

Chapter XVIII, Title 19 of NYCRR Part 900

Office of Renewable Energy Siting

Subpart 900-1

§900-1.1 Purpose and Applicability

(a) The purpose of this Part is to establish procedural and substantive requirements for permit applications for major renewable energy facilities (as defined in section 900-1.2(ag) of this Part) reviewed by the Office of Renewable Energy Siting and applies to applications for permits for the siting, design, construction, operation, compliance, enforcement and modification of such facilities pursuant to Section 94-c of the New York State Executive Law.

(b) This Part shall not apply to the following:

(1) to a major renewable energy facility (as defined in section 900-1.2(ag) of this Part), or any portion thereof, over which any federal agency or department has exclusive siting jurisdiction, or has siting jurisdiction concurrent with that of the state and has exercised such jurisdiction to the exclusion of regulation of the facility by the state. However, nothing herein shall be construed to expand federal jurisdiction;

(2) to normal repairs, maintenance, replacements, non-material modifications and improvements of a major renewable energy facility (as defined in section 900-1.2(ag) of this Part), whenever built, which are performed in the ordinary course of business and which do not constitute a violation of any applicable existing permit, including permits issued pursuant to this Part;

(3) to a major renewable energy facility (as defined in section 900-1.2(ag) of this Part) if, on or before the effective date of Section 94-c of the New York State Executive Law, an application has been made or granted for a license, permit certificate, consent or approval from any federal, state or local commission, agency, board or regulatory body, including the submission of a pre-application public involvement program plan under Article 10 of the New York State Public Service Law, in which the location of the major renewable energy facility has been designated by the applicant, except where an applicant elects to be subject to this Part as authorized by Public Service Law Section 162;

(4) any renewable energy system as such term is defined in Section 66(p) of the New York State Public Service Law, with a nameplate capacity of less than twenty-five thousand kilowatts, unless such system becomes an opt-in renewable energy facility (as defined in section 900-1.2(ba) of this Part); and

(5) any stand-alone battery energy storage system.

§900-1.2 Definitions

Whenever used in this Part, unless otherwise expressly stated, the following terms shall have the meanings indicated below. The definitions in this section are not intended to change any statutory or

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common law meaning of these terms, but are merely plain language explanations of legal terms used in this Part.

(a) *Adjudicatory hearing* means a hearing held pursuant to Section 94-c of the New York State Executive Law, this Part or Article 3 of the New York State Administrative Procedure Act, where parties may present evidence on issues of fact, and argument on issues of law and fact prior to the Executive Director (as defined in subdivision (v) of this section) or their designee rendering a decision on the merits, but shall not include public comment hearings.

(b) *Administrative law judge* or *ALJ* means the designated representative authorized by the Executive Director (as defined in subdivision (v) of this section) to conduct hearings pursuant to this Part.

(c) *Amicus* means a person who is not otherwise eligible for party status, but who is allowed to introduce written argument upon one or more specific issues.

(d) *APA* means the New York State Adirondack Park Agency.

(e) *Applicant* means a person (as defined in subdivision (bf) of this section) filing appropriate applications and supporting materials for the purpose of obtaining a siting permit from the Office of Renewable Energy Siting.

(f) *Argument* means opinions or viewpoints, as distinguished from evidence.

(g) *Certificate of Completion* or *COC* shall have the same meaning as set forth in 6 NYCRR Part 375.

(h) *Chief Executive Officer* means: for a county outside of a city, the executive of a county elected or appointed on a county-wide basis or, if there be none, the chairman of the board of supervisors of legislature; for a city, the mayor; for a village, the mayor; and for a town, the supervisor; or the highest elected or appointed official therein.

(i) *Commencement of commercial operation* or *commercial operation date* is defined as the date on which the major renewable energy facility (as defined in subdivision (ag) of this section) 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 facility.

(j) *Commencement of construction* means the beginning of unlimited and continuous site clearing, site preparation and grading activity, but does not include staging, limited tree-cutting activities related to testing or surveying (such as geotechnical drilling and meteorological testing), together with such testing, surveying, drilling and similar pre-construction activities to determine the adequacy of the site for construction and the preparation of application materials or compliance filings.

(k) *Community intervenor* means a potential community intervenor (as defined in subdivision (bh) of this section) who has been granted party status pursuant to section 900-8.4 of this Part.

(l) *Complete application* or *completeness of an application* means an application for a permit that is determined by the Office of Renewable Energy Siting, by issuance of a notice of complete application, to be sufficient for the purpose of preparing draft permit conditions, but which may need to be supplemented during the course of review in order to enable the Office of Renewable Energy Siting to make the findings and determinations required by law. Applications deemed compliant with Section 164 of the New York State Public Service Law by the Chair of the New York State Board on Electric

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Generation Siting and the Environment shall be considered complete upon filing of a transfer application (as defined in subdivision (bz) of this section) pursuant to this Part.

(m) *CLCPA targets* means the public policies established in the Climate Leadership and Community Protection Act enacted in Chapter 106 of the Laws of 2019, including the requirement that a minimum of seventy percent of the statewide electric generation be produced by renewable energy systems by two thousand thirty, that by the year two thousand forty the statewide electrical demand system will generate zero emissions and the procurement of at least nine gigawatts of offshore wind electricity generation by two thousand thirty five, six gigawatts of photovoltaic solar generation by two thousand twenty-five and to support three gigawatts of statewide energy storage capacity by two thousand thirty.

(n) *CPLR* means the New York State Civil Practice Law and Rules.

(o) *Delegated permit* means a permit issued by the New York State Department of Environmental Conservation which substitutes for a comparable permit required by federal law and is recognized by the federal agency responsible for administering the federal program.

(p) *Department of State* or *Department* means the New York State Department of State.

(q) *Disclosure* means the disclosure of facts, documents, or other things that are known by or in the possession of a person and that are material and necessary in the prosecution or defense of the proceeding regardless of the burden of proof.

(r) *Draft permit* means a document prepared by the Office of Renewable Energy Siting which contains terms and conditions staff find necessary for a proposed major renewable energy facility (as defined in subdivision (ag) of this section) to meet all legal requirements associated with such a permit, but is subject to modification as a result of public comments or an adjudicatory hearing.

(s) *ECL* means the New York State Environmental Conservation Law.

(t) *Electronically stored information* or *ESI* means any information that is created, stored, or utilized with computer technology of any type. ESI includes, but is not limited to, word-processing files, audio files, video files, spreadsheets, images, emails and other electronic messaging information that are stored electronically.

(u) *Environmental justice area* or *EJ area* means a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from the siting of a major renewable energy facility.

(v) *Executive director* or *director* means the Executive Director of the Office of Renewable Energy Siting.

(w) *Executive Law* or *EL* means the New York State Executive Law.

(x) *Evidence* means sworn or affirmed testimony of witnesses, and physical objects, documents, records or photographs that tend to prove or disprove the existence of an alleged fact.

(y) *Hearsay* means a statement, other than one made by a sworn witness testifying at the hearing, offered into evidence to prove the truth of the matter asserted.

(z) *Host Community Benefit* means a payment or other incentive for the benefit of the host community, as determined by the Public Service Commission pursuant to section eight of part JJJ of chapter 58 of the laws of two thousand twenty, or such other payment or incentive as determined by the Office of Renewable Energy Siting, or as subsequently agreed to between the applicant and the host community.

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(aa) *Interconnections* means off-site electric transmission lines less than ten (10) miles in length, water supply lines, waste water lines, communications lines, steam lines, stormwater drainage lines, and appurtenances thereto, installed in New York State connecting to and servicing the site of a major renewable generating facility, that are not subject to the Public Service Commission's jurisdiction under Article VII of the New York State Public Service Law, not including service lines designed and sized for household type usage such as for bathrooms or ordinary telephones.

(ab) *Local agency account* means the account established by the Office of Renewable Energy Siting and maintained by the New York State Energy Research and Development Authority pursuant to Section 94-c of the Executive Law for local agencies and potential community intervenors which meet the eligibility and procedural requirements of this Part to participate in public comment periods or hearings.

(ac) *Local agency* means any local agency, board, district, commission or governing body, including municipalities, and other political subdivision of the state.

(ad) *Low-income community* means a census block group, or contiguous area with multiple census block groups, where 23.59 percent or more of the population have an annual income that is less than the poverty threshold; except that the percentage population and income threshold may be revised to reflect updated demographic data.

(ae) *Major amendment* means a change in a siting permit application likely to result in any material increase in any identified adverse environmental impacts, any significant adverse environmental impact not previously identified, or any new site-specific standards and conditions.

(af) *Major modification* means a change to an existing permit standard or condition likely to result in any material increase in any identified adverse environmental impact or any significant adverse environmental impact not previously addressed by uniform or site-specific standards or conditions or otherwise involves a substantial change to an existing permit standard or condition.

(ag) *Major renewable energy facility or facility* means any renewable energy system, as such term is defined in Section 66(p) of the New York State Public Service Law as added by Chapter 106 of the Laws of 2019, with a nameplate generating capacity of twenty-five thousand kilowatts or more, and any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission system, including all associated appurtenances to electric plants as defined under Section 2 of the New York State Public Service Law, including electric transmission facilities less than ten (10) miles in length in order to provide access to load and to integrate such facilities into the state's bulk electrical transmission system.

(ah) *Minor amendment* means a change in an application or draft permit condition that is not a major amendment.

(ai) *Minor modification* means a change in an existing permit condition or an approved compliance filing that is not a major modification.

(aj) *Minority community* means a census block group, or contiguous area with multiple census block groups, where the minority population is equal to or greater than 51.1 percent in an urban area or 33.8 percent in a rural area; except that the specific percentages may be revised to reflect updated demographic data.

(ak) *Minority population* means a population that is identified or recognized by the U.S. Census Bureau as Hispanic, African-American or Black, Asian and Pacific Islander, or American Indian.

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(al) *Motion* means a request for a ruling or an order.

(am) Municipality means a county, city, town or village.

(an) *Nameplate generating capacity* means, starting from the initial installation of a major renewable energy facility, the maximum electrical generating output that the facility is capable of production on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings) as specified by the manufacture of the generating units.

(ao) *No further action determination* means a written determination by the New York State Department of Environmental Conservation that a parcel of real property has been remediated to the applicable regulatory agency's satisfaction.

(ap) *Non-participating property* means a parcel of real property owned by a person (as defined in subdivision (bf) of this section) who has not executed an agreement with the applicant related to the facility.

(aq) *NYSAGM* means the New York State Department of Agriculture and Markets.

(ar) *NYSDEC* means the New York State Department of Environmental Conservation.

(as) *NYSERDA* means the New York State Energy Research and Development Authority.

(at) *NYSDPS* means the New York State Department of Public Service.

(au) *NYSDOT* means the New York State Department of Transportation.

(av) *NYSDOH* means the New York State Department of Health.

