Project certificate conditions will be submitted at a later date. Depending upon design status, the final layout of the Project's POI facilities (e.g., collection substation, switchyard, and interconnection to the existing NYPA 345 kV transmission line) will be included with this second compliance filing or submitted as a separate future filing for Civil Construction on POI facilities phase. Following the completion of all construction, disturbed soils will be restored as required by the SWPPP. Construction and soil restoration may be completed in stages to reduce the overall amount of soil disturbance at the Project Area at any one

time.

Site Preparation Filing Drawings and Documents

A. Site Plans & SWPPP:

1. Site Plans: Consistent with Certificate Condition 64, site plan drawings for activities proposed during the Site Preparation phase shall be provided. The drawings shall be prepared consistent with the SEEP Guide requirements of Section A – Plans, Profiles and Detail Drawings applicable to clearing and grading activities. Additional Project Components may be included within the drawings for context/reference (e.g., solar arrays, collection lines, fencing). All site plans will be drawn at a scale of at least 1" = 200'. Contents:

- a. Site plans depicting proposed tree clearing and grading activities. Prepared with GIS or CAD, with aerial background. Drawings shall be full size (22" x 34" or larger) and 11" x 17" drawings shall be made available to NYSDPS staff upon request.
- b. Access Road Plans: plan drawings created with CAD. Typical cross sections. Plans will show final (and temporary, if applicable) road widths and expected grading limits during construction.
- c. Consistent with Certificate Condition 65, maps showing the locations for construction trailers/offices and location of access to public roads will be submitted. A construction laydown yard plan shall also show planned areas for trailers, parking, and storage.
- d. Stormwater management measures and erosion and sediment control measures.
- e. Consistent with Certificate Condition 71, final wetland impact drawings, site plans, and construction details for activities associated with clearing and grading shall be submitted and incorporate and accurately depict methods for minimization of impacts to each wetland.
- f. If applicable, where proposed access roads cross streams, a Stream Crossing Plan shall be provided consistent with the requirements of Certificate Conditions 73-75.
- g. Vegetation clearing and disposal methods consistent with the SEEP Guide requirements of Section A.3 and B.8.

2. Stormwater Pollution Prevention Plan (SWPPP)

- a. A SWPPP shall be submitted consistent with the SEEP Guide requirements of Section A.2. The Certificate Holder shall specify if the Project will be constructed under a single Notice of Intent (NOI) or if a separate NOI will be filed for subsequent construction phases.

3. Wetlands and Stream Plan

- a. The plan shall be consistent with Certificate Conditions 73 and 122; and SEEP Guide Sections A.6. and B.17.
- b. Wetland and stream drawings must show areas where roads cross wetlands, adjacent areas, and streams; shall indicate topographic contours, delineated wetlands, adjacent areas, streams, and stream width at the bankfull elevation; shall specify access and construction measures, crossing method (e.g., culvert or bridge; trenchless or trenched installation, timber matting or geotextile/gravel, etc.); and shall show any designated streamside "protective or buffer zones" in which construction activities will be restricted. The drawing shall use a 1" = 50' scale.
- c. Tables listing wetland and stream impacts, with the following for each impact: area, type of wetland or stream classification, type of impact, Federal or State jurisdiction.
- d. A Wetland Mitigation Plan, as applicable under SEEP Guide Section B, Item 17.d.v and Certificate Condition 122. The Wetland Mitigation Plan shall be consistent with the Commission's Order and SEEP Guide Section B, 17.f .

B. Plans, Agreements, and Shapefiles

The following plans, agreements and shapefiles will be prepared based upon construction activities associated with Site Preparation as defined in Certificate Condition 8(a) to address the Certificate Condition noted for each. Should the same plan, agreement and/or shapefiles be required for subsequent construction phases, they will be included with the applicable compliance filings for the Civil Construction, Civil Construction on POI facilities, and Commencement of Operations phases as defined in Certificate Condition 8.

1. Agricultural Area Plan

- a. Consistent with Certificate Condition 77 and SEEP Guide Section A.7.a.

2. Timber Salvage Plan

- a. Consistent with Certificate Condition 72.

3. Complaint Resolution Plan

- a. Consistent with Certificate Condition 49 and SEEP Guide Section B.3.

