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Via Electronic Filing

New York State Office of Renewable Energy Siting  
W.A. Harriman Campus  
Building 9, Rear Dock  
1220 Washington Avenue  
Albany, NY 12226

**Re: *Matter 21-02553: Application of Hecate Energy Columbia County 1, LLC for a Permit for a Major Renewable Energy Facility Pursuant to Executive Law Section 94-c for the Construction of the Approximately 60-Megawatt Shepherd's Run Solar Farm Located in the Town of Copake, Columbia County, NY.***

Dear Sir/Madam:

We represent Hecate Energy Columbia County 1, LLC (“Hecate” or “the Applicant”), in the above-referenced proceeding. On March 8, 2022, the Applicant filed an Application for a permit to construct the proposed Shepherd’s Run Solar Farm (the “Project”) pursuant to New York State’s Executive Law § 94-c and 19 NYCRR Part 900. On May 9, 2022, the Office of Renewable Energy Siting (“ORES” or “the Office”) issued a Notice of Incomplete Application (the “First Notice”). On July 29, 2022, the Applicant filed a response to the First Notice (“First Response”). On September 27, 2022, the Office issued a second Notice of Incomplete Application (“Second Notice”). On January 27, 2023, the Applicant filed a response to the Second Notice (“Second Response”). On March 28, 2023, the Office issued a third Notice of Incomplete Application (“Third Notice”).<sup>1</sup> Please accept this communication

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<sup>1</sup> The Applicant notes that the areas of Application incompleteness identified by the Office have expanded since the Office issued its First Notice. Pursuant to 19 NYCRR § 4.1(e), the Office has 60 days after submission by the Applicant of all requested materials to determine whether the Application is complete. Pursuant to 19 NYCRR § 4.1(h), if the Office fails to provide notice of its determination of incompleteness within the 60-day time period, the application shall be deemed complete. Further, neither Executive Law § 94-c nor 19 NYCRR Part 900 appears to provide an opportunity for the Office to assert deficiencies in subsequent Notices of Incomplete Application that were not raised in a prior Notice of Incomplete Application; indeed, such assertions may be considered an attempt to extend the Office’s maximum 60-day time period to review application materials for completeness. As such, the Applicant respectfully asserts that several items identified by the Office in the Second and Third Notices are instead deemed constructively complete by the Office’s failure to raise those deficiencies in prior Notices. For example, in the First Notice, the Office requested an updated agricultural co-utilization plan for purposes of 19 NYCRR § 900-2.16(e). In the First Response, the Applicant stated that it is not proposing an agricultural co-utilization plan, but it is continuing to explore opportunities for co-use. The Second Notice did not contain any deficiency comments related to the Applicant’s response nor compliance with 19 NYCRR § 900-2.16(e). However, the Third Notice requests an “updated conceptual co-utilization plan” with “sufficient detail for

as the Applicant’s response to the Third Notice (“Third Response”). In this Third Response, the Applicant recites the categories and specific items noted in the Office’s Third Notice and provides further information and clarifications that it believes the Office will find to be sufficient to deem the Application complete pursuant to 19 NYCRR § 900-4.1.

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implementation,” including detailed business plans and projected profits. By way of another example, the Third Notice requests that the Applicant remove references to “resale value” in Exhibits 23 and 24. Notwithstanding that a request to remove language from the Application should not weigh on the completeness of the Application, neither the First Notice nor Second Notice included any comments pertaining to resale value, although such language was provided in the original Application filed on March 8, 2022. The further list of notices the Applicant would assert have been deemed constructively complete, with respect to which the Applicant reserves the right to amend or add to, is as follows: Third Notice Requests Exhibit 3(1) (regarding the Taghkanic Headwaters Conservation Plan); Exhibit 6(1)(a) and (b) (regarding compliance with Town of Copake Code Chapter 135); Exhibit 8(1) (requesting additional landscaping at the interconnection substation); Exhibit 14(2) (requesting removal of temporal classifications that appear in the original Table 14-2 filed on March 8, 2022); Exhibit 14(3) (requesting scientific literature or studies to support a statement that appears in the original Exhibit 14 filed on March 8, 2022); Exhibit 15(1) (regarding clarifying temporary and permanent impacts to agricultural production areas); Exhibit 15(2) (regarding acreage retained for each type of continued agricultural use); Exhibit 15(5) (regarding compliance with NYSDAM Guidelines with respect to drainage remediation); Exhibit 23(1) (requesting removal of language pertaining to leaving access roads in place that appears in the original Exhibit 23 filed on March 8, 2022); Exhibit 24(1)(a) (regarding request to address public comment in the Application); Exhibit 24(2)(d) (requesting removal of argument pertaining to PILOT and host community benefits that appears in the original Exhibit 24 filed on March 8, 2022); Exhibit 24(10) (regarding arrangement for code review, approval and certification with respect to the Project); and Exhibit 24(11) (regarding disagreement with language used to describe code provision that appears in the original Exhibit 24 filed on March 8, 2022). The Applicant nevertheless continues to respond to such notices in an effort to provide the Office and all parties with additional information regarding the Project, but reserves its right to assert constructive completeness with respect to these items and any others that may be determined to have been raised outside the 60-day review period under Section 4.1(e).

**Exhibit 01. – General Requirements**

As part of this Third Response, the Applicant hereby provides Revised Exhibit 1 to update the Applicant’s primary public contact information at Section 1(c).

**Exhibit 03. – Location of Facilities and Surrounding Land Use**

***Notice Request #1:***

1. Please provide an appendix to Exhibit 3 to incorporate the Taghkanic Headwaters Conservation Plan and the Applicant’s written consistency analysis so that there is a cohesive response and analysis included in the Application. Please discuss the Applicant’s avoidance, minimization, and mitigation measures specific to addressing the Plan’s purpose to “protect forests for clean water and wildlife while meeting the needs of local communities and landowners.” Additionally, please provide facts and/or figures discussing the limited amount of proposed clearing of forest areas in relation to those shown on Figures 6 and 7 of this Plan.

***Applicant’s Response:***

The Applicant hereby provides Appendix 3-5. Taghkanic Headwaters Conservation Plan (THCP) Consistency Analysis to Exhibit 3 to provide the Taghkanic Headwaters Conservation Plan (the “Plan”) and a written analysis of how the Project is consistent with the Plan.<sup>2</sup> Specifically, Appendix 3-5 provides a discussion of the Applicant’s avoidance, minimization, and mitigation measures specific to the Plan’s purpose to “protect forests for clean water and wildlife while meeting the needs of local communities and landowners.” The limited amount of proposed clearing of forest area within the areas shown on Figures 6 and 7 of the Plan is discussed in Appendix 3-5 and depicted on Appendix 3-5 Figure 1 and Appendix 3-5 Figure 2.

**Exhibit 05. – Design Drawings**

***Notice Request #1:***

1. Pursuant to 19 NYCRR § 900-2.1(f), please provide GIS shapefiles and CAD files detailed in Appendix A-1 while ensuring consistency with all information provided in the existing or revised Exhibit materials.

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<sup>2</sup> Hecate maintains that the Plan does not meet the requirements to be deemed a local ordinance, law, resolutions, regulation, or standards under 19 NYCRR § 900-2.25. *See* Matter No. 21-02553, Application of Hecate Energy Columbia County 1, LLC for a 94-c Permit for a Major Renewable Energy Facility, Hecate Response to Town of Copake Letter (filed November 15, 2022) DMM Item No. 58.

***Applicant's Response:***

The Applicant will provide the GIS shapefiles and CAD files listed on Appendix A-1 concurrent with its filing of this Third Response. The shapefiles are consistent with the information provided in the Application, as supplemented by this Third Response.<sup>3</sup>

***Notice Request #2:***

2. Sheet C-102 illustrates that the substation does not meet the 100' buffer required by § 232-16.12(F)(6)(A)(2) of the Code of the Town of Copake (Copake Code). Please revise Exhibit 5 to comply with this local law.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 to request limited relief from the 100' buffer required by Code § 232-16.12(F)(6)(A)(2). In lieu of this buffer, the Applicant will comply with the ORES setback requirements in 19 NYCRR § 900-2.6(d) and Table 2, which do not require that the Project be set back a specified distance from the lot line of participating properties. Compliance with 19 NYCRR § 900-2.6(d) and Table 2 is demonstrated in Sheet C-102. Both the Project substation parcel and the abutting Craryville substation parcels are participating properties. The Applicant owns the Project substation parcel. The NYSEG-owned Craryville substation parcel is a participating property, as defined in 19 NYCRR § 900-1.2(bb), because the Applicant has an executed interconnection agreement with NYSEG. Accordingly, the Applicant has negotiated with NYSEG the placement of components of the interconnection facilities on the Applicant's parcel and within 100' of the NYSEG Craryville substation property to facilitate the interconnection of the Project to the grid.