(aw) *OPRHP* means the New York State Office of Parks, Recreation and Historic Preservation.

(ax) *Office* or *ORES* means the Office of Renewable Energy Siting within the Department of State and established pursuant to Section 94-c of the Executive Law.

(ay) *Office of hearings* means the office within the ORES principally responsible for conducting adjudicatory hearings pursuant to this Part.

(az) *Office staff* means those Office personnel participating in a hearing, but does not include the Executive Director, or their designee, the ALJ or those personnel in the Office of Hearings advising or consulting with the Executive Director, or their designee, or the ALJ.

(ba) *Opt-in renewable energy facility* means a renewable energy system, as such term is defined in Section 66(p) of the New York State Public Service Law as added by Chapter 106 of the Laws of 2019, with a nameplate capacity of at least twenty thousand kilowatts but less than twenty-five thousand kilowatts, in which the applicant has elected to submit an application for siting pursuant to this Part and for the purposes of this Part, shall be considered a major renewable energy facility.

(bb) *Participating property* means a parcel of real property owned by a person who has executed a lease, easement or other agreement with the applicant related to the facility.

(bc) *PSL* means the New York State Public Service Law.

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(bd) *Party* means any person granted full party status or *amicus* status in the adjudicatory portion of the hearing according to the procedures and standards set forth in this Part but does not include the ALJ, the Office of Hearings, or the Executive Director (or their designee).

(be) *Pending Article 10 facility* means a major renewable energy facility, which on or before the effective date of Section 94-c of the Executive Law, had submitted a draft public involvement program plan to the New York State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the PSL and its implementing regulations.

(bf) *Person* means any individual, public or private corporation, public benefit corporation, limited liability company, multi-state authority, political subdivision, government agency, department or bureau of the State, federally/state recognized Indian Nation, municipality, industry partnership, association, firm, trust, estate or any legal entity whatsoever.

(bg) *Plain language* means an eighth-grade reading level or language which is easily understandable to the lay public.

(bh) *Potential community intervenor* means any person residing within a municipality within which a major renewable electric generating facility is proposed or residing outside the municipality within which the facility is proposed, but within one (1) mile of a proposed solar facility (as defined in subdivision (bu) of this section) or five (5) miles of a proposed wind facility (as defined in subdivision (ca) of this section) or any non-profit organization that can demonstrate a concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to their mission. For the purposes of this definition, the term “residing” shall include any resident or owner of property within the geographical limitations described above.

(bi) *Potential party* means any person who has filed a petition for party status whose petition has not received either final denial or acceptance.

(bj) *Project* means the physical activity or undertaking for which a siting permit is required from the Office.

(bk) *Project impact area* means the geographic area or areas within which the proposed undertaking may cause any change, beneficial or adverse, in the character or use of an identified archaeological site, historic resource or cultural property.

(bl) *Protective order* means an order denying, limiting, conditioning or regulating the use of material requested through disclosure.

(bm) *Public comment hearing* means the portion of the hearing process during which unsworn statements are received from the host municipalities, the public and the parties.

(bn) *Public Service Commission* or *PSC* means the New York State Public Service Commission.

(bo) *Recommended decision and hearing report* means the ALJ's summary of the proceeding, including the ALJ's findings of fact, conclusions of law, and recommendations for the Executive Director's (or their designee) consideration.

(bp) *Relevant* means tending to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable.

(bq) *Repurposed site* means an existing or abandoned commercial or industrial use property, including without limitation, brownfields, landfills, dormant electric generating or other previously disturbed

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location which, if applicable, has been remediated to permit the siting of a major renewable energy facility.

(br) *SAPA* means the New York State Administrative Procedure Act.

(bs) *Service* means the delivery of a document to a person by authorized means and, where applicable, the filing of a document with the ALJ, the Office of Hearings or the Executive Director (or their designee).

(bt) *Siting permit* or *permit* means authorization to construct and operate a major renewable energy facility issued by the Office pursuant to Section 94-c of the Executive Law and this Part.

(bu) *Solar facility* means a solar-powered major renewable energy facility.

(bv) *Statement of intent to deny* means a document prepared by Office staff which identifies the reasons why the siting permit for the project may not be issued as proposed or conditionally.

(bw) *Stipulation* means an agreement between two or more parties to a proceeding, and entered into the hearing record, concerning one or more issues of fact or law that are the subject of the proceeding.

(bx) *Study area* means the area generally related to the nature of the technology and the setting of the proposed site. Unless otherwise provided in this Part, in highly urbanized areas, the study area is a minimum one (1)-mile radius from the property boundaries of the facility site, interconnections and related facilities, and for facilities with components spread across a rural landscape, the study area shall at a minimum include the area within a radius of at least five (5) miles from all generating facility components, interconnections and related facilities.

(by) *Subpoena* means a legal document that requires a person to appear at a hearing and testify, to produce documents or physical objects, or both.

(bz) *Transfer application* means an application submitted for a siting permit for an opt-in renewable energy facility current undergoing an alternative permitting process or a pending Article 10 facility.

(ca) *Wind facility* means a land-based, wind-powered major renewable energy facility.

§900-1.3 Pre-application procedures

(a) *Consultation with Local Agencies.* No less than sixty (60) days before the date on which an applicant files an application, or files a transfer application other than for a pending Article 10 facility for which the Article 10 application has been deemed complete, the applicant shall conduct pre-application meeting(s) with the chief executive officer of the municipality(ies) in which the proposed facility will be located and any local agencies of such municipalities identified by the chief executive officer. During such pre-application meeting(s), the applicant shall provide:

(1) A brief description of the proposed facility and its environmental setting;

(2) A map of the proposed facility showing project components and regulatory boundaries as it pertains to substantive law relevant to the proposed facility;

(3) A summary of the substantive provisions of local laws applicable to the construction, operation, maintenance, and decommissioning of the proposed facility;

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(4) An identification of such substantive local law provisions for which the applicant will request that the Office make a finding that compliance therewith would be unreasonably burdensome;

(5) An explanation of all efforts by the applicant to comply with such substantive local law provisions through the consideration of design changes to the proposed facility, or otherwise;

(6) Any potential impacts of the facility for which consultation with the municipality(ies) is required to inform the preparation of the exhibits to the application (including, but not necessarily limited to, transportation and visual resources);

(7) A designated contact person, with telephone number, email address and mailing address, from whom information will be available on a going-forward basis, as well as a proposed project website to disseminate information to the public; and

(8) An anticipated application date and information regarding the future availability of local agency account funds, citing to the requirements set forth in Subpart 900-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(b) *Meeting with community members.* No less than sixty (60) days before the date on which an applicant files an application, and following the meeting(s) held pursuant to subdivision (a) of this section, the applicant shall conduct at least one meeting for community members who may be adversely impacted by the siting of the facility. The purpose of the meeting is to educate the public about the proposed project, including the anticipated application date and information regarding the future availability of local agency account funds, citing to the requirements set forth in Subpart 900-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting, at the Albany, New York office, Attention: Request for Local Agency Account Funding. The applicant shall provide notice of the meeting no sooner than thirty (30) days and no later than fourteen (14) days prior to the meeting in accordance with the publication requirements of section 900-1.6(c) of this Part.

(c) The applicant shall provide as part of the application copies of transcripts (if any), presentation materials, and a summary of questions raised and responses provided during the pre-application meeting(s). In the event the applicant is unable to secure a meeting with a municipality, the application shall contain a detailed explanation of all of applicant's best efforts and reasonable attempts to secure such meeting, including, but not limited to, all written communications between the applicant and the municipality.

(d) At least sixty (60) days before the date an applicant files an application, the applicant shall publish a notice of intent to file an application in accordance with the publication requirements of section 900-1.6(c) of this Part and provide a copy thereof to the Office, and to all local agencies in attendance at the pre-application meeting. The notice of intent to file an application may be included as part of the notice requirement of subdivision (b) of this section. The notice shall contain, at a minimum, the following:

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- (1) A brief summary of the proposed facility and location;
- (2) A designated contact person, with telephone number, email address and mailing address, from whom information will be available on a going-forward basis, as well as a proposed project website to disseminate information to the public; and
- (3) A statement of future availability of local agency account funds, citing to the requirements set forth in Subpart 900-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(e) *Wetland delineation.*

- (1) At the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a wetland delineation to determine the boundaries of all federal, state and locally regulated wetlands present on the facility site and within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, access roadways, and utility tie-ins. For adjacent properties without accessibility, wetland delineation surveys shall be based on remote sensing data, interpretation of existing wetland and soils mapping, observations from adjacent accessible properties, and current and historical aerial imagery.
- (2) The applicant shall submit to the Office, with a copy to NYSDEC, a draft wetland delineation report summarizing the wetland characteristics and Cowardin classifications of all federal, state, and locally regulated wetlands, the wetland class consistent with 6 NYCRR Section 664.1 (if applicable), a summary of the field data collected, and an ArcGIS compliant shapefiles or geo-database of the field delineated wetland features.
- (3) The applicant shall consult with the Office, and as necessary with the NYSDEC, to determine the status of the delineated state-regulated wetlands and the NYSDEC may conduct a site visit at the request of the Office to assist in determining which wetlands are state-regulated pursuant to ECL Article 24, and to advise with respect to potential impacts to jurisdictional wetlands.
- (4) At the request of the Office, the NYSDEC shall review the draft wetland delineation and advise the Office if the proposed facility components could impact regulated wetlands. The Office, with a copy to the NYSDEC, shall provide a final approved jurisdictional determination to the applicant within sixty (60) days of receipt of the applicant's draft wetland delineation report, provided that weather and ground conditions are suitable for making such a determination. In the event that weather or ground conditions prevent the Office from making a determination

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within sixty (60) days, the Office shall provide a jurisdictional determination to the applicant as soon as practicable, following suitable weather and ground conditions.

(5) The applicant shall provide the approved wetland delineation and associated report in the application as required in section 900-2.15 of this Part.

(f) *Water Resources and Aquatic Ecology.*

(1) At the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a surface water delineation to identify the location of all federal, state waters regulated pursuant to ECL Article 15, and locally regulated surface waters present on the facility site and within one hundred (100) feet of areas to be disturbed by construction, including the interconnections. The surface water map shall indicate the jurisdictional boundaries of all state waterbodies regulated pursuant to ECL Article 15. For adjacent properties without accessibility, waterbody delineations may be estimated using remote sensing data, interpretation of wetlands and soils mapping, topographic maps, observations from adjacent accessible properties and aerial imagery.

(2) The applicant shall submit a draft surface water delineation report to the Office, with a copy to the NYSDEC, consisting of a description of the waterbody characteristics, NYS water quality classification of mapped features, the Fisheries Index Number (FIN) or Waterbody Index Number (WIN), a description of stream flow (perennial, intermittent, or ephemeral), summary of the field data collected, and an ArcGIS compliant shapefile(s) or geo-database of the location of streams and other waterbodies.