4. Invasive Species Management and Control Plan

- a. Consistent with Certificate Condition 76 and SEEP Guide Section B.18.

5. Notification Plan

- a. Outlining the intended procedures for notifications required by Certificate Conditions 22-27.

6. Emergency Response Plan for Construction

- a. Consistent with Certificate Condition 58 and SEEP Guide Section B.4.a.

7. Health and Safety Plan

- a. Consistent with Certificate Condition 60 and SEEP Guide Section B.4.c.

8. Unanticipated Discovery Plan and Archaeological Avoidance Plans

- a. Consistent with Certificate Condition 82 and SEEP Guide Section B.15.

9. Dig Safe New York Documentation

- a. Consistent with Certificate Condition 86.

10. Traffic Control Plan

- a. Consistent with Certificate Condition 63 and SEEP Guide Section B.7.b.

11. Quality Assurance and Quality Control Plan

- a. Consistent with Certificate Condition 56 and SEEP Guide Section B.4.d.

12. Construction Spill Prevention, Containment and Control (SPC) Plan

- a. Consistent with Certificate Condition 80 and SEEP Guide Section B.5.b.

13. Utility Crossing Agreements

- a. Consistent with Certificate Condition 40, prior to the Commencement of Civil Construction as defined in Certificate Condition 8(b), the Certificate Holder shall file as an Information Report the agreement between itself and existing utilities (NYPA and National Fuel) demonstrating that each utility has granted the Certificate Holder permission to install facilities within transmission line easements. If final agreements have not been executed and crossings are required during Site Preparation the provisions of Section B.7.a herein addressing the crossings for this phase shall govern and the agreement(s) authorizing the crossings necessary during the Site Preparation shall be filed.

14. Setbacks and GIS Files

- a. Consistent with Certificate Conditions 42(a) and 64(a)-(c). GIS files shall be submitted as confidential information for use by State agencies.

15. 401/404 Documentation

- a. A copy of the Certificate Holder's request for a 401 Water Quality Certification and 404 permit application.

16. Land Rights Package

- a. A copy of the Certificate Holder's documentation demonstrating that all property rights and/or necessary agreements are in place for use of the Facility Site for construction and/or operation (e.g., redacted landowner agreements, options, easements, or "good neighbor" agreements) consistent with Certificate Condition 28.

Appendix 3 – Facility Components and Wetland Boundaries

Figures and maps showing the location of all facility components and wetland and stream boundaries will be provided as a Compliance Filing and will become a part of the final SEEP.

APPENDIX C

COMPLAINT RESOLUTION PROTOCOLS

APPENDIX C

GARNET ENERGY CENTER PROJECT

Complaint Resolution Protocol

June 2021

1. COMPLAINT RESOLUTION PROTOCOL FOR CONSTRUCTION AND OPERATIONAL NOISE FROM SOLAR FACILITIES

This Noise Complaint Resolution Protocol has been prepared to establish the procedures by which the Certificate Holder will address public complaints during the construction and the operation of the Project. All activities will adhere to the requirements of appropriate governing authorities, and will be in accordance with all applicable federal, state and local rules, regulations, Orders and agreements.

2. PROCEDURE FOR FILING COMPLAINTS

- a. Complaints can be made by following any of the following procedures.
 - i. Call the Certificate Holder at its headquarters (800-674-0851), or its representatives (e.g. Construction Manager during construction, or the Site Manager once the Project is operational),
 - ii. Meet with Certificate Holder employees in person at the temporary construction office or at a location near the Project once the Project is operational,
 - iii. Submit a complaint in writing by mailing a detailed complaint, or
 - iv. Submit a complaint in writing by emailing a detailed complaint to the Certificate Holder or its representatives (info@garnetenergycenter.com) (e.g. Construction Manager during construction or the Site Manager once the Project is operational),
 - v. Refer to Appendix B for contact information.
- b. The complaint should be as detailed as possible and include the information (available online at both the Project website and the Town website) indicated in the Complaint Resolution Plan, entitled "Complaint Form". The form can be used to submit a complaint by mail. These forms will also be available at the temporary construction office during construction.
- c. The Certificate Holder encourages complainants to submit complaints directly to the Certificate Holder or its representatives to be able to address such complaints in a timely manner according to this protocol. Complaints submitted to other third parties may not be communicated to the Certificate Holder and therefore may not get addressed in a timely manner.
- d. In circumstances whereby a third party receives a complaint about the Project, the Certificate Holder requests that the third party refers the complainant to the Complaint Resolution Protocol on the Certificate Holder's website and, if possible, forward the complaint to the Certificate Holder within seven (7) business days of receipt. The Certificate Holder will communicate the receipt of complaints to emergency service providers, NY State agencies, the Town of Conquest, and other third parties that should be notified of complaints about the Project.