As further described in Exhibit 24, this proposed substation location and its proximity to the existing NYSEG Craryville substation maximizes the buffer to the adjacent residential property on the east side of the substation parcel (202'), minimizes the overhead components of gen-tie facilities between the substations (and therefore the need for additional visual mitigation), minimizes the earthwork required to install the proposed Project substation, and minimizes sound levels to non-participating residential receptors to the maximum extent practicable (and therefore the need to mitigate noise impacts). Further, minimizing the setback from the NYSEG parcel allows the Applicant to request a more limited waiver from the Town's requirement to underground all wires, as described in Request #16, which the Applicant has limited to the minimum request necessary to interconnect the Project. Finally, the intent of a setback requirement is to protect the neighboring property. As the relevant

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<sup>3</sup> For this response and others in which the Applicant agrees to provide additional GIS shapefiles and CAD files, please note that the Applicant will submit and serve the requested files and will also, to ensure completeness, submit and serve all previously provided GIS shapefiles and CAD files. Pursuant to the ALJ Leary's April 11, 2023 *Ruling Granting Motion to Compel Service of Filings in the Proceeding and Denying Motion for Official Administrative Notice of Local Legislative Resolutions*, the Applicant will serve the Town with all GIS shapefiles and CAD files concurrently with its provision of such files to Office staff.

neighboring property in this case is owned by NYSEG, applying the 100' setback would only serve to protect the NYSEG-owned substation, and would have a potentially detrimental effect on the residential property to the east of the Project substation parcel because of the necessary reduction of setback on that side.

***Notice Request #3:***

3. The proposed Facility contains: grading in areas with erosion potential upland of water resources, wet and dry soil conditions, sheep grazing and apiary activities, existing naturalized vegetation in array areas with partial disturbance, and specific vegetation and seeding requirements under § 232-16.12(F)(6)(a)(10) and § 232-16.12(F)(6)(a)(19) of the Copake Code. The January 27, 2023 Comments on Second Deficiency Notice and the Revised Landscape Plans of Exhibit 5 propose different seed mixes. Staff finds that the Applicant has not sufficiently developed the proposed seeding plan to address all the items listed above. Please revise the Exhibits to clarify the proposed seed mixes, and discuss the establishment of native seed within existing naturalized ground cover and how the seed mixes will complement the proposed sheep grazing and apiary activities.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 5 to clarify the proposed seed mixes, their intended uses, and to provide a discussion of how the Applicant will promote the establishment of native seed within existing naturalized ground cover, including how the proposed seed mixes will complement the potential future co-uses, including sheep grazing and apiary activities.

The seed mixes proposed in Revised Appendix 5-3 (Revised Landscape Plans), used in conjunction with temporary seeding, meet the requirements of Copake Code § 232-16.12(F)(6)(a)(19), which states that, "Following construction of a Tier 4 ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with native grass and/or planted with low-level native vegetation capable of preventing soil erosion and airborne dust." As described in Revised Exhibit 5 and outlined in the Revised Landscape Plans, in combination with temporary seeding, the proposed seed mixes will prevent soil erosion, generation of airborne dust, and aid in the establishment of the final seed mix.

The Revised Landscaping Plan illustrates that native grasses will be planted in disturbed areas beneath the arrays. The proposed seed mixes will complement the potential future co-uses, if implemented. If the Applicant proposes an Agricultural Co-Utilization Plan in the future, as further described in response to Exhibit 23, Notice Requests #7a – 7c, the Applicant will include a feasibility analysis pursuant to 19 NYCRR § 900-2.16(e). However, an Agricultural Co-Utilization Plan is not proposed at this time.

As described in the Second Response and Revised Exhibit 24, the Applicant has requested limited relief from the provision of Code § 232-16.12(F)(6)(a)(10) that requires that native grasses and native vegetation be *maintained* below the arrays.

***Notice Request #4a:***

4. Please update Exhibits 5, 8, and 16 and provide revised CAD and GIS shapefiles, to address the following:
  - a. Consistent with 19 NYCRR §§ 900-2.1(a) and 900-2.25(d), please *demonstrate* compliance with § 232-11(E)(3) and § 232-11(E)(4), using additional road profiles or enlarged grading plans, including the grading required to meet elevations at the existing “edge of pavement” or “street” and include the “edge of pavement” on the design plans. (Emphasis in original).

***Applicant’s Response:***

The Applicant hereby provides Revised Appendix 5-1 (Civil Drawings) to demonstrate compliance with Code § 232-11(E)(3) and § 232-11(E)(4). Specifically, see Sheets C-201, C-202, and C-203 of Revised Appendix 5-1 (Civil Drawings), which include blow-ups of all access drive connections to the street and associated profiles and which detail the grading required to meet elevations at the existing edge of pavement. The Applicant has incorporated these updates in the relevant CAD and GIS shapefiles that are provided with this Third Response.

***Notice Request #4b:***

- b. Please *demonstrate* that the Facility will meet the site distance requirements in § 232-11(E)(5). Please provide documentation on the horizontal and vertical geometry at all intersections as required by 19 NYCRR § 900-2.17(a)(1), including, but not limited to, driveway slope, lane widths, corner angle, radius, and cut/fill. (Emphasis in original).

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 16 including new Table 16-3 to demonstrate compliance with Code § 232-11(E)(5). Exhibit 16 further details how the Project’s driveway locations meet the American Association of State Highway and Transportation Officials (AASHTO) geometric design requirements, which form the basis for the New York State Department of Transportation (NYSDOT) Sight Distances. In all cases, the Project’s driveway locations meet or exceed the AASHTO Stopping Sight Distances (SSDs) and the sight-distance requirements of Code § 232-11(E)(5). In the First Response, the Applicant provided revised Site Distance Diagrams in Revised Appendix 16-1 to demonstrate how Driveway 1 and Driveway 3 met the minimum SSD based on AASHTO Standards without tree clearing. The Applicant also hereby provides updated Sheets C-101 and C-102 of Revised Appendix 5-1 (Civil Design Drawings) which have been updated to indicate the extents of minor tree/shrub clearing that is required to provide the sight distance requirements in Code § 232-11(E)(5) for Driveways 1 and 3. The horizontal and vertical geometry at all intersections as required by 19 NYCRR § 900-2.17(a)(1) has been provided in Revised Appendix 5-1: Civil Design Drawings of Exhibit 5 on Sheets C-201, C-202, and C-203, which include blow-ups of all access drive connections to the street and associated profiles.

***Notice Request #4c:***

- c. Please make any necessary adjustments to other Exhibits, including, but not limited to, Exhibit 8 photo simulation 46b.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 8, which has been revised to reflect the updates to Revised Appendix 5-1: Civil Design Drawings as it relates to photo simulation(s) VP46b, VP46, VP33 and VP27 in Revised Appendix 8-6.

***Notice Request #4d:***

- d. Please adjust limit of disturbance (LOD) and acreage appropriately throughout the Exhibits.

***Applicant's Response:***

In response to Exhibit 8 Notice Request #1, the Applicant added additional landscape screening, as described below, which resulted in an increase in the total LOD from 265 to 267 acres. It is important to note that the portion of the LOD attributable to Project components has not changed other than for minor modifications associated with the access road entrances as described in the Applicant's response to Exhibit 5 Notice Response #4a above and the removal of tree clearing, as described in Exhibit 14 and Exhibit 14 Notice Response #1a below.

The Applicant provides Revised Exhibits 1, 3, 5, 6, 8, 9, 12, 14, 15, 16, 22, 23, and 24 in response to the Notice Requests received in this Third Notice. The Applicant also hereby provides Revised Exhibits 2, 10, and 11 and 24 and Figures 3-9, 4-1, 11-2, 11-3, 13-2, 13-3, 14-1, 15-4, 15-9, and 15-10 to update the Project Footprint, LOD, and acreage consistently throughout the Exhibits included with this Third Response. The Applicant also provides updated Cover Pages and Glossary Pages for Exhibits 4, 7, 13, 17, 18, 19, 20, 21, and 25 for which the only change necessitating a revision was to the LOD acreage reported in the Exhibit's Glossary Section.

***Notice Request #5:***

5. Pursuant to 19 NYCRR § 900-2.16(d), please supplement Exhibit 5 design drawings to include tile drainage repair detail.

***Applicant's Response:***

The Applicant hereby provides revised Exhibit 5 design drawings at Appendix 5-1 Sheet C-504 to include tile drainage repair detail.

**Exhibit 06. – Public Health, Safety and Security**

***Notice Request #1a:***

1. The Applicant has demonstrated that parts of the Facility will be located in a FEMA mapped 100-year floodplain. Exhibit 24 states that the Applicant will comply with substantive provisions of the Town of Copake Flood Damage Prevention Law Chapter 135.
  - a. § 135-13(C)(1) requires “...equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.” Exhibit 24 states that “...the Applicant can store solar arrays horizontally during 100-year storm events, as needed to prevent water from accumulating within the components during conditions of inundation. See Exhibits 3 and 6 of this Application.” Please provide additional design information or cross-references demonstrating that the Facility will be built in compliance with the substantive requirements of Chapter 135 (including applicable requirements for elevation and floodproofing), of the Copake Code while meeting Town solar law height requirements and other applicable local law requirements.

***Applicant’s Response:***

The Applicant states in Exhibit 24 that the Project will be constructed in compliance with the applicable substantive requirements of Code Chapter 135. Compliance with the applicable substantive provisions of Chapter 135 – which are identified in Exhibit 24, Table 24-2 – is demonstrated in Appendices 5-1, 5-2, and 5-5 and further described in Exhibit 6. These Appendices illustrate that the panels will be mounted on trackers with a foundation system that will be anchored to prevent flotation, collapse, or lateral movement, as required by Code § 135-13(A)(1). Appendix 5-2 also demonstrates the elevation of the panel, when tilted or when horizontal. When stored horizontally, the panels would be 4-5 feet above ground level, and above the base flood elevation in conformance with Code §135-14(B). Any such storage would not exceed the height requirement or other applicable local law requirements of the Town Code, as demonstrated in Appendix 5-2. Further, the elevation of the panels will prevent water from entering or accumulating within the panels during conditions of flooding, in accordance with Code § 135-13(C)(1), as described in Exhibit 6. Finally, Appendix 5-5 demonstrates that the proposed trackers will be made of galvanized steel, which is resistant to flood damage, as required by Code § 135-13(B)(1).