(3) The applicant shall consult with the Office, and as necessary with the NYSDEC, to determine which waters are state-regulated pursuant to ECL Article 15.

(4) At the request of the Office, the NYSDEC shall review the draft delineation and advise the Office if any of the proposed facility components could impact state-regulated waterbodies pursuant to ECL Article 15. The Office, with a copy to the NYSDEC, shall provide a final approved jurisdictional determination to the applicant within sixty (60) days of receipt of the applicant's draft surface water delineation report, provided that weather and ground conditions are suitable for making such a determination. In the event that weather or ground conditions prevent the Office from making a determination within sixty (60) days, the Office shall provide a determination to the applicant as soon as practicable, following suitable weather and ground conditions.

(5) The applicant shall provide an approved surface water delineation report in the application as required by section 900-2.14 of this Part.

(g) *NYS threatened or endangered species.*

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(1) At the earliest point possible in the applicant's preliminary project planning, the applicant shall conduct a wildlife site characterization summarizing existing public information on bird, bat, and other species, including, but not limited to, New York's Environmental Assessment Form (EAF) Mapper, New York Natural Heritage Program (NYNHP), USFWS iPaC and ECOs databases, New York's Environmental Resource Mapper, Nature Explorer, and Biodiversity and Wind Siting Mapping Tool, eBird, Audubon Christmas Bird Counts, United States Geological Survey (USGS) breeding bird surveys, the current New York Breeding Bird Atlas III program, New York State Ornithological Association, local birding organizations, Bat Conservation International's database on bat species ranges, NYSDEC bat information. With respect to NYS threatened or endangered species or species of special concern, the wildlife site characterization shall include:

- (i) Species documented at the proposed facility, access roads, interconnections, connecting lines, from available data sources. A subset of NYS threatened or endangered species identified within the last five (5) years shall be provided.
- (ii) For each listed animal species documented from available data sources, provide an evaluation of current habitat suitability for those species at the project site.
- (iii) Landscape features and resources of potential concern within five (5) miles of the facility that may function to funnel or concentrate birds and bats, with a focus on NYS threatened or endangered species, during migration or for feeding, breeding, wintering, or roosting activities, such as national wildlife refuges, wildlife management areas, grassland focus areas, core forest blocks (contiguous areas one hundred fifty (150) acres or larger), Audubon Important Bird Areas, high elevation mountaintops, prominent ridgelines, forested riparian areas, known hibernacula, records of caves and mines, or other significant habitat areas.
- (iv) Geographical, topographical, and other physical features within five (5) miles of the facility, interconnections, connecting lines, and access roads.
- (v) National Wetlands Inventory (NWI) and NYSDEC mapped wetlands, streams, waterbodies, state forests, parks, land use, and other available information relevant to siting the facility.
- (vi) A review of National Audubon Society climate change modeling for listed bird species documented in the wildlife site characterization, and review of other climate change models relevant to listed bird species and other wildlife species documented at the facility site, as available.

(2) The applicant shall provide the results of the wildlife site characterization and project details (including as much information available at the time for facility component plans, preferably in GIS format) to the Office and the NYSDEC. A meeting shall be held by these agencies and the applicant within four (4) weeks of delivery of the draft wildlife site characterization, unless otherwise agreed upon by the applicant and the Office. At this meeting, the agencies shall:

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- (i) Provide feedback as to the content and conclusions of the wildlife characterization study.
 - (ii) Enter into a non-disclosure agreement with the applicant, if necessary, and provide all additional data points beyond those identified in the draft site characterization.
 - (iii) Indicate whether the agencies consider occupied habitat of NYS threatened or endangered species to be present on the facility site based on existing information and, if so, indicate where such is located.
 - (iv) Recommend habitat assessments (including applicant to provide information regarding recent and planned future land uses) and/or field surveys that can be completed in the appropriate seasonal windows within one year.
- (3) If the applicant conducts a habitat assessment and believes suitable habitat for a given species is no longer present at the site, it shall provide a copy of the assessment report to the agencies for review and a determination as to whether surveys shall be required.
- (4) If surveys are recommended, the applicant shall develop a pre-construction study work plan in consultation with the Office and the NYSDEC. All surveys should follow existing protocols.
- (5) The applicant shall conduct surveys and provide draft reports and relevant GIS shape files to the Office and the NYSDEC within six (6) weeks of the completion of each study. If sightings of NYS threatened or endangered species were documented during the surveys, then a summary of the sightings with detailed location information shall be provided to the agencies in advance of the draft report and within three (3) weeks of the completion of each study.
- (6) Within thirty (30) days of submittal of the draft survey reports, the agencies and the applicant shall review the results of the habitat assessment(s) and survey(s) and the current facility design. The agencies and the applicant shall also discuss the requirements for the Net Conservation Benefit Plan, if applicable.
- (7) Within thirty (30) days of such conference pursuant to paragraph (6) of this subdivision, the Office shall provide its draft determination regarding whether occupied habitat for one or more NYS threatened or endangered species exists within the facility site, the boundary of the occupied habitat, whether de minimis levels as provided in section 900-2.13 of this Part might be attainable for grassland birds, and, if applicable, the amount of mitigation funding that may be necessary if impacts cannot be avoided or mitigated.
- (8) The applicant shall provide the approved wildlife site characterization report, habitat assessment and/or survey reports, and Net Conservation Benefit Plan (if required) in the siting permit application as provided in section 900-2.13 of this Part.

(h) Archaeological Resources Consultation.

- (1) At the earliest point possible in the applicant's preliminary project planning, if any portion of the project impact area (PIA) falls within an area of archaeological sensitivity due to its

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inclusion on the statewide archaeological inventory map, the applicant shall conduct a Phase IA archeological/cultural resources study for the PIA.

(2) The applicant shall submit the results of the Phase IA study to the Office. Within sixty (60) days of applicant's submittal of the Phase IA results, the Office, in consultation with OPRHP, shall inform the applicant as to whether a Phase IB field study will be required. The Office may schedule a meeting with the applicant and OPRHP to discuss the scope and content of the Phase IB field study.

(3) If warranted by the Phase I studies, the applicant shall conduct a Phase II site evaluation study to assess the boundaries, integrity and significance of cultural resources identified in Phase I studies.

(4) The applicant shall provide the Phase IA, IB and Phase II, if applicable, in the siting permit application as required by section 900-2.10 of this Part.

(i) Consultation with the Office.

(1) Applicants seeking a siting permit for a major renewable energy facility other than a solar facility or a wind facility shall consult with the Office at least one (1) year prior to submitting an application in order to determine which exhibits the Office will require, as well as any site-specific permit application requirements.

(2) Any applicant may request a pre-application meeting with the Office, which request shall be granted or denied at the discretion of the Office.

§900-1.4 General requirements for applications

(a) Each application for a major renewable energy facility siting permit shall:

(1) Include a properly completed ORES application form;

(2) Contain the exhibits required pursuant to Subpart 900-2 of this Part;

(3) Contain any requests, including justification and supporting documentation, for a site-specific condition in lieu of any exhibit requirement or uniform standard or condition set forth in Subpart 900-6 of this Part and an explanation as to why such site-specific condition is required;

(4) Provide a website through which the applicant will disseminate information to the public, which shall include at least the following information:

(i) A summary of the application describing the proposed facility, its location, and the range of potential environmental and health impacts of the construction and operation of the facility;

(ii) A map(s) at a size and level of detail appropriate to substantially inform the public of the location of the proposed facility site;

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- (iii) A statement that the application, when filed, may be examined during normal business hours at the Office of Renewable Energy Siting, and the local library(ies) served in accordance with section 900-1.6(a)(6) of this Part, and the addresses thereof;
 - (iv) An explanation of the application review process, including information regarding the availability of local agency account funds, citing the requirements set forth in Subpart 900-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting, at the Albany, New York office, Attention: Request for Local Agency Account Funding;
 - (v) Information as to how and where persons wishing to receive all notices concerning the proposed facility can file a request with the Office to subscribe to receive such notices;
 - (vi) Information as to how to access relevant documents from the ORES website;
 - (vii) Copies of all notices required pursuant to this Part; and
 - (viii) The names, addresses, telephone numbers and e-mail addresses of a representative of the applicant and relevant ORES staff.
- (5) Identify any information that the applicant asserts is critical infrastructure information or trade secrets pursuant to Article 7 of the New York State Public Officers Law, or other applicable state or federal laws, which the applicant requests the Office not to disclose and reasons why such information should be excepted from disclosure. Such information shall clearly be marked as trade secret or critical infrastructure information and only included in applications filed with the Office. All other copies of the application served pursuant to section 900-1.6(a) of this Part shall contain information noting the location of redacted information that the applicant is asserting is critical infrastructure information or trade secrets.
- (6) In compliance with the provisions of Section 304 of the National Historic Preservation Act, and 9 NYCRR Section 427.8, information about the location, character, or ownership of a cultural resource shall not be disclosed to the public, and shall only be disclosed pursuant to an appropriate protective order. Such information shall clearly be marked and only included in applications filed with the Office. All other copies of the application served pursuant to section 900-1.6(a) of this Part shall contain information noting the location of information redacted in accordance with Section 304 of the National Historic Preservation Act, and 9 NYCRR Section 427.8.
- (7) Include an affidavit of service showing that a copy of the application and accompanying documents were served on all those required by section 900-1.6(a) of this Part;
- (8) Be accompanied by a fee to be deposited in the local agency account in an amount equal to one thousand (1,000) dollars for each one thousand (1,000) kilowatts of capacity, which may be adjusted from time to time by the Office to account for inflation;

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(9) Be accompanied by the ORES fee required pursuant to section 900-1.5 of this Part; and

(10) If requested of the applicant by the Office, include any additional information that may be required in order to enable the Office to make the findings and determinations required by law.

(b) Water Quality Certification. In accordance with Section 401 of the Clean Water Act, if construction or operation of a proposed major renewable energy facility would result in any discharge into the navigable water of the United States and require a federal license or permit, the applicant shall request and, prior to commencing construction, obtain a Water Quality Certification indicating that the proposed activity will be in compliance with water quality standards, as set forth in 6 NYCRR Section 608.9.

(1) Generally, the request for the Water Quality Certification shall be submitted as part of the application pursuant to subdivision 900-2.14(f) of this Part. In the event the related application for a federal license or permit has not been submitted on or before the date of submission of the 94-c application, the applicant shall provide a statement describing its plan for making such a request, including a timetable, as set forth in subdivision 900-2.14(f), and the request for the water quality certification shall be submitted to the ORES when an application for a Federal license or permit is made.

(2) When an applicant or permittee has requested both a Water Quality Certification from the ORES and permits from the U.S. Army Corps of Engineers or other federal agency, the ORES shall provide information to the district engineer or other federal agency as to whether circumstances require a period of time longer than the period specified in applicable federal regulations for the certifying agency to act on the request for certification in order to avoid a waiver.