3. RESOLUTION OF COMPLAINTS

- a. The Certificate Holder will work in good faith to address and/or resolve reasonable complaints as soon as is practicable, however, some complaints may take more time than others to evaluate and

determine proper resolution, and some complaints may not reasonably be resolved. If a complaint cannot be reasonably resolved, the Certificate Holder will advise the complainant in writing as to why and share said response with emergency service providers, NY State agencies, the Town of Conquest, and other third parties that should be notified of complaints about the Project. Please also refer to Certificate Conditions of the Order for other specific requirements.

- b. The Certificate Holder will contact the complainant as quickly as possible and in all cases within 3 days to confirm that the complaint was received and within 7 days of receipt to gather additional information and/or discuss a resolution plan.
- c. The Certificate Holder will resolve complaints within the time frames specified in the Certificate Order, if any. Otherwise the Certificate Holder will work in good faith to address and/or resolve complaints as soon as is reasonably practicable and commits to resolving complaints within 60 days, unless circumstances dictate that more time is necessary for evaluation or resolution and the Applicant is working toward a resolution. In instances where resolution will take longer than 60 days, the Applicant will contact the complainant within 30 days of receipt of the complaint to explain why resolution will take, or is taking, longer and will provide a timeframe for resolution. The complainant may contact the Certificate Holder to obtain status updates concerning the response to the complaint.

4. DISPUTE RESOLUTION AND UNRESOLVED COMPLAINTS

- a. In some instances, the Certificate Holder and a complainant (the parties) may not agree on a resolution to a complaint. In such instances, the Certificate Holder will consult New York State Department of Public Service (DPS) and notify the Town of Conquest. If necessary, the complaint will be referred as specified by applicable regulations.
- b. In other instances, the Certificate Holder may determine that a complaint does not have a reasonable resolution. For such complaints (for example a complaint about the value of solar energy), the Certificate Holder will add the complaint to the complaint log and notify the complainant that no resolution is feasible unless a different procedure is required by the Certificate Order or applicable regulations.

5. DOCUMENTATION OF COMPLAINTS

- a. During construction and operation of the Project, the Certificate Holder will keep a complaint log, recording complaints that it receives. The complaint log will include, at a minimum, the information required by the Certificate Order. A sample complaint log form is included below.
- b. At a minimum, the log will contain the name(s) and contact information of the person(s) that lodges the complaint, name of the property owner(s), address of the residence where the complaint was originated, the date and time of the day underlying the event complained of, and a summary of the complaint, if available.
- c. The complaint log will be maintained by the Certificate Holder and will be made available to DPS and the Town of Conquest upon request.

6. PUBLIC NOTIFICATION OF COMPLAINT PROCESS

- a. No less than two (2) weeks prior to the commencement of construction, the Certificate Holder will publish a summary of the Complaint Resolution Protocol in such newspapers, including local community and general circulation newspapers, including the newspaper of record for the Town of Conquest, as will serve substantially to inform the public of such Complaint Resolution Protocol. The summary will include contact information of the Certificate Holder including phone numbers, email and physical addresses.
- b. The Protocol will be provided to the Town Supervisor and Town Board where the Project is sited.
- c. The Protocol will also be posted on the Certificate Holder's website and will be available to the public at the Certificate Holder's temporary construction offices.