No floodproofing of the Project is proposed because the Project is designed to accommodate variable site conditions, including inundation, pursuant to Code §135-14(B)(1), and, because the Project is not located in a floodway as defined in Code §135-4, Code §135-15 is inapplicable to the Project.

***Notice Request #1b:***

- b. Please confirm whether, and demonstrate how, the Applicant will comply with any substantive requirements in § 135-11 of the Copake Code, including



without limitation the requirements for a professional engineer or architect's certification in regard to the Applicant's initial design, and floodproofing plan.

***Applicant's Response:***

Exhibit 24, Table 24-2 provides the substantive provisions of Chapter 135 that are applicable to the Project. There are no substantive requirements of Code § 135-11 that are applicable to the Project. Code § 135-11 describes the requirement to obtain a development permit prior to the construction of any development within a special flood hazard, as established in Code § 135-6, which is a procedural requirement of local law that is not applicable to the Project. Code § 135-11(A) also describes the information that would be required to be submitted to the Town in the application for a development permit if the Applicant were not seeking a permit pursuant to Executive Law § 94-c. While this development permit application information could be construed as a substantive requirement, there are no development permit application requirements that are applicable to the Project. Code § 135-11(A)(1) does not apply to the Project because the Project does not involve the construction of a "floor," which is defined in Code § 135-4 as "The top surface of an enclosed area in a building (including basement), i.e., the top of a slab in concrete slab construction or the top of wood flooring in wood frame construction." Code § 135-11(A)(2) does not apply to the Project because the Project is not required to be, and will not be, floodproofed, as further described below. Code §§ 135-11(A)(3) and (4) similarly do not apply because the Project is not required to be, and will not be, floodproofed. Code § 135-11(A)(5) does not apply because the Applicant will not alter or relocate any watercourses as a result of the construction of the Project within the FEMA 100-year floodplain.

Additionally, there are no substantive requirements of Code § 135-11(B) which are applicable to the Project because the Project does not include floors and floodproofing is not proposed. "Floodproofing" is defined in Code § 135-4 as "Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents." (Emphasis added). "Structure" is defined in Code § 135-4 as "A walled and roofed building, a manufactured home or a gas or liquid storage tank that is principally above ground." The Project is a solar facility that has been designed to accommodate inundation during storm events through the use of piles and panels that can be stored horizontally during 100-year storm events. As such, the Project does not involve the "addition, change, or adjustment" to a "structure" to "reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents." Accordingly, a certificate is not required from a licensed professional engineer or architect as described in Code §§ 135-11(B), 115-11(A)(3), and 115-11(A)(4).

**Exhibit 08. – Visual Impacts**

***Notice Request #1:***

1. Please update the Landscape Plan to include additional screening at the point of interconnection (POI) substation pursuant to 19 NYCRR § 900-2.9(d)(8) and § 232-16.12(F)(6)(a)(11) of the Copake Code, including but not limited to, adjacent to the

west, south, and east perimeter of the POI substation and update photo simulations and contrast ratings for VP46 and VP46b.

***Applicant's Response:***

The Applicant hereby provides a revised Landscape Plan at Revised Appendix 5-3 to include additional screening at the POI substation, consistent with 19 NYCRR § 900-2.9(d)(8) and Code § 232-16.12(F)(6)(a)(11). Screening has been added along the collection substation access road, the access road entranceway, the switchyard, and the west, south, and east perimeter of the POI substation. Additionally, the Applicant hereby provides Revised Appendix 8-6 containing 8 new photo simulations for VP46 and VP46b (north view from NY Route 23 towards proposed substation). Revised Appendix 8-6 also contains revised simulation for VP46 and VP46b. These simulations have been revised to depict the proposed Project with landscape screening at 1-2 years and at 5 years, each under leaf-on and leaf-off conditions. The Applicant hereby provides Revised Appendix 8-7 containing new contrast ratings for VP46 and VP46b. Finally, the Applicant hereby provides Revised Exhibit 8 which has been revised accordingly to reflect the foregoing updates.

***Notice Request #2:***

2. The Office finds that the Applicant's proposed screening of the Facility from NYS Bikeway 23 / NYS Route 23 is insufficient and does not comply with § 232-16.12(F)(6)(a)(11) of the Copake Code which requires screening from "[p]ublicly dedicated roads and highways, including...State Route 23" and "[r]outes commonly used by bicyclists, both local and bicycle tourists visiting the town." Please revise Exhibit 5, Detailed Site and Landscape Plan, Exhibit 8, "Landscape Type" identified in "Viewpoint Location Aerial Map," and representative simulation VP27 to include additional screening of the Facility.

***Applicant's Response:***

The Applicant hereby provides Exhibits 5 and 8 and Revised Appendix 5-3 to include additional screening of the Project; however, the Applicant respectfully disagrees with the Office that the proposed screening of the Project from NYS Bikeway 23/NYS Route 23 does not comply with Copake Code § 232-16.12(F)(6)(a)(11). The Third Notice contains only an excerpt of this provision. In full, Code § 232-16.12(F)(6)(a)(11) requires that "the Tier 4 solar energy system, including any associated fencing or proposed off-site infrastructure, shall be *located and screened in such a way as to avoid or minimize visual impacts* as viewed from: (a) Publicly dedicated roads and highways, including State Route 22 and State Route 23; (b) Existing residential dwelling located on contiguous parcels; (c) Routes commonly used by bicyclists, both local and bicycle tourists visiting the town." (Emphasis added). As described in the Applicant's Second Response, the Applicant proposes the landscaping depicted in VP27 to *minimize* visual impacts to motorists and cyclists heading east on NYS Route 23. Thus, the landscaping depicted in VP27 effectively minimizes views from State Route 23, in accordance with Code § 232-16.12(F)(6)(a)(11)(a). Although not requested, the Applicant also hereby provides revised VP33. The Applicant revised VP33 to depict updated landscape screening to further minimize views of the Project to motorists and cyclists using

NYS Bikeway 23 and users of the Harlem Valley Rail Trail, in accordance with Code § 232-16.12(F)(6)(a)(11)(c). VP33 serves as the best representation of Project views from points along NYS Route 23. Revised photo simulations for VP27 and VP33 are hereby provided in Revised Appendix 8-6. The revisions to VP27 and VP33 depict the proposed Project with landscape screening at 1-2 years and at 5 years, each under leaf-on and leaf-off conditions. Additionally, the Applicant hereby provides Revised Appendix 8-7 containing new contrast ratings for VP27 and VP33, Revised Aerial Map Series and Revised Appendix 8-3 Figures 3, 4, and 5 for VP27 and VP33.

***Notice Request #3:***

3. Pursuant to 19 NYCRR § 900-2.9(d)(9), the Applicant provided a lighting plan but it lacks the illumination levels. As required by 19 NYCRR § 900-2.9(d)(9)(ii), please supplement the Exhibit with a proposed lighting arrangement, including illumination levels at the collection substation and demonstrate compliance with § 232-16.12(F)(6)(a)(16) of the Copake Code.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 8 and a new Appendix 8-5A, Substation Photometric Plan, to provide the illumination levels for the proposed lighting arrangement at the collection substation pursuant to 19 NYCRR § 900-2.9(d)(9)(ii). Consistent with Code § 232-16.12(F)(6)(a)(16), the proposed lighting is limited to that required for safety and operational purposes only, is down-lighted, and is shielded from all neighboring properties and public roads. Additionally, the Applicant has revised Appendix 5-4, Drawings E-202 and E-203 to reflect the updated lighting arrangement.

**Exhibit 09. – Cultural Resources**

***Notice Request #1a:***

1. 19 NYCRR § 900-2.10(b) requires “[a] study of the impacts on historic resources within the Project impact area...”
  - a. Please provide a supplemental Appendix to Exhibit 9 containing SHPO’s February 6, 2023 letter, requesting an updated historic resources overview memorandum of the Niver/Rasweiler Angus Farm (available in SHPO’s CRIS database); the Applicant’s response(s) to this letter; and SHPO’s subsequent comments and/or determination on this topic.

***Applicant's Response:***

The Applicant hereby supplements Appendix 9-2 to provide SHPO’s February 6, 2023 letter and provides Appendix 9-7 containing the June 7, 2023 updated historic resources overview memorandum in response to SHPO’s February 6, 2023 letter. SHPO’s response to the updated historic resources overview memorandum of the Niver/Rasweiler Angus Farm (USN 02107.000113) is pending. As detailed in the letter from February 6, 2023, SHPO was

provided with further historical information on the farm in a letter from Copake historian, Howard Blue, dated January 9, 2023. The letter and accompanying documentation detailed an 1859 occupation of the farm by a small party of Stockbridge Indians (Mohicans). This group was brought in from their Wisconsin Reservation to occupy several farms in the area including the Niver/Rasweiler Angus Farm, claiming it was part of their homeland. This effort was coordinated by local activists of the Anti-Rent movement in Columbia County. Although the Niver/Rasweiler Angus Farm had already been determined eligible under Criterion C, SHPO requested an analysis of possible NRHP eligibility under Criterion A in light of the information provided by Howard Blue. The letter from SHPO dated February 6, 2023 outlined four items to address in order to review significance under Criterion A which included: (1) a history of the farm at 02107.000113 that identifies the farm's physical characteristics and features at the time of the Mohican occupation; (2) a narrative that summarizes the 1859 Mohican occupation and its historic importance; (3) a NRHP evaluation of all aspects of integrity at 02107.000113 and how these aspects relate to NRHP significance; and (4) a map figure showing the Project's Area of Potential Effects with an overlay of the "Indian Village" as depicted in Franklin Pope's *Map of the Boundary between Massachusetts and New York showing the Ancient Colonial and Provincial Grants and Settlements* [1888?], and the farm at USN 02107.000113. The Applicant's memorandum dated June 7, 2023, provided at Appendix 9-7, addresses all four items and recommends the property as eligible under Criterion A.