(3) If the request for a Water Quality Certification does not accompany an application, it shall be filed and served and notice of it shall be given in the same manner as an application pursuant to section 900-1.6 of this Part. If the request for a Water Quality Certification is filed after the issuance of the siting permit, such request shall be treated as a request for a permit modification pursuant to section 900-11.1 of this Part.

§900-1.5 Office of Renewable Energy Siting Review Fee

(a) The Office shall charge a fee to the applicant in order to recover the costs of reviewing and processing an application in an amount equal to one thousand (1,000) dollars for each one thousand (1,000) kilowatts of capacity, which shall be due at the time of application filing.

§900-1.6 Filing, Service and Publication of an Application

(a) The applicant shall file an electronic copy and five (5) paper copies with the Office of Renewable Siting, Attention: Applicant Review, at the Albany, New York office and shall concurrently serve copies on the following, as specified:

(1) An electronic copy and one (1) paper copy on the NYSDEC at its central office and an electronic copy on each affected NYSDEC regional office;

(2) An electronic copy and one (1) paper copy on NYSDPS at its Albany, New York office;

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- (3) An electronic copy and one (1) paper copy on the chief executive officer of each municipality in which any portion of the proposed facility is to be located; and in New York City, an electronic copy upon the Borough President of any affected borough, and upon the Community Board of any affected areas served by a Community Board;
 - (4) Unless otherwise directed, an electronic copy on the commissioners of the NYSAGM, NYSDOH, NYSDOT and OPRHP;
 - (5) An electronic copy on the attorney general of the state of New York;
 - (6) An electronic copy and one (1) paper copy each on a library serving the district of each member of the state legislature in whose district any portion of the proposed facility is to be located or could be adversely impacted by the proposed facility;
 - (7) An electronic copy on the chief executive officer of any other agency, or local agency that would (absent Section 94-c of the Executive Law) have permitting or approval authority with respect to any aspect of the proposed facility; and
 - (8) An electronic copy on the APA if such proposed facility is located within the Adirondack Park, as defined in subdivision (1) of Section 9-0101 of the ECL.
- (b) Upon request from any of the entities set forth in subdivisions (a)(1)-(8) of this section, the applicant shall provide up to two (2) additional paper copies within five (5) business days of receipt of the request.
- (c) Publication of notice of application shall be made no less than three (3) days before the date on which an applicant files the application and the applicant shall comply with the following:
- (1) Provide a copy of the notice to the Office;
 - (2) Publish notice in newspapers designated for publication of official notices of each municipality in which the proposed facility is to be located, in the newspaper of largest circulation in the county(ies) in which the proposed facility is to be located and, if any are available, in a free newspaper publication that services the area in which the proposed facility is to be located;
 - (3) Provide written notice to all persons residing within one (1) mile of the proposed solar facility or within five (5) miles of the proposed wind facility; and
 - (4) Provide notice to each member of the state legislature in whose district any portion of the proposed facility is to be located.
- (d) Notices required pursuant to subdivision (c) of this section shall serve substantially to inform the public of such application and availability of local agency account funding as follows:
- (1) Contain a summary of the application and a website link which shall contain such a summary;
 - (2) Contain the date on or about which the application will be filed with the Office;
 - (3) Contain a statement of availability of local agency account funds, including the date the notice of intent to file an application required pursuant to section 900-1.3(d) of this Part was

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published, citing to the requirements set forth in Subpart 900-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Siting, at the Albany, New York office, Attention: Request for Local Agency Account Funding; and

(4) Shall be in plain language, in English and in any other language spoken according to the United States Census data by five thousand (5,000) or more persons residing in any five (5)-digit zip code for the proposed facility. Notices published in languages other than English shall be published in newspapers, if any are available, servicing the appropriate language community.

(e) If the Office determines that any language not captured in paragraph (d)(4) of this section is spoken by a significant population of persons residing in close proximity to the proposed facility, interconnections or related facilities necessary to serve the proposed facility, the Office shall direct the applicant to provide notice and summary of the application in the appropriate language and method.

Subpart 900-2 Application Exhibits

§900-2.1 Filing Instructions

(a) Each application for a siting permit shall contain the exhibits described in this Subpart as relevant to the proposed facility technology and site and such additional information as the applicant may consider relevant or as may be required by the Office. Exhibits that are not relevant to the particular facility's technology or proposed location may be omitted from the application.

(b) Each exhibit shall contain a title page showing:

- (1) The applicant's name;
- (2) The title of the exhibit; and
- (3) The proper designation of the exhibit.

(c) Each exhibit consisting of ten (10) or more pages of text shall contain a table of contents citing by page and section number or subdivision the elements or matters contained in the exhibit.

(d) In collecting, compiling and reporting data required for the application, the applicant shall establish a basis for a statistical comparison with data which shall subsequently be obtained under any program of post-permit monitoring.

(e) If the same information is required for more than one exhibit, it may be supplied in a single exhibit and cross-referenced in the other exhibit(s) where it is also required.

(f) If maps are requested, the applicant shall provide both hard copy and digital files, including appropriate GIS shapefiles and/or CAD, etc.

§900-2.2 Exhibit 1: General Requirements

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Exhibit 1 shall contain:

- (a) The name, address, telephone number, and e-mail address of the applicant;
- (b) The address of the website established by the applicant to disseminate information to the public regarding the application;
- (c) The name, address, telephone number, and e-mail address of a representative of the applicant that the public may contact for more information regarding the application;
- (d) The name, business address, telephone number, and e-mail address of the principal officer of the applicant;
- (e) If the applicant desires service of documents or other correspondence upon an agent, the name, business address, telephone number, and e-mail address of the agent;
- (f) A brief explanation of the type of business entity that the applicant is, including its date and location of formation and the name and address of any parent entities; and
- (g) If the facility is to be owned by a corporation, a certified copy of the charter of such corporation; if the facility is not to be owned by a corporation, a copy of the certificate or other documents of formation.

§900-2.3 Exhibit 2: Overview and Public Involvement

Exhibit 2 shall contain:

- (a) A brief description of the major components of the facility, including collection lines, transmission lines, interconnections, access roads and related facilities. A brief, clearly and concisely written overall analysis in plain language that assembles and presents relevant and material facts regarding the facility upon which the applicant proposes that the Office make its decision. The analysis shall be analytical and not encyclopedic and shall specifically address each required finding, determination and consideration the Office shall make or consider in its decision and explain why the applicant believes that the requested permit should be granted.
- (b) A brief description of applicant's local engagement and outreach efforts as required in sections 900-1.3(a) and (b) of this Part.

§900-2.4 Exhibit 3: Location of Facilities and Surrounding Land Use

Exhibit 3 shall contain:

- (a) Latest- or recent-edition USGS maps (1:24,000 topographic edition, utilizing GIS mapping to the extent available), showing:

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- (1) The proposed location of the facility, including proposed electric collection and transmission lines and interconnections, as well as ancillary features located on the facility site such as roads, railroads, switchyards, energy storage or regulation facilities, substations and similar facilities;
 - (2) The proposed location of any off-site utility interconnections, including all electric transmission lines, communications lines, stormwater drainage lines, and appurtenances thereto, to be installed in New York State connecting to and servicing the site of the facility;
 - (3) The proposed limits of clearing and disturbance for construction of all facility components and ancillary features.
- (b) Maps clearly showing the location of the facility and all ancillary features not located on the facility site in relation to municipal boundaries and taxing jurisdictions, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.
- (c) Written descriptions explaining the relation of the location of the facility site, and all ancillary features not located on the facility site, to the affected municipalities and taxing jurisdictions.
- (d) A map showing existing land uses within the study area.
- (e) A map of any existing overhead and underground major facilities for electric, gas or telecommunications transmission within the study area and a summary of any consultations with owners of major facilities for electric, gas or telecommunications that may be impacted by the facility (crossing existing utilities or otherwise).
- (f) A map of all properties upon which any component of a facility or ancillary feature would be located, and for wind facilities, all properties within two thousand (2,000) feet of such properties, and for solar projects, all properties within one thousand (1,000) feet, that shows the current land use, tax parcel number and owner of record of each property, and any publicly known proposed land use plans for any of these properties.
- (g) A map of existing zoning districts and proposed zoning districts within the study area and a description of the permitted and the prohibited uses within each zone. For “floating” or “overlay” zones that are not specifically attributable to a specific mapped zoning district, describe the applicable substantive criteria that apply for establishment of the overlay zone.
- (h) A statement as to whether any applicable local jurisdiction has an adopted comprehensive plan applicable to lands on which facility components or ancillary facilities are located and whether the proposed facility is consistent with such comprehensive plan. A copy of the plan shall be provided in the application, with an indication of plan sections applicable to the proposed uses.
- (i) A map of all publicly known proposed land uses within the study area, as determined in consultation with State and local planning officials, from any public involvement process, or from other sources.

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(j) Maps showing designated NYS coastal areas, inland waterways and local waterfront revitalization program areas (pursuant to 19 NYCRR Part 600, et seq.), groundwater management zones, designated agricultural districts, flood-prone areas, critical environmental areas designated pursuant to Article 8 of the ECL, and coastal erosion hazard areas, that are located within the study area.

(k) Maps showing recreational and other land uses within the study area that might be affected by the sight or sound of the construction or operation of the facility, interconnections and related facilities, including wild, scenic and recreational river corridors, open space, and any known archaeological, geologic, historical or scenic area, park, designated wilderness, forest preserve lands, scenic vistas specifically identified in the Adirondack Park State Land Master Plan, NYS Parks, NYSDEC lands, conservation easement lands, federal or state designated scenic byways, nature preserves, designated trails, and public-access fishing areas, major communication and utility uses and infrastructure, and institutional, community and municipal uses and facilities.

(l) A qualitative assessment of the compatibility of the facility, including any off-site staging and storage areas, with existing, proposed and allowed land uses, and local and regional land use plans, located within a one (1)-mile radius of the facility site. The assessment shall identify the nearby land uses of particular concern to the community and shall address the land use impacts of the facility on residential areas, schools, civic facilities, recreational facilities, and commercial areas. The assessment and evaluation shall demonstrate that conflicts from facility-generated noise, traffic and visual impacts with current and planned uses have been minimized to the extent practicable.

(m) A qualitative assessment of the compatibility of proposed above-ground transmission lines, collection lines, and interconnections and related facilities with existing, potential, and proposed land uses within the study area.

(n) A qualitative assessment of the compatibility of proposed underground transmission lines, collection lines, interconnections and related facilities with existing, potential, and proposed land uses within three hundred (300) feet from the centerline of such interconnections or related facilities.