7. NOISE COMPLAINT AND RESOLUTION PROTOCOL

This Protocol is in effect upon commencement of construction and will be in effect for the life of the project.

a. Complaint Response – Construction

- i. At a minimum, complaints from construction will be addressed as specified in the Certificate Order.
- ii. If the Sound Complaint location is more than one (1) mile¹ from active construction activity, the complaint will be logged but no action will be taken.
- iii. If the Sound Complaint location is one (1) mile¹ or less from active construction activity, the following steps will be taken:
 1. A representative from the construction firm will visit the site of the complaint during construction activity to listen and observe.
 2. The Certificate Holder will determine whether the Certificate Conditions of the Order on construction noise are met and if not, correction(s) will be taken, or
 3. Construction personnel in consultation with the EM will determine if any equipment is not functioning properly and thus creating unusual sound. If so, this equipment will be repaired or replaced as soon as practical.

b. Complaint Response - Operation

If the Sound Complaint is originated in a residence within half mile of the facility, and based on final computer noise modeling or any preliminary monitoring, there appears to be a reasonable possibility that the sound levels induced by the Project exceed or are within 5 dBA of any applicable noise limit or design criteria specified in a Certificate Condition of the Order, then the Certificate Holder will investigate the incident as follows:

- i. The Applicant is not required to conduct sound testing if:
 1. the modeled sound levels are lower than 5 dBA below any applicable noise limit.
 2. the complaint has occurred as a result of abnormal operation. In this case, the Certificate Holder shall make necessary repairs.
- ii. The Certificate Holder shall conduct sound monitoring if:
 1. The complaint location is further than 0.5 miles from any previously evaluated monitoring locations, or
 2. The location is closer than 0.5 miles of a previously evaluated monitoring location but the final computer noise modeled levels or the results of any preliminary measurements of sound levels are higher or expected to be higher than the positions previously evaluated, or
 3. There is a reasonable possibility that mechanical or operational conditions have changed that affect Inverter/Medium to Low Voltage Transformer or substation equipment sound levels, or,
 4. The issue is different than the one previously evaluated, or
 5. The last monitoring was conducted more than three years ago.
- iii. The Certificate Holder will not, as a result of additional complaints, repeat sound monitoring in a previously evaluated location during any three-year period following the first monitoring for that receptor, unless changes in system operation or maintenance can be reasonably assumed to have resulted in higher sound levels.
- iv. The Certificate Holder may request that a Complainant maintain a written log of potentially offending sound events over some reasonable period of time, in order to assist in identifying influences that may affect the sound from the Facility.

¹ Two (2) miles for complaints from blasting noise.

- v. If Certificate Conditions of the Order or any preliminary investigation suggests that sound monitoring is warranted, the Certificate Holder shall conduct such sound monitoring through an independent third party capable of producing verifiable results.
- vi. The Certificate Holder shall inform a resident when it intends to conduct any exterior sound monitoring and cooperate with the resident to determine an appropriate location for the monitoring equipment. If the investigation determines that a sound complaint is the same as previously lodged and that the Facility is found to be compliant with the relevant certificate conditions for two separate instances at the same location during the last 3 years, then any future complaint, beyond the first two, may require the complainant to pay the cost of additional sound testing.
- vii. If, as the result of an investigation of a complaint, it is determined that the sound level at any residence, attributable to the Project, does not comply with any Certificate Condition or design goal of the Order, the Certificate Holder will evaluate and implement practical measures to reduce sound levels at the receptor and/or mitigate the issue by other measures.
- viii. Complaints associated with the operation of motors/tracking systems, will be addressed by implementing operational mitigation strategies (e.g. staggering), or physical mitigation measures (e.g., lubrication, replacement of noisy components), as feasible and appropriate.

8. REPORTING

- a. For any complaint-based monitoring conducted by the Certificate Holder, the results of the testing shall be submitted in a report as specified in the Certificate Order and in this Complaint Resolution Protocol.
- b. Copies of the report will be delivered to the complainant, NYS DPS, and, to the Town of Conquest.
- c. The report shall include at a minimum the following information collected during the monitoring period:
 - i. Ground-level wind speed and direction during monitoring (1.5 meters above the ground),
 - ii. Operational status of the noise sources or substation components, as applicable,
 - iii. Summary of sound levels,
 - iv. Raw sound level data as logged by the sound level meter during the program
 - v. Conclusions.

COMPLAINT FILING FORM (for public)

Date of filing: _____

Name of Property Owner: _____

Name of the Complainant: _____

Address: _____

Phone #: _____

Email Address: _____

Date and time of the day underlying the event: _____

Location(s) of the property where the issue is/was noticed: _____

Duration of the issue: _____

Description of Complaint:*

*If possible, include weather conditions and any other details that can help identifying the issue.