***Notice Request #1b:***

- b. Please provide a supplemental Appendix to Exhibit 9 containing SHPO's March 7, 2023 Adverse Impact determination letter (available in SHPO's CRIS database), regarding the Applicant's previous "Supplement to Appendix 9-3. Architectural History Report" (DMM Record No. 70).

***Applicant's Response:***

The Applicant hereby provides Revised Appendix 9-2 to provide SHPO's March 7, 2023 Adverse Impact Determination Letter.

***Notice Request #1c:***

- c. Following the completion of SHPO's review, please update Exhibit 9.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 9 to be consistent with all SHPO correspondence and determinations as of the date of this Third Response. The Applicant has not yet received a response from SHPO to the historic overview memorandum of USN 02107.000113, submitted on June 14, 2023, which is currently pending SHPO review.

**Exhibit 12. – NYS Threatened or Endangered Species**

***Notice Request #1:***

1. ORES, in consultation with the New York State Department of Environmental Conservation (NYSDEC), concludes that the proposed mitigation site for the net conservation benefit plan (NCBP) is not suitable for reasons described in our September 27, 2022 Notice of Incomplete Application. Please supplement Exhibit 12 with alternative areas that can be considered for mitigation.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 12 to provide an alternative area that can be considered for mitigation. The Applicant has analyzed a potential off-site mitigation area comprising an approximately 60-acre area of open habitat within Parcel 102889-122.-1-71 and proposes this area for mitigation. The proposed mitigation area is a suitable mitigation option based on the following criteria:

- It meets the mitigation acreage amount (20 acres) required by 19 NYCRR § 6.4(o)(3)(ix) because it is greater than 25 acres in size;
- It is comprised of a combination of open habitat types, predominantly grass, hay, alfalfa, and scattered hedgerows, and therefore tree and or brush clearing would be minimal;
- It is not being actively cultivated or used as cattle pasture;
- It is close to the Project Site– approximately 3.87 miles northwest;
- A mitigation area sited within the greater 60-acre field would have direct connectivity with the surrounding open habitat;
- Ten observations of northern harrier have been reported on eBird during the wintering season within two miles of the parcel in the last 5 years, therefore the area appears to be regularly utilized by the species as wintering habitat; and
- The landowner is a willing participant (willing to put the land in easement or deed restrictions).

Should the proposed offsite mitigation site not be acceptable to ORES, the Applicant proposes to provide payment of the required mitigation fee into the Endangered and Threatened Species Mitigation Fund established pursuant to Section 99(hh) of the New York State Finance Law.

**Exhibit 14. – Wetlands**

***Notice Request #1a:***

1. The appropriate classification for the removal of “85%, or 0.84 acres of areas containing trees and shrubs” from Class 1 wetland H-19, as described in supplemental Exhibit 14, is “Clearing of Forest” (19 NYCRR § 900-2.15 Table 1). Clearing of Forest in the adjacent area of Class 1 wetland H-19 is not an allowable impact per 19

NYCRR § 900-2.15 Table 1, unless a 75-foot setback is maintained from undisturbed adjacent areas of the Class 1 wetland.

- a. Please revise Figures, Design Drawings and Exhibit 14 to remove Clearing of Forest from within 75-feet of Class 1 wetlands.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 14 to remove Clearing of Forest from within 75-feet of Class 1 wetlands. A minor area of selective trimming remains within 75-ft of Class I wetland H-19 (only 0.07 acres); however, as shown on Revised Figure 13-4, these activities are proposed within non-PFO, non-forested land cover to selectively trim or cut shrubs and saplings to prevent shading on panels. No grubbing of roots of this area is proposed.

***Notice Request #1b:***

- b. Please include this update in the revised GIS shapefiles and CAD files requested above.

***Applicant's Response:***

The Applicant has incorporated updates to Exhibit 14 into the associated GIS shapefiles and CAD files requested herein and provided with this Third Response.

***Notice Request #1c:***

- c. Please update Table 14-2 wetland impact and mitigation acreages.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 14, Table 14-2 with updated wetland impact and mitigation acreages consistent with the updates to Exhibit 14 described above.

***Notice Request #2:***

2. Please remove temporal classifications (i.e., "temporary" or "permanent") listed in Supplemental Table 14-2, Article 24 Wetland Adjacent Area Impact Table.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 14, Table 14-2 to remove the temporal classifications "temporary" and "permanent" listed in Table 14-2 as requested by the Office. Additionally, the Applicant hereby provides Revised Figure 13-4. Delineated Wetland and Stream Impacts (1" = 200' scale) and Revised Figure 13-4b. Delineated Wetland and Stream Impacts (1" = 50' scale) in order to remove temporal impact classifications.

***Notice Request #3:***

3. Exhibit 14, Section (f)(4) “Wetland Function in Adjacent Areas” states that “[t]he ***Project design and siting will improve the functions and values of the adjacent areas onsite.*** ... These functions will be increased by the Project because all impacted wetlands and adjacent areas will be planted with a native seed mix which will stabilize the ground, minimize erosion, restore the land post-construction and increase biodiversity” (Emphasis added). Please provide scientific literature or studies to support this statement and further discuss the amount of existing native or naturalized ground cover to remain in the wetland adjacent areas.

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 14 to provide citations to scientific literature and studies that support the statement in Exhibit 14, Section (f)(4) that the Project design and siting will improve the functions and values of the adjacent areas onsite. Additionally, the Applicant hereby provides Revised Exhibit 14 to further discuss the amount of existing native or naturalized ground cover that will remain in the wetland adjacent areas.

***Notice Request #4:***

4. The Supplemental Landscape Design Drawings (Revised Appendix 5-3, Parts 1 and 2) portray a “potential trail by others” proposed within wetlands and within 100 feet of wetlands. Please describe any development activities associated with this trail; the impacts that may occur to, and within 100 feet of, federal and state wetlands; and discuss compliance with § 232-11(D)(2) of the Copake Code.

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 3 to further clarify that the Applicant is not proposing additional impacts to wetlands or otherwise undertaking any development activities associated with a trail system or other passive recreation community area (hence the reference to the “potential trail *by others*”) (emphasis added). The Applicant included the “potential trail by others” in the Revised Appendix 5-3 provided with the Second Response to illustrate the general location of a potential community recreation corridor requested by the Working Group, demonstrating that there is the opportunity for such areas if the landowner agrees to work with the Working Group for this purpose. These areas are located outside of the lease area and would not be the responsibility of the Project. Ultimately, the landowner or other entity undertaking the development of the trail system or community recreation corridor would be responsible for ensuring that such development complies with Code § 232-11(D)(2).

**Exhibit 15. – Agricultural Resources**

***Notice Request #1:***

1. 19 NYCRR § 900-2.16(a)(8) requires that the Applicant provide an assessment of the temporary and/or permanent impacts to agricultural production areas within the

proposed “Project Footprint”. Please update section 15(a)(8) to clarify impacts to agricultural land that are considered by the Applicant to be a temporary disturbance and impacts considered to be a permanent disturbance. Please include the total acreage for each type of disturbance within the “Project Footprint” and calculated per parcel.

***Applicant’s Response:***

Land disturbance associated with the Project is primarily temporary in nature because the land use as a solar generating facility is temporary for the life of the facility and can be returned to prior land use after decommissioning. Therefore, impacts in the Application are categorized as ‘permanent’ or ‘temporary’ relative to the operational life of the facility. Impacts of the construction and operation of the Project on agricultural land and the respective acreage of such impacts are described in Exhibit 15, Section 15(a)(8) and depicted in Figure 15-10. The Applicant hereby provides Revised Exhibit 15, Section 15(a)(8) to further clarify which impacts to agricultural land are temporary or permanent disturbances. For each type of disturbance (temporary or permanent), the Applicant has included the total acreage of the disturbance within the Project Footprint and within each parcel. This information is presented in new Table 15-3. Summary of Temporary and Permanent Impacts to Agricultural Lands within the Project Footprint.

***Notice Request #2:***

2. Please supplement section 15(a)(8) with additional information tabulating the total acreage within the Project Area that will be retained for each type of continued agricultural use, as described in sections 15(b)(2) and (b)(3) and depicted in Figure 15-10 Agricultural Land to Remain in Production.

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 15, Section 15(b)(2) to provide, in tabular form, the total acreage within the Project Area that will be retained for each type of continued agricultural use (during the operational life of the Project) as described in Sections 15(b)(2) and (b)(3) and depicted in Figure 15-10. This information is presented in new Table 15-5. Agriculture to Remain. Following decommissioning, agricultural land uses may be undertaken in all areas of the Project Area that were previously used as agricultural land.

***Notice Request #3a:***

3. Please submit an updated Agricultural Plan as required by 19 NYCRR § 900-2.16(c) to address the following:
  - a. Section 15(a)(8) provides insufficient discussion of the Applicant’s proposed measures to avoid and minimize agricultural impacts to field-verified active agricultural lands within MSG 1-4 prime soils. Please provide specific facts and figures to substantiate Applicant’s statement that “[r]educing impacts to one resource (e.g., wetlands), may increase impacts for another (e.g., agricultural land).”