(o) For facilities at locations within NYS designated coastal areas, or in direct proximity of coastal areas or designated inland waterways, provide an analysis of conformance with relevant provisions of the New York State Coastal Management Program Policies, and proposed or adopted Local Waterfront Revitalization Plans (pursuant to 19 NYCRR Part 600, et seq.). For facilities located within or adjacent to areas mapped by the National Oceanographic and Atmospheric Administration (NOAA), mapping of the proposed facility's location on the most recent edition of NOAA navigation charts shall be provided.

(p) Aerial photographs of all properties within the study area of sufficient scale and detail to enable discrimination and identification of all natural and cultural features.

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(q) Overlays on aerial photographs which clearly identify the facility site and any facility layout, interconnection route, the limits of proposed clearing or other changes to the topography, vegetation or human-made structures, and the location of access and maintenance routes.

(r) All aerial photographs shall reflect the current uses of the land. All aerial photographs shall indicate the source and the date photographs were taken.

(s) A description of community character in the area of the facility, an analysis of impacts of facility construction and operation on community character, and identification of avoidance or mitigation measures that will minimize adverse impacts on community character. For the purposes of this exhibit, community character includes defining features and interactions of the natural, built and social environment, and how those features are used and appreciated in the community.

(t) For repurposed sites with a history of environmental contamination only:

(1) For a site that has not been remediated under the oversight of the NYSDEC:

(i) A copy of a Phase 1 Environmental Site Assessment (ESA) and, if any Recognized Environmental Conditions were identified, a Phase 2 ESA; and

(ii) A determination by a qualified Licensed Professional Engineer, on the basis of the Phase I ESA and/or Phase 2 ESA, that it is not anticipated that hazardous substances would be encountered during construction and/or operation of the facility.

(2) For a site that has been remediated under the oversight of the NYSDEC and received a Certificate of Completion or No Further Action from the NYSDEC:

(i) A copy of the applicable Site Management Plan for the facility site and any deed or land use restrictions imposed; and

(ii) A certification by the applicant that it will implement and comply therewith.

(u) For a proposed facility where an oil, gas or mining solution well is known to exist within five hundred (500) feet of proposed areas to be disturbed within a proposed facility boundary (based on records maintained by the NYSDEC) or for any proposed facility located in NYSDEC regions 7, 8, or 9:

(1) A description of a survey, setting forth the date(s) the survey occurred, the company that conducted it and the methodology used. The purpose of the survey is to determine whether any NYSDEC-regulated wells are present within 500 feet of proposed areas to be disturbed, and if so, identification of the wells and type, if known. Unless another method was authorized by the Office, the survey shall have been done by the use of magnetometers, including aerial platform magnetometers, that are able to locate wells including those lacking surface expressions and any discovered wells should be recorded in decimal degrees, NAD 83, with

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six (6) decimal places of accuracy, and presented on the map identified in subdivision (u)(2) of this section.

(2) A map based on the survey required in subdivision (u)(1) of this section identifying the location of all wells and associated infrastructure (to the extent known), along with the facility boundaries, proposed areas to be disturbed, and proposed facility components. The map should also identify proposed setbacks from permanent structures and buildings of a minimum of one hundred (100) feet from identified well(s) and minimum twenty (20) feet in width from nearest reasonable facility property access point to the well to permit inspections and other regulatory work as may be needed.

(3) An explanation if the applicant cannot meet the setback and access requirements referenced in subdivision (u)(2) of this section.

§900-2.5 Exhibit 4: Real Property

Exhibit 4 shall contain:

(a) A map of the facility site showing property boundaries with tax map sheet, block and lot numbers; the owner of record of all parcels included in the facility site and for all adjacent properties; easements, grants, deed restrictions, and related encumbrances on the parcels comprising the facility site; public and private roads on or adjoining or planned for use as access to the facility site; zoning and related designations applicable to the facility site and adjoining properties.

(b) A property/right-of-way map of all proposed transmission lines and interconnection facilities and off-property/right-of-way access drives and construction lay-down or preparation areas for such interconnections.

(c) A demonstration that the applicant has obtained title to or a leasehold interest in the facility site, including ingress and egress access to a public street, or is under binding contract or option to obtain such title or leasehold interest, or can obtain such title or leasehold interest. State whether the applicant is registered as a transportation corporation and plans to acquire necessary lands for generating or transmission line or other facility-related infrastructure pursuant to New York State Eminent Domain Procedure Law.

(d) A statement that the applicant has obtained, or can obtain (with commercially reasonable certainty), such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility site.

(e) An identification of any improvement district extensions necessary for the facility and a demonstration that the applicant has obtained, or can obtain, such improvement district extensions.

§900-2.6 Exhibit 5: Design Drawings

(a) Drawings to be submitted pursuant to this section shall be prepared by or at the direction of a professional engineer, licensed and registered in New York State, whose name shall be clearly printed on the drawings.

(b) Wind facilities shall meet the setback requirements in Table 1 or manufacturer setbacks, whichever are more stringent. The setback distances shall be measured as a straight line from the centerline or mid-point of the wind turbine tower to the nearest point on the building foundation, property line or feature, as applicable. Compliance with such setbacks (based on the tallest wind turbine model under consideration) shall be shown in the general site plan drawings (or as stand-alone mapping) as required by section 900-2.6(f)(1)(ii) of this Part.

Table 1: Setback Requirements for Wind Turbine Towers

Structure type	Wind Turbine Towers setback*
Substation	1.5 times
Any Above-ground Bulk Electric System**	1.5 times
Gas Wells (unless waived by landowner and gas well operator)	1.1 times
Public Roads	1.1 times
Property Lines	1.1 times
Non-participating, non-residential Structures	1.5 times
Non-participating Residences	2 times
*1.0 times Wind Turbine Towers setback is equal to the Total Height of the Wind Facility (at the maximum blade tip height). **Operated at 100 kV or higher, and as defined by North American Electric Reliability Corporation Bulk Electric System Definition Reference Document Version 3, August 2018 (see section 900-15.1(e)(1)(i) of this Part)	

(c) The applicant shall provide a table listing rated power, hub height, rotor diameter, and total height of each wind turbine model under consideration for the facility.

(d) Solar facilities shall meet the setback requirements set forth in Table 2. Compliance with such setbacks listed in Table 2 shall be shown in the general site plan drawings required by section 900-2.6(f)(1)(i) of this Part. Fencing, collection lines, access roads and landscaping may occur within the setback.

Table 2: Setback Requirements for Solar Facility Components

Setback Type	Solar Facility Setback
Non-participating residential property lines	100 feet
Centerline of Public Roads	50 feet
Non-participating property lines (non-residential)	50 feet
Non-participating occupied residences	250 feet

(e) The maximum height of solar facilities, exclusive of electric collection, transmission or substation/switchyard components, shall not exceed twenty (20) feet from finished grade. The height of arrays shall be measured from the highest natural grade below each solar panel to its maximum potential height.

(f) Exhibit 5 shall contain:

(1) Site plans of the proposed facility, including the following:

(i) For solar facilities, general site plan drawings (utilizing GIS mapping) of all facility components at a legible common engineering scale (using a scale ratio (in feet) of at least 1:200), two (2) full-size hard copy sets (22" x 34" sheets) shall be provided with the application) including the following proposed and existing features:

(a) Solar panels, inverters, low-medium transformers, property lines, applicable setbacks of Table 2: Setback Requirements for Solar Facility Components and any applicable local setbacks;

(b) Extents of proposed access road travel lanes (including indications of any existing access roads to be utilized) and any turn-around areas/temporary road improvements for component deliveries (may be included in site plans or as a stand-alone map set per the requirements of section 900-2.17 of this Part);

(c) Electric cable collection line corridors (including an indication of permanent rights-of-way (ROW)) and the approximate locations of any proposed splice vaults; overhead and underground cable routes shall be differentiated; mapping shall identify any locations of proposed trenchless collection line installations, including the approximate lengths of such electric line routes, information can be included in site plans or provided as a stand-alone map set);

(d) The existing electric transmission line (which the facility will interconnect to) and any known existing utilities (including pipelines) and associated rights of way within the facility site;

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(e) Approximate limits of disturbance for all facility components (panels, access roads, electric line corridors, etc.);

(f) Approximate clearing limits for all facility components (panels, access roads, buildings, electric lines, shading vegetation, etc.);

(g) Extents of collection and interconnection stations and any applicable local setbacks;

(h) Any proposed energy storage system(s) and any applicable local setbacks;

(i) Site security features, including approximate location of perimeter fencing; and

(j) Any berms, retaining walls, fences and other landscaping improvements (included in general site plans or provided as a stand-alone map set).

(ii) For wind facilities, general site plan drawings (utilizing GIS mapping) of all facility components at a reasonable legible engineering scale (using a scale ratio (in feet) of at least 1:200), two (2) full-size hard copy sets (22" x 34" sheets) shall be provided with the application), including the following proposed and existing features:

(a) Extents of proposed access roads (including an indication of any existing access roads to be utilized); turn-around areas/temporary road improvements for component deliveries or construction access (may be included in site plans or as a stand-alone map set per requirements of section 900-2.17 of this Part);

(b) Extents of wind turbines (based on approximate dimensions of foundations) and crane pads;

(c) Electric collection corridors (including an indication of permanent ROW) and the approximate location of any proposed splice vaults; overhead and underground cable routes shall be differentiated; mapping shall include an identification of proposed trenchless collection line installations, including the approximate lengths of such electric line routes, (this information can be included in site plans or provided as a stand-alone map set);

(d) Collection substation outline and any applicable local setbacks;

(e) Extents of the switchyard station and any applicable local setbacks;

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(f) The existing electric transmission line (which the facility will interconnect to) and any known existing utilities (including pipelines) and associated ROW within the facility site;

(g) Approximate limits of disturbance for all facility components (turbines, access roads, electric line corridors, etc.);

(h) Approximate clearing limits for all facility components (turbines, access roads, buildings, electric lines, etc.);

(i) Proposed wind turbines setbacks (based on the tallest wind turbine model under consideration), represented by radii (setback circles) offset from turbine locations, demonstrating compliance with manufacturers' setbacks or those listed in Table 1 above, whichever is more stringent (setback circles can be included in general site plans or provided as a stand-alone map set); participating residences shall also be shown.

(j) Any proposed energy storage system(s) and any applicable local setbacks;

(k) Any proposed berms, retaining walls, fences and other landscaping improvements (included in general site plans or provided as a stand-alone map set); and

(l) Permanent meteorological towers and any applicable local setbacks.