APPENDIX D: CERTIFICATE HOLDER'S CONTACT INFORMATION

Excelsior Energy Center
700 Universe Blvd., FEW/JB
Juno Beach, FL 33408

Telephone: 800-674-8613
Email: info@excelsiorenergycenter.com

APPENDIX E: COMPLAINT LOGGING FORM (for Operator)



GARNET ENERGY CENTER COMPLAINT RESOLUTION PLAN

FACILITY OPERATOR:
Garnet Energy Center, LLC
700 Universe Boulevard
Juno Beach, FL 33408

Contents

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Attachments

Attachment A. Garnet Energy Center Complaint Resolution Flowchart

Attachment B. Noise Complaint Resolution Protocol

1.0 Complaint Resolution Plan

Garnet Energy Center, LLC (Garnet Energy Center) has prepared this Complaint Resolution Plan (the Plan) to establish a consistent method and procedure by which Garnet Energy Center will address public complaints, including degraded television service and vibration complaints, which may be received during the construction and the operation of the Garnet Energy Center Project (the Project).

2.0 Procedure for Filing Complaints

The following procedures outline the process by which a Complainant may file a complaint related to the Project:

1. Call Garnet Energy Center at **(800) 674-0851**, or call the Project Manager during clearing and grading, the Construction Manager during construction, or the Site Manager once the Project is operational, at the numbers listed in the following table.

Table 1. Garnet Energy Center Project Complaint Contacts

Title	Name	Office Phone	Cell Phone	Email
Project Manager	Kris Scornavacca	(800) 674-0851	-	Kris.Scornavacca@nexteraenergy.com
Construction Manager	TBD	TBD	TBD	TBD
Site Manager	TBD	TBD	TBD	TBD

2. Meet with local Garnet Energy Center employees and/or Site Manager, if available, in person at the temporary construction trailer. The Complaint Resolution Plan will be updated prior to commencement of construction of the Project to include information regarding local Garnet employees and contractors when selected and prior to construction. Verbal complaints received during construction will be converted to written documents that can be tracked by the Certificate Holder and contractors and be reported to DPS staff;
3. Submit a complaint in writing by mailing a detailed complaint to the following address:

Garnet Energy Center, LLC
700 Universe Blvd., FEW/JB
Juno Beach, FL 33408; or

4. Submit a complaint in writing by emailing a detailed complaint to the Project Manager during clearing and grading, the Construction Manager during construction, or the Site Manager once the Project is operational. The Complaint Form and email address will be provided on the Project website (<https://www.garnetenergycenter.com/>) during construction and operation, and will be provided in the construction commencement notification letter.

In order for Garnet Energy Center to properly and sufficiently address a complaint, the complaint should be as detailed as possible and include the information below:

- Name of Complainant;
- Date of complaint;
- Complainant's phone number;
- Complainant's address;
- Complainant's email address;
- Location of issue;
- Duration of the issue; and
- Detailed description of the complaint (if possible, include the date and time that the issue occurred, the exact location and duration of the issue, and any other details that can help pinpoint the issue).

A flowchart illustrating the procedures described above is included at the end of this plan as Attachment A.

For specific procedures regarding noise complaints see the Noise Complaint Resolution Protocol in Attachment B.

Included in this Plan is a Complaint Form that can be used to submit a complaint by mail or to be dropped off at the temporary construction office. These forms will also be available at the temporary construction office.

Garnet Energy Center encourages Complainants to submit complaints directly to Garnet Energy Center at the following address:

Garnet Energy Center, LLC
700 Universe Blvd., FEW/JB
Juno Beach, FL 33408

This will allow Garnet Energy Center to address such complaints in a timely manner. Complaints submitted to local governmental agencies, emergency service providers, New York state agencies or other third parties may not be communicated to Garnet Energy Center and therefore may not get addressed.

In circumstances whereby a third party receives a complaint about the Project, Garnet Energy Center requests that the third party refer the Complainant to the Complaint Resolution Plan on the Project's website and, if possible, forward the complaint to the Garnet Energy Center within seven business days. Garnet Energy Center will communicate this request to the Town Supervisor (local governmental agencies), emergency service providers, New York State agencies, and other third parties that may receive complaints about the Project. If a complaint of damage associated with these activities is received and the resolution of this complaint results in a determination, and following the exhaustion of applicable administrative and judicial review procedures, that damages were a result of these activities, Garnet Energy Center will compensate the Complainant for any damages. Compensation for damages will be discussed with the Complainant during the Resolution of Complaints process described below.