***Applicant's Response:***

Section 15(a)(8) provides the following specific facts to substantiate the statement that reducing impacts to one resource may increase impacts to another: “For example, the Project substation was sited adjacent to the existing NYSEG Craryville 115 kV substation on the Craryville-Klinekill and Churchtown-Craryville 115 kV transmission lines on agricultural land in the Town of Copake. The location of the substation was selected for its proximity to the transmission line (thereby reducing the overhead transmission interconnection and associated visual impacts), access to a public roadway, setbacks from adjacent homes to reduce noise impacts from the substation transformer equipment, avoidance of wetlands and streams, avoidance of cultural resources, limited grading or earthwork, and avoidance of clearing of forestland.” Thus, relocating the Project substation to avoid impacts to agricultural land would necessitate a greater length of overhead line to interconnect the Project, thereby increasing visual impacts; would likely require a new access road, thereby increasing ground disturbance, because the currently proposed location takes advantage of the existing public roadway and the substation would not fit in the available area around the Project’s proposed access road; and, given the location of wetlands, streams, cultural resources, slopes, and forests within the Project Site, would necessitate siting the substation closer to such resources and site conditions.

Nevertheless, the Applicant hereby provides Revised Exhibit 15, Section 15(a)(8) and Figure 15-11 to provide additional discussion of the Applicant’s proposed measures to avoid and minimize impacts to field-verified active agricultural lands within MSG 1-4 prime soils. Additionally, the Applicant updated Exhibit 15 Section 15(a)(8) to provide facts and figures to demonstrate that reducing impacts to certain on-site resources, such as wetlands, may increase impacts to other on-site resources, such as agricultural land.

***Notice Request #3b:***

- b. Staff acknowledges that section 15(b)(2) states “[t]he Project Footprint will occupy 197.7 acres currently utilized for agricultural production as row crops and hayfields” and section 15(b)(6) states “[w]ithin the approximately 265-acre Project Footprint, 125.66 acres (47.34%) of soils are classified as being within mineral soil groups 1-4.” However, the Agricultural Plan is not sufficiently focused on “active agricultural lands (i.e., land in active agriculture production defined as active three (3) of the last five (5) years) within NYS Agricultural Land Classified Mineral Soil Groups 1 through 4.” Please supplement the Agricultural Plan to provide this information in tabular form for the “Project Footprint or Limit of Disturbance”.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 15, which has been updated to include a new Table 15-3 which provides in tabular form, the amount of active agricultural lands within MSG 1-4 within the Project Footprint or Limit of Disturbance.

***Notice Request #4:***

4. Page 4 of the Revised Appendix 15-1 states “[w]here topsoil segregation is not deemed feasible, the Agricultural Monitor will be consulted prior to commencing with trenching operations.” Please revise the Agricultural Area Trenching Plan at section 15(f) of Exhibit 15 and the Appendix 15-1 Agricultural Plan to include a commitment to adhere to the NYSAGM Guidelines for topsoil segregation, and a requirement for the Agricultural Monitor to include the Office and NYSAGM in any feasibility consultation.

***Applicant’s Response:***

In its Second Response, the Applicant updated the Agricultural Trenching Plan to be consistent with the NYSDAM Guidelines for topsoil stripping. *See* Exhibit 15, Section 15(f) (“The Applicant will apply the NYSDAM Guidelines for trench excavation as described in Appendix 15-1, Table 1 of this Application when performing open-cut trenching in agricultural lands”). Additionally, the Application contains numerous references to the Applicant’s commitment to comply with the NYSDAM Guidelines, including with respect to the required Agricultural Monitor:

- “To ensure impacts to agricultural lands are minimized to the maximum extent practicable, the Project will comply with the New York State Department of Agriculture and Markets (AGM) Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands requirements, dated October 18, 2019 (“NYSDAM Guidelines”) (NYSDAM, 2019).” Exhibit 15, Section 15(a)(8).
- “An Agricultural Plan was prepared by the Applicant to address impacts and mitigation to active agricultural lands, as defined in 19 NYCRR § 900-2.16(c), within New York State Agricultural Land MSGs 1-4 and to conform with NYSDAM Guidelines. The Agricultural Plan includes the use of a third-party Environmental Monitor that is qualified as an agricultural monitor in accordance with 19 NYCRR § 900-6.4(b)(4), 6.4(s).” Exhibit 15, Section 15(c).
- “Additionally, the Project will be constructed and operated in accordance with the NYSDAM Guidelines (“Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands”, dated October 2019) which specify practices in relation to the maintenance of drainage patterns and features.” Exhibit 15, Section 15(d)(1).
- “The Applicant will apply the NYSDAM Guidelines for trench excavation as described in Appendix 15-1, Table 1 of this Application when performing open-cut trenching in agricultural lands.” Exhibit 15, Section 15(f).

Nevertheless, the Applicant hereby provides Revised Exhibit 15, Section 15(f) (Agricultural Area Plan) and Appendix 15-1, Table 1, to include an additional express

commitment to adhere to the NYSDAM Guidelines for topsoil segregation while conducting open-cut trenching and to require that the Agricultural Monitor include the Office and NYSDAM in any feasibility consultation.

***Notice Request #5:***

5. Page 18 of the Second Revised Exhibit 15 states “[a]s land disturbance conditions require, a site-specific plan will be prepared, ***in consultation with the landowner***, for the replacement or repair of crushed/severed culverts and pipes” (Emphasis added). Pursuant to 19 NYCRR § 900-2.16(d), please revise the Drainage Remediation Plan at section 15(d) to include a clear commitment by the Applicant to adhere to the specific NYSAGM Guidelines regarding the Environmental Monitor and Construction Requirements that the Applicant proposes to adhere to concerning the repair of drain lines.

***Applicant’s Response:***

Exhibit 15, Section 15(d) stated, “The Applicant will comply with 19 NYCRR §§ 900-2.16(d), 900-6.4(s) and 900-10.2 and will submit a Final Drainage Remediation Plan to avoid, minimize, or mitigate potential significant adverse drainage impacts, including inadvertent damages to surface or subsurface drainage systems, and an identification of methods of repair for damaged drainage systems within the Project Footprint during the construction, operation, and decommissioning phases. The Final Drainage Remediation Plan will detail how the Applicant will identify and locate existing subsurface drainage before construction as much as is reasonably possible based primarily on consultation with landowners and the County Soil and Water Conservation District. During and after construction, any known drain tiles within the Project Footprint will be checked for damage, and any such damaged drain tiles will be repaired and replaced consistent with the NYSDAM details for “Repair of Severed Tile Line” as necessary to prevent offsite drainage issues, or as specified in landowner lease agreements, and will be performed by qualified drain-tile specialists. The Applicant will coordinate with the landowner and the environmental/agricultural monitor to continue to monitor drain tiles to ensure repairs are properly functioning.”

Nevertheless, the Applicant hereby provides Revised Exhibit 15, Section 15(d) and Appendix 15-1, Table 1 to further describe that where surface or subsurface drainage problems resulting from construction of the solar project occur, the Applicant is committed to applying the NYSDAM Guidelines to correct these problems with the appropriate mitigation as determined by the Agricultural Monitor and the Construction Requirements concerning the repair of drain lines. A drain tile repair detail has also been added to Appendix 5-1.

***Notice Request #6:***

6. In the Second Revised Exhibit 15, section 15(a)(7), the Applicant states “[o]nce Project construction has been completed, a mix of native common seed mixture will be used as ground cover to ***enable soil recovery, replenish soil nutrients and mitigate***

*soil erosion...*” (Emphasis added). Please provide scientific literature or studies to support this statement.

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 15, Section (a)(7) to provide citations to scientific literature or studies that support the statement that the proposed mix of native common seed mixture will enable soil recovery, replenish soil nutrients and mitigate soil erosion when used as ground cover for the Project.

***Notice Request #7a:***

7. Please update the Applicant’s conceptual co-utilization plan as discussed in Exhibit 15(e) Feasibility of Agricultural Co-utilization. Pursuant to 19 NYCRR § 900-2.16(e), please submit any updated information, with sufficient details for proper implementation, regarding the following:
  - a. a detailed apiary plan which discusses operations, proposed apiary specific vegetation seeding/plantings, and projected commodity profits;

***Applicant’s Response:***

In the First Notice, the Office asserted that the Application included an incomplete agricultural co-utilization plan and thus requested that the Applicant “demonstrate that any proposed agricultural co-utilization plan will be feasible and submit an updated plan.” In the First Response, the Applicant clarified that the “Applicant did not propose, nor does the Application include an Agricultural Co-Utilization Plan.” Rather, as stated in Exhibit 15, Section 15(E), the Applicant is exploring co-utilization activities, including apiaries and sheep grazing, in consultations with Fox Farm Apiary, Hidden Mountain Farm, participating landowners, and local community stakeholders. As a result of those consultations, “If feasible in light of site access and security of the operation of the facility, the Applicant would enable or facilitate the co-location of compatible agricultural practices in the areas of the site with a siting preference of areas underlain by the most productive soils (see Figure 15-9), and that are potentially accessible by the school so that educational opportunities can potentially be incorporated.” Further, the Applicant is continuing “to explore these opportunities for agricultural co-utilization and develop a site specific co-utilization plan for future apiary, pollinator, and livestock use, as the Project site plan and schedule continues to develop. Further, as previously mentioned, the areas of the Project located outside of the LOD that remain undeveloped after construction may continue to be used for agricultural purposes.”