(2) All drawings listed below are to be drawn to scale, or to an exaggerated scale, as appropriate. All such drawings are to be created using computer graphics or computer-aided design software; hand-drawn sketches and drawings may not be used. The following details and plans shall be provided:

(i) Typical elevation drawings indicating the length, width, height, material of construction, color and finish of all buildings, structures, and fixed equipment to be provided for the following:

(a) Wind turbine elevations, for each proposed wind turbine model under consideration, including maximum blade tip height and turbine blade specifications with descriptions of the blade installation process (turbine height and blade detail may be substituted with manufacturer sheets, if documentation includes the required detail);

(b) Switchyard station(s) and interconnection facilities (including fencing, gates, and all station equipment); a general arrangement plan shall be included in the

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elevation drawing set showing elevation mark pointers (arrows) with reference to associated elevation views (including views of all components of the station);

(c) Collection substation(s) (including fencing, gates, and all substation equipment); a general arrangement plan shall be included in the elevation drawing set showing elevation mark pointers (arrows) with reference to associated elevation views (including views of all components of the substation); and

(d) Energy storage system(s) (including fencing, gates, and buildings); a general arrangement plan shall be included in the elevation drawing set showing elevation mark pointers (arrows) with reference to associated elevation views (including views of all components of the energy storage system).

(ii) Each proposed permanent point of access or access type shall include a typical installation plan view, cross section and side view with appropriate dimensions (temporary and permanent width(s)) and identification of materials to be used along with corresponding material thickness. Where existing accessways will be used, a description of proposed upgrades for facility construction shall be provided. Additionally, typical details of any other proposed access (e.g., helicopter or barge placement) shall be provided.

(iii) Typical underground infrastructure section details including single and multiple circuit layouts with dimensions of proposed depth, trench width, level of cover, separation requirements between circuits, clearing width limits for construction and operation of the facility, limits of disturbance, required permanent ROW and a description of the cable installation process; typical details of any proposed splice vaults shall also be provided, including vault dimensions, level of cover, required trench length, width and depth, clearing width limits for construction and operation of the facility, and limits of disturbance.

(iv) Details for typical overhead electric transmission and collection lines, including a profile of the centerlines at an exaggerated vertical scale and typical elevation plans including height above grade and structure layouts.

(3) Site suitability report from the original equipment manufacturer showing that turbine model(s) are compatible with existing facility conditions (i.e., site specific conditions).

(4) A list of engineering codes, standards, guidelines and practices that the applicant has or intends to conform with when planning, designing, constructing, operating and maintaining the wind turbines, solar arrays, electric collection system, substation, transmission line, inter-

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connection, energy storage systems (a summary of correspondence with local fire department representatives shall accompany proposals of such systems), and associated structures.

(5) Any manufacturer provided information regarding the design, safety and testing information for the turbines, solar panel, inverters, substations, transformers, and battery storage equipment to be installed during construction, or as related to any equipment installed during facility operation.

§900-2.7 Exhibit 6: Public Health, Safety and Security

Exhibit 6 shall contain:

(a) A statement and evaluation that identifies, describes, and discusses all efforts made to avoid and minimize potential adverse impacts of the construction and operation of the facility, the interconnections, and related facilities on the environment, public health, and safety, other than as already detailed in other relevant Exhibits, at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence, identifies the current applicable statutory and regulatory framework, and also addresses:

- (1) The anticipated gaseous, liquid and solid wastes to be produced at the facility during construction and under representative operating conditions of the facility, including their source, anticipated volumes (excluding estimates for minor waste volumes, such as concrete washout wastes), composition and temperature, and such meteorological, hydrological and other information needed to support such estimates and any studies, identifying the author and date thereof, used in the analysis;
- (2) The anticipated volumes of such wastes to be released to the environment during construction and under any operating condition of the facility;
- (3) The treatment processes to eliminate or minimize wastes to be released to the environment;
- (4) The manner of collection, handling, storage, transport and disposal for wastes retained and not released at the site, or to be disposed of;
- (5) Maps of the study area and analysis showing relation of the facility site to: public water supply resources (to the extent locations are publicly available); community emergency response resources and facilities including police, fire and emergency medical response facilities and plans; emergency communications facilities; hospitals and emergency medical facilities; existing known hazard risks including flood hazard zones, storm surge zones, areas of coastal erosion hazard, landslide hazard areas, areas of geologic, geomorphic or hydrologic hazard; dams, bridges and related infrastructure; explosive or flammable materials transportation or storage facilities; contaminated sites; and other local risk factors;

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(6) All significant impacts on the environment, public health, and safety associated with the information required to be identified pursuant to paragraphs (1) through (5) of this subdivision, including all reasonably related short-term and long-term effects;

(7) Any measures proposed by the applicant to minimize such impacts;

(8) Any measures proposed by the applicant to mitigate such impacts; and

(9) Any monitoring of such impacts proposed by the applicant.

(b) A Site Security Plan for the operation of proposed facility, including site plans and descriptions of the following site security features:

(1) Access controls including fences, gates, bollards and other structural limitations;

(2) Electronic security and surveillance facilities;

(3) Security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass;

(4) Lighting of facility components to ensure aircraft safety, which complies with the required showing in section 900-2.9 of this Part; and

(5) A description of a cyber security program for the protection of digital computer and communication systems and networks that supports the facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry, including, but not limited to, the Federal Department of Commerce's National Institute of Standards and Technology, the North American Electric Reliability Corporation, or the International Organization for Standardization, and providing for periodic validation of compliance with the applicable standard by an independent auditor.

(c) A Safety Response Plan to ensure the safety and security of the local community, including:

(1) An identification of contingencies that would constitute a safety or security emergency;

(2) Emergency response measures by contingency;

(3) Evacuation control measures by contingency;

(4) Community notification procedures by contingency;

(5) A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies and hazardous substance incidents in compliance with the fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law;

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(6) A description of all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident; and

(7) A requirement to conduct training drills with emergency responders at least once per year.

(d) A statement that the applicant has provided a copy of the plans required in subdivisions (b) and (c) of this section to, and requested review of such plans and comment by, the New York State Division of Homeland Security and Emergency Services.

(e) If the facility is to be located within any part of a city with a population over one million (1,000,000), a statement that the applicant has provided a copy of the plans required in subdivisions (b) and (c) of this section to, and requested review of such plans and comment by, the local office of emergency management.

§900-2.8 Exhibit 7: Noise and Vibration

Exhibit 7 shall contain:

(a) A study of the noise impacts of the construction and operation of the facility. The name(s) of the preparer(s) of the study and qualifications to perform such analyses shall be stated. If the study is prepared by certified member(s) of a relevant professional society or state, the details of such certification(s) shall be stated.

(b) Design Goals: The study shall demonstrate that noise levels from noise sources at the facility will comply with the following:

(1) For wind facilities:

(i) A maximum noise limit of forty-five (45) dBA Leq (8-hour), at the outside of any existing non-participating residence, and fifty-five (55) dBA Leq (8-hour) at the outside of any existing participating residence;

(ii) Prominent tones are defined by using the constant level differences listed under ANSI/ASA S12.9-2005/Part 4 Annex C (sounds with tonal content) (see section 900-15.1(a)(1)(iii) of this Part), at the outside of any existing non-participating residence. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated non-participating position shall be increased by 5 dBA for evaluation of compliance with subparagraphs (i) and (v) of this paragraph;

(iii) A maximum noise limit of sixty-five (65) dB Leq- (1-hour) at the full octave frequency bands of sixteen (16), thirty-one and a half (31.5), and sixty-three (63) Hertz (Hz) outside of any existing non-participating residence in accordance with Annex D of ANSI/ASA

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standard S12.9-2005/Part 4 Section D.2.(1) (Analysis of sounds with strong low-frequency content) (see section 900-15.1(a)(1)(iii) of this Part);

(iv) Not producing human perceptible vibrations inside any existing non-participating residence that exceed the limits for residential use recommended in ANSI/ASA Standard S2.71-1983 "Guide to the evaluation of human exposure to vibration in buildings" (see section 900-15.1(a)(1)(i) of this Part);

(v) A maximum noise limit of forty (40) dBA Leq (1-hour) at the outside of any existing non-participating residence from the collector substation equipment; and

(vi) A maximum noise limit of fifty-five (55) dBA Leq (8-hour), short-term equivalent continuous average nighttime sound level from the facility across any portion of a non-participating property except for portions delineated as NYS-regulated wetlands pursuant to section 900-1.3(e) of this Part and utility ROW. The applicant shall demonstrate compliance with this design goal through the filing of noise contour drawings and sound levels evaluated at the worst-case discrete locations. No penalties for prominent tones will be added in this assessment.

(2) For solar facilities:

(i) A maximum noise limit of forty-five (45) dBA Leq (8-hour), at the outside of any existing non-participating residence, and fifty-five (55) dBA Leq (8-hour) at the outside of any existing participating residence;

(ii) A maximum noise limit of forty (40) dBA Leq (1-hour) at the outside of any existing non-participating residence from the collector substation equipment;

(iii) Prominent tones are as defined by using the constant level differences listed under ANSI/ASA S12.9-2005/Part 4 Annex C (sounds with tonal content) (see section 900-15.1(a)(1)(iii) of this Part), at the outside of any existing non-participating residence. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated non-participating position shall be increased by 5 dBA for evaluation of compliance with subparagraphs (i) and (ii) of this paragraph; and

(iv) A maximum noise limit of fifty-five (55) dBA Leq (8-hour), short-term equivalent continuous average sound level from the facility across any portion of a non-participating property except for portions delineated as NYS-regulated wetlands pursuant to section 900-1.3(e) of this Part and utility ROW to be demonstrated with modeled sound contours drawings and discrete sound levels at worst-case locations. No penalties for prominent tones will be added in this assessment.

(c) Radius of Evaluation: Evaluation of the maximum noise levels to be produced during operation of the facility shall be conducted on a cumulative (if any) and non-cumulative basis for all sensitive receptors within the sound study area, defined as follows:

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(1) For wind facilities, the evaluation shall include, at a minimum, all sensitive receptors in a one (1)-mile radius from any wind turbine or substation proposed for the facility. For the cumulative noise analysis, the evaluation shall include noise from any wind turbine and substation existing and proposed by the time of filing the application and any existing sensitive receptor within a two (2)-mile radius from any wind turbine or substation proposed for the facility.

(2) For solar facilities, the evaluation shall include, at a minimum, all sensitive receptors within a one thousand five hundred (1,500) foot radius from any noise source (e.g., substation transformer(s), medium to low voltage transformers, inverters, energy storage) proposed for the facility or within the thirty (30) dBA noise contour, whichever is greater. For the cumulative noise analysis, the evaluation shall include noise from any solar facility and substation existing and proposed by the time of filing the application and any existing sensitive receptors within a three thousand (3,000)- foot radius from any noise source proposed for the facility or within the thirty (30) dBA cumulative noise contour, whichever is greater.