3.0 Resolution of Complaints

Garnet Energy Center will work in good faith to address and/or resolve reasonable complaints as soon as is practicable, however, some complaints will take time to evaluate and determine proper resolution and some complaints cannot reasonably be resolved. Safety and good community relations are among the highest priorities of Garnet Energy Center; as such, speedy resolution of legitimate complaints is imperative.

Complainants will receive confirmation that their complaint has been received by either a recording or an automatic email confirming receipt, if such function is available and practicable. Upon receiving a complaint, Garnet Energy Center will enter the complaint into a complaint log documenting the details, and will determine a plan of action to resolve the complaint, if possible to resolve. If necessary, Garnet Energy Center will contact the Complainant within seven days of complaint receipt, with the goal of making contact within 48 hours to gather additional information and/or discuss a resolution plan. Garnet Energy Center will work in good faith to address and/or resolve complaints as soon as is reasonably practicable and commits to resolving complaints

within 30 days, unless circumstances dictate that more time is necessary for evaluation or resolution and Garnet Energy Center is working toward a resolution. In instances where resolution will take longer than 30 days, Garnet Energy Center will contact the Complainant to explain why resolution will take longer, or is taking longer, and will provide a timeframe for resolution that is as soon as is practicable.

4.0 Dispute Resolution and Unresolved Complaints

In some instances, Garnet Energy Center and a Complainant (the parties) may not agree on a resolution to a complaint. Any complaints not resolved within 30 days of receipt will be reported to DPS Staff. If necessary, the complaint will be referred as specified by applicable regulations. In other instances, Garnet Energy Center may determine that a complaint does not have a reasonable resolution. For such complaints (for example a complaint regarding the aesthetic value of solar arrays or a complaint about the value of solar energy), Garnet Energy Center will add the complaint to the complaint log, notify the Complainant that no resolution is feasible and recommend the Complainant contact the NYSDPS if they disagree. The Complainant thereafter may use the NYSDPS dispute resolution procedures to seek a resolution of the dispute.

5.0 Documentation of Complaints

During construction and operation of the Project, Garnet Energy Center will keep a complaint log with records of complaints received. The complaint log will include, if available, the date of the complaint, the name of the Complainant, contact information for the Complainant including address and phone number, and a detailed description of the complaint. It will also include a description of the complaint resolution, if resolution is feasible.

The complaint log will be maintained by Garnet Energy Center and will be made available to the NYSDPS. Upon request by the NYSDPS, Garnet Energy Center will send the complaint log via email within seven business days.

All complaints received shall be reported to the Siting Board, or the commission after the Board's jurisdiction has ceased, monthly during the first three years of commercial operation and quarterly thereafter. By filing with the Secretary during the first 10 calendar days of each month, copies of the complaints and if available, a description of the probable cause, the status of the investigation, summary of findings, and whether mitigation measures have been implemented. If no complaints are received, the Certificate Holder shall submit a letter to the Secretary indicating that no complaints were received during the reporting period. Garnet Energy Center will also provide

annual reports of complaint resolution tracking to DPS Staff. Annual reports will also be filed with the Secretary.

6.0 Public Notification of Complaint Process

No fewer than two weeks prior to the commencement of construction, Garnet Energy Center will publish a summary of the Complaint Resolution Plan, as part of the construction notification required by the applicable Certificate Condition, in one or more newspapers, including, if available, a free local community newspaper (online or hard copy), and a general circulation newspaper, as will serve substantially to inform the public of such Complaint Resolution Plan. Local municipalities as well as host and adjacent landowners, within 2500 feet the Project Area boundaries, will be directly notified of the complaint process via mail. The summary will provide contact information including phone numbers, email, and physical addresses. The Plan will be provided to the Town of Conquest Town Clerk. The Plan will also be posted on the Project's website, provided to local document repositories, and will be available to the public at the temporary construction office.

Complaint Form

Name: _____ Date: __ Phone #: __

Address:

Description of Complaint:*

*If possible, include the date and time the issue occurred, the exact location and duration of issue, weather conditions, and any other details that can help pinpoint the issue.

Complaint Resolution Plan
Center, LLC

Garnet Energy