As such consultations are ongoing, the Applicant has not yet determined that any potential co-utilization would be feasible. 19 NYCRR § 900-2.16(e) specifically states that, “Any agricultural co-utilization plan for the lifespan of the facility shall demonstrate that the proposed agricultural co-utilization will be feasible. The plan shall be assembled by a qualified or accredited third party agricultural professional. The plan should include an itemization of the investments made by the applicant to facilitate the agricultural co-utilization (e.g., grazing plan, planting pasture species, development of watering facilities, modified access for livestock trailers, panel spacing, additional fencing, access roads, gates,

housing, etc.).” (Emphasis added). The Applicant is not proposing a co-utilization plan at this stage, but is committed to enabling co-use to the extent feasible, as determined through further engagements. As stated in the First Response, “if, through such continued engagement, co-utilization of the Project is deemed feasible for the life of the Project, the Applicant will submit an Agricultural Co-Utilization Plan, as a pre-construction compliance filing.” This is consistent with the Office’s treatment of co-utilization plans for Cider Solar<sup>4</sup> and Riverside Solar,<sup>5</sup> the final permits for which contain site-specific conditions requiring that the applicant submit any co-utilization plan as a compliance filing. This approach is also consistent with treatment of co-utilization plans in Exhibit 15 of the 94-c applications for Tracy Solar<sup>6</sup> and Homer Solar.<sup>7</sup>

Moreover, the Applicant respectfully asserts that the Office has already deemed Section 15(E) complete, pursuant to 19 NYCRR §§ 900-4.1(e) and (h), by failing to raise any areas of incompleteness related to co-utilization in the Second Notice.

***Notice Request #7b:***

Please submit any updated information, with sufficient details for proper implementation, regarding the following:

- b. a detailed business plan for the sheep farm, including but not limited to, grazing restoration, livestock management, and projected commodity profits; and

***Applicant’s Response:***

See the Applicant’s Response to Notice Request #7a.

***Notice Request #7c:***

Please submit any updated information, with sufficient details for proper implementation, regarding the following:

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<sup>4</sup> See Matter 21-01108, Application of Hecate Energy Cider Solar LLC for a 94-c Permit for Major Renewable Energy Facility, Cider Solar – Siting Permit (issued July 25, 2022), DMM Item No. 77, at Section 6(b)(2).

<sup>5</sup> See Matter 21-00752, Application of Riverside Solar, LLC for a 94-c Permit for Major Renewable Energy Facility, Riverside Solar – Siting Permit (issued January 9, 2023), DMM Item No. 77, at Section 6(C)(1).

<sup>6</sup> See Matter No. 21-00962, Application of Tracy Solar Energy Center for a 94-c Permit for Major Renewable Energy Facility, Exh 15 Agricultural Resources Revised (filed January 19, 2022), DMM Item No. 26, at 15.12 (“TSEC plans to discuss co-utilization opportunities with individual landowners based on landowners’ site-specific needs and requirements.”). The Tracy Solar – Siting Permit at DMM Item No. 58 does not require that the applicant submit a co-utilization plan.

<sup>7</sup> See Matter 21-00976, Application of Homer Solar Energy Center, LLC for a 94-c Permit for Major Renewable Energy Facility, Exh 15 Agricultural Resources (filed July 22, 2021), DMM Item No. 7, at 15.12 (“HSEC plans to discuss co-utilization opportunities with individual landowners based on landowners’ site-specific needs and requirements.”). The Homer Solar – Siting Permit at DMM Item No. 66 does not require that the applicant submit a co-utilization plan.

- c. a detailed business plan for any other co-utilization activities proposed for the Facility.

***Applicant's Response:***

The Applicant is not proposing a specific Agricultural Co-Utilization Plan for the Project at this time, as further described in the Applicant's Response to Notice Request #7a, nor is the Applicant considering other co-utilization activities for the Project. The Applicant hereby provides Revised Exhibit 15 to clarify that the only co-utilization activities under consideration for the Project are the apiary and sheep grazing uses that are described therein.

**Exhibit 22. – Electric and Magnetic Fields**

***Notice Request #1a:***

1. Please provide the below missing information related to right of way (ROW) of overhead segments, or the citation to the location of these items:
  - a. Section 22(a) and 22(b): a description of the cross-section, structure details, and ROW Segments evaluated for the *115 kV Generator Tie Line for overhead segments*; (emphasis added)

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 22, Section 22(a) and 22(b) to provide a description of the cross-section, structure details, and ROW Segments evaluated for the 115 kV Generator Tie Line for overhead segments. Additionally, the Applicant hereby provides Revised Appendix 22-1 to clarify the ROW Segment depicted in Section A.1.

***Notice Request #1b:***

Please provide the below missing information related to right of way (ROW) of overhead segments, or the citation to the location of these items:

- b. Section 22(d): the updated measurement intervals for the overhead study; and

***Applicant's Response:***

The measurement intervals for the overhead study are already addressed in Section 22(d). The measurement intervals for the overhead study are also addressed in Appendix 22-1, Section 5 and Appendices A.2 (Configuration 1: 115 kV Substation Property Crossing at Interconnection Substation (Substation Cut)) and A.3 (Configuration 2: 115 kV Substation Horizontal Take-Off Structure at Collector Substation (Substation Cut)).

***Notice Request #1c:***

Please provide the below missing information related to right of way (ROW) of overhead segments, or the citation to the location of these items:

- c. Section 5.1 of the Second Revised Appendix 22-1 indicates a 20' wide ROW. The aerial images included in the revised Appendix 22-1 do not include the proposed ROW of the 115 kV Generator Tie Line for overhead segments. The A.2 and A.3 cross sections do not indicate the 20' wide ROW. Please provide the missing information and clarify the dimensions of the proposed ROW.

***Applicant's Response:***

The Applicant hereby provides Revised Appendix 22-1 to depict the proposed ROW of the 115 kV Generator Tie Line for overhead segments in the aerial photos and to indicate the 20' width of maximum EMF effects in the A.2 and A.3 cross sections. Note that Appendix 22-1 has been revised to illustrate the maximum values at 20' from the centerline of the Generator Tie Line, rather than from the ROW boundaries.

As described in Section 5.0 of Appendix 22-1, in addition to the EMF (in mG and kV/m), the Applicant provides the value of EMF as measured from 20' from the center line of the 115kV Generator Tie Line. For medium voltage 115kV transmission lines, EMF is measured around 20' from center line and this value has been provided for reference. EMF has also been calculated at 500' from the center line of the Generator Tie Line, as show in Figures 5 – 8 of Appendix 22-1. The value of EMF decreases as the distance from center line increases. Thus, the value of EMF at 500' from the center line is 0, which indicates that there is no EMF at 500' away from the center line. This value indicates that the EMFs of this line are within the exposure limits set forth in the Public Service Commission's *Statement of Interim Policy on Magnetic Fields of Major Transmission Facilities*, as provided in Appendix C to Appendix 22-1, for any location beyond 20' from the centerline of the Generator Tie Line.

**Exhibit 23. – Site Restoration and Decommissioning**

***Notice Request #1:***

1. Please remove references to leaving access roads in place at landowner request upon decommissioning.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 23 and Revised Appendix 23-1 (Decommissioning Plan) to remove references to leaving access roads in place at landowner request upon decommissioning, as requested by the Office.

***Notice Request #2:***

1. Please provide citations to market price data for panel recycling to support estimated revenues from the line items in Appendix 23-1 for panel salvage "Panels – Silicon," "Panels – Aluminum," and "Panels – Glass." Please remove references to panel resale value in Exhibits 23 and 24.

***Applicant's Response:***

The Applicant hereby provides Revised Appendix 23-1 to include citations to market price data for panel recycling to support estimated revenues for panel salvage "Panels – Silicon," "Panels – Aluminum," and "Panels – Glass" and to remove references to panel resale values. The Applicant also hereby provides Revised Exhibit 23 and 24 to remove references to resale value.

**Exhibit 24. – Local Laws and Ordinances**

***Notice Request #1a:***

1. General
  - a. Please review DMM public comment #393 and provide any necessary revisions or corrections to Exhibits 2 and 24.

***Applicant's Response:***

Comment #393 asserts that there is a discrepancy between Exhibit 24 and Appendix 2-1 with regard to the number of meetings that the Applicant had with Town officials in 2022. The PIP Meeting Log at Appendix 2-1 indicates 4 phone calls, 3 email exchanges, 1 in-person meeting, and 1 virtual meeting with Town officials during 2022. The Applicant hereby provides Revised Exhibit 24 to state that the Applicant engaged with Town officials nine (9) times during the course of 2022.

***Notice Request #1b:***

- b. Please supplement Table 24-3 with the following information per parcel: add parcel size to banner (in acres); add a row for Limits of Disturbance (or "Project Footprint"); and add a row for "fenced area" as defined by Table 24-3 footnote 2.

***Applicant's Response:***

The Applicant hereby provides a revised Table 24-3 to provide the acreage of each parcel, the limit of disturbance or Project Footprint, and fenced area per each parcel.

***Notice Request #1c:***

- c. Exhibit 24, Table 24-1 references certain Facility redesign discussions with the Town and community stakeholders, and cites to "Second Revised Exhibit 8, Section 8(d) (pages 68-69)" in multiple locations. It appears the pertinent discussion is on page 66. Please clarify or correct this cross-reference in all locations.



***Applicant's Response:***

The Applicant hereby provides a revised Table 24-1 to correct the reference to reflect that the pertinent information is found within Section 8(d) of Exhibit 8.