(d) Modeling standards, input parameters, and assumptions:

(1) For both wind and solar facilities, the evaluation shall use computer noise modeling software that follows the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 900-15.1(a)(1)(v) of this Part) or the ISO-9613-2:1996 propagation standards (see section 900-15.1(g)(1)(i) of this Part) with no meteorological correction (Cmet) added. The model shall:

(i) Set all noise sources operating simultaneously at maximum sound power levels;

(ii) Use a ground absorption factor of no more than $G=0.5$ for lands and $G=0$ for water bodies;

(iii) Use a temperature of ten (10) degrees Celsius and seventy (70) percent relative humidity;

(iv) Report, at a minimum, the maximum A-weighted dBA Leq (1-hour or 8-hour) sound pressure levels in a year, and the maximum linear/unweighted/Z dB (Leq 1-hour) sound pressure levels in a year from the thirty-one and a half (31.5) Hz up to the eight thousand (8,000) Hz full-octave band, at all sensitive sound receptors within the radius of evaluation;

(v) Report the maximum A-weighted dBA Leq sound pressure levels in a year (Leq (8-hour)) at the most critically impacted external property boundary lines of the facility site (e.g., non-participating boundary lines);

(vi) Report the information in tabular and spreadsheet compatible format as specified herein and in subdivisions (f)(3) and (q)(2) of this section. A summary of the number of receptors exposed to sound levels greater than thirty-five (35) dBA will also be reported in tabular format grouped in one (1)-dB bins; and

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(vii) Report noise impacts with sound level contours (specified in subdivision (k) of this section) on the map described in subdivision (h) of this section.

(2) For wind facilities, the model shall:

(i) Be performed at a minimum for the turbine model with the highest broadband A-weighted apparent sound power level at any wind speed condition;

(ii) Use a one and a half (1.5) meter assessment point above the ground and the addition of a minimum uncertainty factor of two (2) dBA, or a four (4) meter assessment point above the ground and the addition of an uncertainty factor of zero (0) dBA or greater.

(3) For solar facilities, the model shall use a one and a half (1.5) meter assessment point above the ground and the addition of an uncertainty factor of zero (0) dBA or greater.

(e) Evaluation of prominent tones for the design:

(1) For wind and solar facility noise sources: The evaluation shall be conducted by using manufacturer sound information, the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 900-15.1(a)(1)(v) of this Part) or the ISO 9613-2:1996 propagation standard (see section 900-15.1(g)(1)(i) of this Part) attenuations (Adiv, Aatm, Agr, and Abar), and the “prominent discrete tone” constant level differences (Kt) specified in ANSI/ASA S12.9-2013/Part 3 Annex B, Section B.1 (see section 900-15.1(a)(1)(ii) of this Part), as follows: fifteen (15) dB in low-frequency one-third-octave bands (from twenty-five (25) up to one hundred twenty-five (125) Hz); eight (8) dB in middle-frequency one-third-octave bands (from one hundred sixty (160) up to four hundred (400) Hz); and five (5) dB in high-frequency one-third-octave bands (from five hundred (500) up to ten thousand (10,000) Hz).

(2) For substation transformers and other solar facility noise sources (such as inverters/medium to low voltage transformers) where no manufacturer’s information or pre-construction field tests are available, the sounds will be assumed to be tonal and prominent.

(f) Evaluation of low frequency noise for wind facilities: If other wind turbines considered for the facility have lower (or equal) broadband A-weighted sound power levels than the turbine modeled in the application, but greater maximum un-weighted sound power levels at the thirty-one and a half (31.5) Hz, or sixty-three (63) Hz full-octave bands, the estimate of low frequency noise levels at the thirty-one and a half (31.5) Hz, or sixty-three (63) Hz bands can be based on:

(1) Computer noise modeling that uses the maximum sound power levels at the thirty-one and a half (31.5) and sixty-three (63) Hz frequency bands at any wind speed among all turbines considered for each turbine location.

(2) Alternatively, if the noise modeling uses only one (1) wind turbine model across the site and if noise reduction operations are not used in the design, the noise levels at the thirty-one and a half

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(31.5) and sixty-three (63) Hz full octave bands can be estimated by applying corrections to the low-frequency band sound pressure results from the computer noise modeling for the turbine with the maximum overall broadband sound power level. These corrections will be equivalent to the differences between the maximum sound power levels at the thirty-one and a half (31.5) and sixty-three (63) Hz bands at any wind speed for all turbines considered for the facility and the sound power levels for the turbine used for computer noise modeling at the thirty-one and a half (31.5) and sixty-three (63) Hz full-octave bands respectively.

(3) The maximum linear/unweighted/Z Leq (1-hour) sound pressure levels (dB) in a year at the sixteen (16), thirty-one and a half (31.5) and sixty-three (63) Hz full octave bands for all receptors within the radius of evaluation shall be reported in tabular and spreadsheet compatible format. A list of all sound sensitive receptors with sound pressure levels (SPLs) equal to or greater than sixty-five (65) dB at sixteen (16), thirty-one and a half (31.5) or sixty-three (63) Hz, shall be provided along with their SPLs. The number of receptors exceeding sixty (60) dB at sixteen (16), thirty-one and a half (31.5) or sixty-three (63) Hz shall also be reported, grouped in one (1)-dB bins.

(g) Evaluation of infrasound for wind facilities: Infrasound levels at the sixteen (16) Hz full-octave band can be based on computer noise modeling software with such capabilities or, by using extrapolated SPL data down to sixteen (16) Hz. The extrapolation estimates can be based on corrections applied to the sound pressure results at thirty-one and a half (31.5) Hz to obtain the sound pressure results at sixteen (16) Hz at each receptor as follows:

(1) If no information from the manufacturer is available for the sixteen (16) Hz full-octave frequency band for any turbine models considered for the facility, at a minimum four (4) dB shall be added to the SPLs at thirty-one and a half (31.5) Hz, to obtain SPLs at sixteen (16) Hz.

(2) If computer noise modeling uses only one (1) wind turbine model across the site, noise reduction operations are not used in the design, and the sound power levels at sixteen (16) Hz are available for all turbine models considered for the facility, the correction shall be equivalent to the difference between the highest manufacturer's sound power level at sixteen (16) Hz at any wind speed and the sound power level at thirty-one and a half (31.5) Hz used for computer noise modeling, and it shall be applied to the sound pressure results at thirty-one and a half (31.5) Hz to obtain the sound pressure results at sixteen (16) Hz.

(3) If computer noise modeling uses only one (1) wind turbine model across the site, noise reduction operations are not used in the design, and the sound power level information at sixteen (16) Hz is available for some but not all turbines considered for the facility, at a minimum four (4) dB, or the difference between the maximum sound power level at sixteen (16) Hz at any wind speed known for any turbines considered for the facility and the sound power level for the thirty-one and a half (31.5) Hz full-octave frequency band used for computer modeling, whichever is greater, shall be applied to the sound pressure results at thirty-one and a half (31.5) Hz to obtain the sound pressure results at sixteen (16) Hz.

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(4) The procedures indicated above, do not restrict the applicant from using additional corrections that provide more conservative (i.e., higher) SPLs at the receptors than as obtained as indicated above.

(h) A map of the study area showing the location of sensitive sound receptors in relation to the facility (including any related substations), as follows.

(1) The sensitive sound receptors shown shall include all residences, outdoor public facilities and public areas, hospitals, schools, libraries, parks, camps, summer camps, places of worship, cemeteries, any historic resources listed or eligible for listing on the State or National Register of Historic Places, any public (federal, state and local) lands, cabins and hunting camps identified by property tax codes, and any other seasonal residences with septic systems/running water within the Sound Study Area.

(2) All residences shall be included as sensitive sound receptors regardless of participation in the facility (e.g., participating, potentially participating, and non-participating residences) or occupancy (e.g., year-round, seasonal use).

(3) Only properties that have a signed contract with the applicant prior to the date of filing the application shall be identified as "participating." Other properties may be designated either as "non-participating" or "potentially participating." Updates with ID-tax numbers may be filed after the application is filed.

(i) An evaluation of ambient pre-construction baseline noise conditions by using the L90 statistical and the Leq energy based noise descriptors, and by following the recommendations included in ANSI/ASA S3/SC 1.100-2014-ANSI/ASA S12.100-2014 American National Standard entitled Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas (see section 900-15.1(a)(1)(iv) of this Part). Sound surveys shall be conducted for, at a minimum, a seven (7) day-long period for wind facilities and a four (4) day-long period for solar facilities.

(j) An evaluation of future noise levels during construction of the facility including predicted A-weighted/dBA sound levels using computer noise modeling as follows:

(1) The model shall use the ANSI/ASA S12.62-2012/ISO 9613-2:1996 (MOD) (see section 900-15.1(a)(1)(v) of this Part) or the ISO-9613-2:1996 propagation standard (see section 900-15.1(g)(1)(i) of this Part) for the main phases of construction, and from activities at any proposed batch plant area/laydown area;

(2) The model shall include, at a minimum, all noise sources and construction sites that may operate simultaneously to meet the proposed construction schedule for the most critical timeframes of each phase;

(3) For wind and solar facilities, the operational modeling requirements included in subdivisions (d)(1)(i) through (d)(1)(iii), and (d)(3) of this section shall be used for modeling of construction noise; and

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(4) Sound impacts shall be reported with sound level contours (specified in subdivision (k) of this section) on the map described in subdivision (h) of this section and sound levels at the most critically impacted receptors in tabular format (as specified in subdivision (q)(2) of this section).

(k) Sound Levels in Graphical Format:

(1) The application shall include legible sound contours rendered above the map specified in subdivision (h) of this section.

(2) Sound contours shall include all sensitive sound receptors and boundary lines (differentiating participating and non-participating) and all noise sources (e.g., wind turbines for wind facilities, substation(s), transformers, HVAC equipment, energy storage systems and emergency generators for wind and solar facilities; and inverters and medium to low voltage transformers for solar).

(3) Sound contours shall be rendered at a minimum, until the thirty (30) dBA noise contour is reached, in one (1)-dBA steps, with sound contours multiples of five (5) dBA differentiated.

(4) Full-size hard copy maps (22" x 34") in 1:12,000 scale shall be submitted.

(l) A tabular comparison between maximum sound impacts and any design goals, noise limits, and local requirements for the facility, and the degree of compliance at all sensitive sound receptors and at the most impacted non-participating boundary lines within the facility site.

(m) An evaluation as to whether any of the following potential community noise impacts will occur:

(1) Hearing loss for the public, as addressed by the World Health Organization (WHO) Guidelines for Community Noise published in 1999 (see section 900-15.1(d)(1)(i) of this Part). The requirements for the public are not to exceed an average sound level of seventy (70) dBA from operation of the facility and one hundred twenty (120) dB-peak for children and one hundred forty (140) dB-peak for adults for impulsive sound levels (e.g., construction blasting).

(2) The potential for structural damage from some construction activities (e.g., blasting, pile driving, excavation, horizontal directional drilling or rock hammering, if any) to produce any cracks, settlements, or structural damage on any existing proximal buildings, including any residences, historical buildings, and public or private infrastructure.