***Notice Request #1d:***

- d. Exhibit 24, Table 24-1 references an iterative design process discussion at Appendix 2-4 in multiple locations. The "Project Layout Changes" slide in Part 1 (PDF page 34) is not representative of the current Facility Fenced Area. Please update this map to reflect all Facility modifications proposed by the Applicant as part of this iterative design process, which can be included as an appendix to Exhibit 2 or 24.

***Applicant's Response:***

Appendix 2-4 contains the open house presentations that the Applicant presented to the Town and stakeholders during the pre-application phase of the Project. The Applicant cited Appendix 2-4 to show prior designs that, through the iterative design process referenced in Table 24-1, resulted in the current Project design, as provided in the Exhibit 5 Appendices. Nevertheless, the Applicant created Appendix 24-6 to Exhibit 24 to compile the various Project design changes that have resulted from this iterative design process. A revised Figure 3-1 Project Components Locations is included to provide the Office with a figure which clearly depicts the current Facility Fenced Area and other Project components.

***Notice Request #1e:***

- e. Exhibit 24, Table 24-1 states that "Town of Copake Town Code Chapter 197 (Subdivision of Land) sets forth substantive requirements applicable to subdivision approval..." (e.g. Requests 1 and 2). Please update Exhibit 24, sections 24(a) Substantive Requirements and 24(d) Applicable Local Substantive Requirements and Compliance Assessment to address these matters, or revise Table 24-1 in all locations where this language appears.

***Applicant's Response:***

The Applicant is not proposing to subdivide any of the Project parcels and as such, Code Chapter 197 is inapplicable to the Project. The Applicant hereby provides a revised Table 24-1 to remove references to Code Chapter 197.

***Notice Request #2a:***

2. Requests 1 and 2: § 232-8(A) and Table 1 – Use Regulations and Table 1: Table of Use Regulations
  - a. Regarding Applicant's request for partial relief from the 20% maximum lot coverage limitation, please provide additional facts and figures in a separate Appendix to support Applicant's statements that the loss of 79.78 acres would

translate to a reduction in solar generating capacity of approximately 16 MW (with supporting references or citations for the 1 MW/5 acre ratio utilized); that removing panels from one location would require removal of an entire inverter group; that removal of an entire inverter group would result in a loss of 3.6 MW; and that compliance with the 20% maximum lot coverage requirement would “effectively prohibit construction of the Project.”

***Applicant’s Response:***

In Table 24-3, the Applicant provided lost acreage and generating capacity as a result of the 20% maximum lot coverage limitation on a per-parcel basis. Nevertheless, the Applicant created a new Appendix 24-5 to Exhibit 24 provide additional facts and figures to support the calculations in Table 24-3 and the lost acreage and generating capacity referenced in Exhibit 24. Appendix 24-5 also contains supporting references and citations for the assumption that 5 acres are required for each MW of generating capacity.

***Notice Request #2b:***

- b. Applicant justifies its request for relief by claiming that “any obligation to redesign the Project in this respect would in effect prohibit the construction of the Project altogether.” Please supplement Table 24-1 to describe, in detail, how redesign of the Project would completely prohibit construction. Please consider this comment to be applicable to all other locations in Table 24-1 where the same or similar argument is utilized.

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 24 to clarify that compliance with *the relevant local law requirement* (not an obligation to redesign per se) would completely prohibit construction of the Project and to provide additional detail to support that argument.

***Notice Request #2c:***

- c. Please clarify Applicant’s mitigation justification and the block citation to multiple cross-referenced exhibits, to include topical references (parenthetical or otherwise) to indicate what information the Office is being directed to, in support of Applicant’s justification that the adverse impacts of granting relief shall be mitigated to the maximum extent practicable. Please consider this comment to be applicable to all other locations in Table 24-1 where similar block citations are utilized.

***Applicant’s Response:***

The sentence in which the block citation appears states that “Any potential adverse impacts on the community that could result from not applying this provision of local law will be avoided or minimized to the maximum extent practicable by the Project’s design and permit conditions, as discussed in Exhibit 2...” Therefore, citations are to discussions of impact mitigation measures throughout the Application. Nevertheless, the Applicant hereby

provides Revised Exhibit 24 to provide parenthetical references to the contents of each section of the Application that is sited in Table 24-1 for the proposition that the Project is designed to avoid or minimize, to the maximum extent practicable, impacts that may result from not applying the local law requirement.

***Notice Request #2d:***

- d. As part of its basis for relief, Applicant cites as costs to consumers the purported loss of capital investment including PILOT, host community benefit payments, and salary and employment benefits. The Office respectfully requests that the discussion of local community benefits is removed from the relief request and notes that it does not consider estimated PILOT and/or host community benefit payments to support requests for relief from local law provisions. If a final siting permit is issued, the Applicant would be required to provide host community benefits pursuant to 19 NYCRR § 900-6.1(f). Please consider this comment to be applicable to all other locations in Table 24-1 where the same or similar argument is utilized.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 to remove from Table 24-1 the discussion of lost PILOT payments and community benefits that would be lost if the Project is not constructed.

***Notice Request #2e:***

- e. Please indicate whether the lot coverage calculations provided in Table 24-3 meet the definition of area of a “Solar Energy System” pursuant to Section 4 of the "Revisions to the Copake Town Code as it Pertains to Solar Energy Facilities” which define the area to include “all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment.” Please revise, as necessary, to include this area.

***Applicant's Response:***

The lot coverage calculations in Table 24-3 meet the definition of “Solar Energy System” as defined in the Code. The Applicant hereby provides revised footnotes in Table 24-3 to clarify the inputs to the lot coverage calculation (as stated in the definition of “Solar Energy System”), which includes interconnection equipment.

***Notice Request #3a:***

3. Request 4 - § 232-11(D)(2) – Locational Restrictions (Wetlands and Waterbodies)
  - a. Please revise applicable Figures to depict and label the minimum distances between any Facility components, excavations, and horizontal directional drilling pits and identified wetlands and waterbodies.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24, Table 24-3 and Figure 24-5 to depict and label the minimum distances between any Project components, excavations, and horizontal directional drilling pits and identified wetlands and waterbodies.

***Notice Request #3b:***

- b. Please supplement or append Table 24-3, to clarify the acreage of development within 100 feet' of waterbodies identifying the appropriate jurisdiction of each waterbody (e.g. federal or state), and the existing landcover or land use (by area) within 100 feet of these waterbodies.

***Applicant's Response:***

The acreage of development within 100' of waterbodies is provided in Table 24-3 and depicted on Figure 24-5. The Applicant hereby provides a revised Table 24-3 to add the jurisdiction of each waterbody and the acreage of existing landcover or land use within 100 feet of these waterbodies.

***Notice Request #3c:***

- c. The Application states that “[a] design change cannot obviate the need for this request without imposing additional impacts on other resources.” Please provide specific facts and figures to support these statements, including a discussion of the alternative siting area referenced in the preceding comment. Please provide a detailed analysis for each parcel demonstrating why Facility components could not be shifted to avoid 100 foot buffer areas. Please consider this comment to be applicable to all other locations in Table 24-1 where the same or similar argument is utilized.

***Applicant's Response:***

The Applicant hereby provides a revised Table 24-1 to provide an analysis as to why components cannot be shifted to avoid the 100-foot buffer area on each applicable parcel and to provide additional facts and figures demonstrating impacts to other resources that would be caused by shifting components to avoid the 100-foot buffer area. *See* Figure 24-5. The Applicant also provides clarification pertaining to the alternative design considerations for the Project, which the Applicant presumes is what the Office is referring to in this comment, because no alternative siting area is referenced in the preceding comment.

***Notice Request #4a(i):***

4. Requests 7 and 8 - §§ 232-11(I)(1) and 232-11(I)(2) – Excavation

- a. The Applicant does not interpret this provision to be applicable because it is not a property owner and “[i]f this provision is applicable, the Applicant could achieve compliance with (a)-(d) because grading will be limited to those areas

depicted on Figure 24-2, will stage grading work so as not to affect more than 2 acres of property at a time, will not breach the water table, and will not occur within 100' of a waterway, as described in Exhibit 10 and depicted on Figure 24-2.”

- i. For avoidance of doubt, please clarify if Requests 7 and 8 seek relief from the cited provisions of local law.

***Applicant's Response:***

The Applicant requests relief from the provision cited in Request 7. The Applicant does not request relief from the provision cited in Request 8 as it is inapplicable to the Project. The Applicant included this discussion in response to Notice Request #8(a) in the Second Notice, and stated “The Applicant does not believe this provision is applicable to the Project, as this provision provides additional requirements specifically for property owners and the Applicant will only lease, and not own, any of the Project parcels. Nevertheless, because the Town has not provided its view with regard to the applicability of this provision, the Applicant erred on the side of inclusivity in including this request, in the event the Town determines that this provision applies.” The Applicant hereby provides Revised Exhibit 24 to remove Request 8, for the avoidance of doubt, because such provision is inapplicable to the Project.

***Notice Request #4a(ii):***

- ii. Please update Table 24-3 to provide grading proposed on each parcel in cubic yards pursuant to the Town's definition of “excavation.”

***Applicant's Response:***

The Applicant hereby provides a revised Table 24-3 to provide grading proposed on each parcel in cubic yards pursuant to the Town's definition of “excavation.”

***Notice Request #4a(iii):***

- iii. Please demonstrate compliance with § 232-11(I)(2)(a)–(d), through mapping or tabular data, including any necessary references to existing or supplemental geotechnical information.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 to remove Request 8, as described above. As such, Code § 232-11(I)(2)(a)–(d) is inapplicable to the Project and the Applicant does not request relief therefrom.

***Notice Request #4a(iv):***

- iv. Exhibit 24, pages 37, 38, 39, 41, 42, 43 and 44 state “[a]pplication of this provision would effectively prohibit the construction of the

Project.” Please provide a technical demonstration, with facts and analysis, justifying the prohibitive nature of these provisions.

***Applicant’s Response:***

As noted in response to Notice Request #2b, the Applicant hereby provides Revised Exhibit 24, Table 24-1 to clarify that compliance with the relevant local law requirement would prohibit construction of the Project and to provide additional detail to support that argument. Note that the Applicant understands that the reference to page 42, 43, and 44 pertains to Request 8, which, as described above, the Applicant has removed from Revised Exhibit 24.

***Notice Request #5a:***

5. Requests 9, 10 and 15 - §§ 232-16.12(F)(2); 232-16.12(F)(3); and 232-16.12(F)(6)(a)(9) – Locational Restrictions (Prime Soils)
  - a. Please supplement Exhibit 24 with an Appendix depicting and quantifying, in map and table form, prime soils as defined by the Town Code (i.e. prime farmland, prime farmland if drained, and soils of statewide importance) within the Project Area (per parcel); “Project Footprint”; the 5-mile Study Area; the Town of Copake; and Columbia County.

***Applicant’s Response:***

The Applicant hereby provides a new Appendix 24-5, containing Table 3-1 and Table 3-2, which provide a quantification of prime soils as defined by the Town Code for the Project Area, the Project Footprint, the 5-mile Study Area, the Town and Columbia County in tabular form. This information is also depicted in new Figure 24-3 (Prime Farmland Soils within Project Area) and 24-4 (Prime Farmland Soils within Columbia County), which the Applicant hereby provides in response to this request.

***Notice Request #5b:***

- b. Please substantiate, with facts and analysis, how the Facility has been sited to avoid prime farmland, prime farmland if drained, and farmland of statewide importance, with respect to the following statement: “[t]o comply with this provision of local law, the Applicant would need to completely redesign the Project layout to avoid prime farmland. Given the diversity of parcel sizes throughout the Project Site, the location of sensitive resources within the Project Site, landowner preferences for their use of their parcels, and other micrositing considerations derived from over a year of site-specific wetland, stream, species, agricultural, soils, and other resource-related impact studies, any obligation to redesign the Project would place an exorbitant burden on the Applicant and would prohibit the construction of the Project altogether.”

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 Table 24-1 and Appendix 24-5 to provide additional detail with regard to how the Project has been sited to avoid prime farmland, farmland if drained, and farmland of statewide importance with respect to the burden imposed on the Applicant by compliance with Code §§ 232-16.12(F)(2); 232-16.12(F)(3); and 232-16.12(F)(6)(a)(9).

***Notice Request #6a:***

6. Request 11 - § 232-16.12(F)(5)(a)(1) – Lot Coverage Restrictions (Minimum Parcel Size)
  - a. The Applicant stated that “[t]he inability to site the access roads on these parcels would effectively prohibit the construction of the Project, as access roads are required to construct the Project. Thus, compliance with this provision would result in a loss of 60 MW, or the entirety of the Project’s generating capacity.” Please explain why alternative access is not feasible to construct array INV-10 and how eliminating a single access road would prohibit the construction of the entire Facility. Please consider this comment to be applicable to all other locations in Table 24-1 where the same or similar argument is utilized.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 to clarify and further minimize the extent of the requested relief from Code § 232-16.12(F)(5)(a)(1). As a result of these revisions, the Applicant has removed its discussion of access roads with respect to this request. The only affected parcel is 144.1-27.100, which is less than the 15-acre minimum lot size and which contains the collection easement where the Project’s collection line will be located. The collection line is required to interconnect with the Project’s substation.

***Notice Request #6b:***

- b. Exhibit 24 indicates that four parcels are not compliant with the minimum lot size, that 2 of the 4 parcels contain no roads, and indicates 0% proposed Tier 4 lot coverage on the 4 parcels. For avoidance of doubt, please review the scope of relief requested to verify that the Applicant’s request contains a clear and concise summary of the minimum relief requested. Please consider this comment to be applicable to all other locations in Table 24-1.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 to clarify that the Applicant’s request for relief from the Town’s minimum lot size requirement of 15 acres only applies to one parcel where the Project’s collection line will be located (tax parcel 144.1-27.100).

***Notice Request #7a:***

7. Request 13 - § 232-16.12(F)(6)(a)(6) – Locational Restrictions (Ecological Values)

- a. Please revise Figure 24-1 to depict and quantify all contiguous areas of forest and undisturbed drainage areas, or provide an adequate description as to why these do not exist within the mapped area. Please provide the acreage of potential impact for each resource listed per parcel and discuss avoidance, minimization, and mitigation.

***Applicant's Response:***

The Applicant hereby provides Revised Figure 24-1, 24-2 and Appendix 3-5, Figure 2 to depict and quantify all contiguous areas of forest and undisturbed drainage areas, to provide the acreage of potential impact for each resource listed per parcel. The Applicant hereby provides Revised Exhibit 24 to provide further discussion of the Applicant's avoidance, minimization, and mitigation measures.

***Notice Request #7b:***

- b. Please supplement the discussion of “adverse impacts of granting the request” with specific facts regarding potential impacts to the community, quantification of proposed contiguous forest clearing, and how clearing will be mitigated to the maximum extent practicable.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 to supplement the discussion of “adverse impacts of granting the request” with specific facts regarding potential impacts to the community, quantification of proposed contiguous forest clearing, and how clearing will be mitigated to the maximum extent practicable.

***Notice Request #8a:***

8. Request 14 - § 232-16.12(F)(6)(a)(8) – Forest Clearing

- a. Please revise the discussion regarding why the “burden should not reasonably be borne by the applicant” in terms of this specific local law relief. There appears to be an editing error in this section.

***Applicant's Response:***

The Applicant hereby provides Revised Exhibit 24 to revise the discussion of why the burden should not reasonably be borne by the Applicant with respect to the provision of local law discussed in Request 14.



***Notice Request #8b:***

- b. Applicant stated “[l]imiting clear cutting to 10% of woodlands on a parcel imposes a technological restriction on the Project.” Please provide specific facts and/or analysis identifying how compliance would make the Facility technically impossible, impractical, or otherwise unreasonable.

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 24 to provide additional analysis as to why the necessary facility component bulk requires clearing of more than 10% of the woodlands on a parcel and therefore, why compliance with the local law restriction would be technically impossible, impractical, or otherwise unreasonable.

***Notice Request #8c:***

- c. Please supplement the discussion of “adverse impacts of granting the request” with specific facts regarding potential impacts to the community related to the clearing of woodlands and how it will be mitigated to the maximum extent practicable.

***Applicant’s Response:***

The Applicant provided a citation to all mitigation measures described in the Application. The Applicant hereby provides Revised Exhibit 24 to provide specific facts regarding potential impacts to the community related to the clearing of woodlands and how it will be mitigated to the maximum extent practicable.

***Notice Request #9a:***

9. Request 16 - § 232-16.12(F)(6)(a)(15) – Undergrounding Requirements

- a. Staff respectfully rejects Applicant’s arguments under existing technology and cost or economics. Please revise to conform to the relevant local law provision and requirements under 19 NYCRR 900-2.25(c)(1) and (2).

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 24 to remove the discussion of lost PILOT and host community benefit fees from Table 24-1 and to provide additional information as to why necessary facility component bulk makes compliance with Code § 232-16.12(F)(6)(a)(15) impossible.

***Notice Request #10:***

10. The Applicant has identified the Town of Copake as qualified to implement the New York State Uniform Fire Prevention and Building Code, but has requested to submit the building plans to the Department of State (NYS DOS), and that NYSDOS review,

approve, and oversee compliance certification of the project. Consistent with 19 NYCRR § 900-2.25(e), please confirm that “no other arrangement can be made,” and provide “a description of the preliminary arrangement that has been made” between the Applicant and NYSDOS to perform this review.

***Applicant’s Response:***

The Applicant hereby provides Revised Exhibit 24 to clarify that the Applicant will request to submit building plans to NYSDOS if no arrangement can be made with the Town of Copake for the Town of Copake Codes Enforcement Officer to review and approve, inspect, and certify the Project’s compliance with applicable codes. The Applicant will engage with the Town to arrange for such review within approximately 2-6 months of the receipt of any final 94-c siting permit for the Project, at such time that the Applicant has developed final engineering drawings for the Project.

***Notice Request #11:***

11. In Table 24-2, Staff respectfully disagrees with the classification of § 232-16.12(F)(6)(a)(19) as a restoration requirement applicable in the decommissioning stage. Please review this section and revise, as appropriate.

***Applicant’s Response:***

The Applicant referred to Code § 232-16.12(F)(6)(a)(19) as containing site restoration requirements because such provision states, “Following construction of a Tier 4 ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with native grass and/or planted with low-level native vegetation capable of preventing soil erosion and airborne dust.” Additionally, “The Project will comply with the substantive standards identified in this section. See Revised Exhibit 23 and Decommissioning and Site Restoration Plan in Appendix 23-1 of the Application.” Nevertheless, the Applicant hereby provides Revised Exhibit 24 to replace “site restoration” with “vegetation requirements” and to provide an additional cross-reference to the Applicant’s Landscaping Plan, which evidences compliance with Code § 232-16.12(F)(6)(a)(19).

Sincerely,



Noah C. Shaw  
Sarah M. Main

Enclosures