(n) An identification and evaluation of reasonable noise abatement measures for construction activities.

(o) An identification and evaluation of noise abatement measures for the design and operation of the facility to comply with the design limits set forth in subdivision (b) of this section.

(1) For wind facilities:

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(i) If noise reduction operations (NROs) are used to demonstrate conformance with any limit, or local law on noise in computer noise modeling or any filing, the design shall use less than half of the maximum NRO available for each turbine model. In this case, the application shall report both “unmitigated” and “mitigated” results.

(ii) If NROs are necessary for the design, those NROs shall be implemented at the start date of operations.

(2) For solar facilities: If noise mitigation measures are necessary for the design, those mitigation measures shall be implemented no later than the start date of operations.

(p) The software input parameters, assumptions, and associated data used for the computer modeling shall be provided as follows:

(1) GIS files used for the computer noise modeling, including noise source and receptor locations and heights, topography, final grading, boundary lines, and participating status shall be delivered by digital means;

(2) Computer noise modeling files shall be submitted by digital/electronic means;

(3) Site plan and elevation details of substations, as related to the location of all relevant noise sources (e.g., transformers, emergency generator, HVAC equipment, and energy storage systems, if any); specifications, any identified mitigations, and appropriate clearances for sound walls, barriers, mufflers, silencers, and enclosures, if any.

(4) In addition, for wind facilities, the application shall contain sound information from the manufacturers for all wind turbines, transformers and any other relevant noise sources. Sound power levels from the turbines shall follow these provisions:

(i) Sound power levels from the turbines selected for the facility shall be documented with information from the manufacturer(s) following the International Electrotechnical Commission (IEC) 61400-11 standard (see section 900-15.1(b)(1)(ii) of this Part) and IEC TS 61400-14 Technical Specification (see section 900-15.1(b)(1)(iii) of this Part) to the extent this information is available.

(ii) Sound power level information shall be reported associated with wind speed magnitudes, and with angular speed of the rotor, and rated power to the extent this information is available. Turbine dimensions to include hub height and diameter of the rotor shall be reported.

(iii) The sound power level information shall include specifications for normal operation, noise reduced operations and low-noise or serrated trailing edges, or any other noise reduction measures, if these are available or required to meet the noise limits indicated in subdivision (b)(1) of this section.

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(5) For solar facilities, the application shall contain:

(i) The locations of all noise sources (e.g., substation transformer(s), medium to low voltage transformers, inverters, energy storage system, HVAC equipment, emergency generators, if any) identified with GIS coordinates and GIS files.

(ii) Sound information from the manufacturers for all noise sources as listed above, and any other relevant noise sources.

(q) Miscellaneous:

(1) The application shall include a glossary of terminology, definitions, abbreviations and references mentioned in the application.

(2) Information shall be reported in tabular, spreadsheet compatible or graphical format as follows:

(i) Data reported in tabular format shall be clearly identified to include headers and summary footer rows. Headers shall include identification of the information contained on each column, such as noise descriptors (e.g., Leq, L90, etc.); weighting (dBA, linear, dB, dBZ) duration of evaluation (e.g., 1-hour, 8-hour), time of the day (day time, nighttime); whether the value is a maximum or average value and the corresponding time frame of evaluation (e.g., maximum 8-h-Leq-nighttime in a year, etc.);

(ii) Titles shall identify whether the tabular or graphical information correspond to the "unmitigated" or "mitigated" results, if any mitigation measures are evaluated, and "cumulative" or "non-cumulative" for cumulative noise assessments;

(iii) Columns or rows with results related to a specific design goal, noise limit or local requirement, shall identify the requirement to which the information relates;

(iv) Tables shall be sorted by sound impacts or rows at the bottom summarizing the results to report maximum and minimum values of the information contained in the columns. For this purpose, sound receptors shall be separated in different tables according to their use (e.g., participating residences, non-participating residences, non-participating boundary lines, schools, parks, cemeteries, historic places, etc.); and

(v) The application shall report estimates of the absolute number of sensitive sound receptors that will be exposed to noise levels that exceed any design goal or noise limit (in total as well as grouped in one (1)-dB bins).

§900-2.9 Exhibit 8: Visual Impacts

Exhibit 8 shall contain:

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(a) A visual impact assessment (VIA) to determine the extent and assess the significance of facility visibility. The components of the VIA shall include identification of visually sensitive resources, viewshed mapping, confirmatory visual assessment fieldwork, visual simulations (photographic overlays), cumulative visual impact analysis, and proposed Visual Impacts Minimization and Mitigation Plan as outlined in subdivision (d) of this section. The VIA shall address the following issues:

- (1) The character and visual quality of the existing landscape;
- (2) The visibility of the facility, including visibility of facility operational characteristics, such as wind turbine lighting, glare from solar panel arrays;
- (3) The visibility of all above-ground interconnections and roadways to be constructed within the facility as determined by the viewshed analysis;
- (4) The appearance of the facility upon completion, including building/structure size, architectural design, facade colors and texture, and site lighting;
- (5) The proposed facility lighting (including lumens, location and direction of lights for facility site and/or task use, and safety including worker safety and tall structure marking requirements) and similar features;
- (6) Representative views (photographic overlays) of the facility, including relevant front, side and rear views, indicating approximate elevations;
- (7) The nature and degree of visual change resulting from construction of the facility and above-ground interconnections;
- (8) The nature and degree of visual change resulting from operation of the facility and above-ground interconnections;
- (9) An analysis and description of related operational effects of the facility such as visible plumes, shading, glare, and shadow flicker; and
- (10) A description of all visual resources that would be affected by the facility.

(b) The viewshed analysis component of the VIA shall be conducted as follows:

- (1) Viewshed maps depicting areas of facility visibility within two (2) miles of a solar facility and five (5) miles of a wind facility, as well as any potential visibility from specific significant visual resources beyond the specified study area, shall be prepared and presented on a 1:24,000 scale recent edition topographic base map. A line of sight profile shall also be done for resources of statewide concern located within the VIA study area. The viewshed maps shall provide an indication of areas of potential visibility based on topography and vegetation, the highest

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elevation of facility structures and distance zone (foreground, midground and background areas). The potential screening effects of vegetation shall also be shown. Visually-sensitive sites, cultural and historical resources, representative viewpoints, photograph locations, and public vantage points within the viewshed study area shall be included on the map(s) or an overlay. An overlay indicating landscape similarity zones shall be included.

(2) The VIA shall include a description of the methodology used to develop the viewshed maps, including software, baseline information, and sources of data.

(3) The viewshed mapping shall be used to determine the potential visibility from viewpoints to be analyzed (as indicated in the following paragraph (4) of this subdivision) and locations of viewer groups in the vicinity of the facility, as determined pursuant to the pre-application meeting(s) held pursuant to section 900-1.3(a) of this Part. These shall include recreational areas, residential and business locations, historic properties (listed or eligible for listing on the State or National Register of Historic Places), and travelers (interstate and other highway users).

(4) In developing the application, the applicant shall confer with municipal planning representatives, the Office, and where appropriate, OPRHP and/or APA in its selection of important or representative viewpoints. Viewpoint selection is based upon the following criteria:

- (i) Representative or typical views from unobstructed or direct line- of-sight views;
- (ii) Significance of viewpoints, designated scenic resources, areas or features, which features typically include, but are not limited to: landmark landscapes; wild, scenic or recreational rivers administered respectively by either the NYSDEC or the APA pursuant to ECL Article 15 or Department of Interior pursuant to 16 USC Section 1271; forest preserve lands; scenic vistas specifically identified in the Adirondack Park State Land Master Plan; conservation easement lands; scenic byways designated by the Federal or State governments; scenic districts and scenic roads, designated by the Commissioner of Environmental Conservation pursuant to ECL Article 49; scenic areas of statewide significance; State parks; sites listed or eligible for listing on the National or State Registers of Historic Places; areas covered by scenic easements, public parks or recreation areas; locally designated historic or scenic districts and scenic overlooks; and high-use public areas;
- (iii) Level of viewer exposure (i.e., frequency of viewers or relative numbers, including residential areas, or high-volume roadways);
- (iv) Proposed land uses; and
- (v) Assessment of visual impacts pursuant to the requirements of adopted local laws or ordinances.

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(c) Visual Contrast Evaluation.

- (1) Photographic simulations of the facility shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the facility. Where vegetation screening is relied on for facility mitigation, leaf-off and leaf-on simulation shall be provided.
- (2) Additional revised simulations illustrating mitigation shall be prepared for those observation points for which mitigation is proposed in the application.
- (3) Each set of existing and simulated views of the facility shall be compared and rated and the results of the VIA shall be summarized. Documentation of the steps followed in the rating and assessment methodology shall be provided including results of rating impact panels and a description of the qualifications of the individuals serving on the panels. Where visual impacts from the facility are identified, contrast minimization and mitigation measures shall be identified, and the extent to which they effectively minimize such impact shall be discussed.

(d) Visual Impacts Minimization and Mitigation Plan. The Visual Impacts Minimization and Mitigation Plan shall include proposed minimization and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, alternative technologies, facility color and design, lighting options for work areas and safety requirements, and lighting options for FAA aviation hazard lighting. The facility design shall incorporate the following measures for the Visual Impacts Minimization and Mitigation Plan:

- (1) Advertisements, conspicuous lettering, or logos identifying the facility owner, turbine manufacturer, solar module manufacturer, or any other supplier entity, other than warning and safety signs, shall not be allowed;
- (2) The electrical collection system shall be located underground, to the extent practicable. Structures shall only be constructed overhead for portions where necessary based on engineering, construction, or environmental constraints;
- (3) Electric collection and transmission facilities design shall specify use of either wood poles or steel pole structures; steel poles shall be self-weathering (such as Corten or equivalent) or other surface finish in dark brown or green color, non-glare finish;
- (4) Non-specular conductors shall be used for any overhead portions of the transmission line and the electric collection system; and
- (5) For wind facilities, wind turbines, towers and blades shall be Federal Aviation Administration (FAA) approved white or off-white colors to avoid the need for daytime aviation hazard lighting,

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unless otherwise mandated by FAA, and non-reflective finishes shall be used on wind turbines to minimize reflected glare.

(6) Shadow Flicker for Wind Facilities. Shadow Flicker shall be limited to thirty (30) hours per year at any non-participating residence, subject to verification using shadow prediction and operational controls at appropriate wind turbines. The Visual Impacts Minimization and Mitigation Plan shall include:

- (i) Analysis of a full year of hourly potential and realistic receptor-specific predicted flicker based on sunshine probabilities, operational projections, and facility design;
- (ii) A protocol for monitoring operational conditions and potential flicker exposure at the wind turbine locations identified in the updated analysis, based on meteorological conditions;
- (iii) Details of the shadow detection and prevention technology that will be adopted for real-time meteorological monitoring and operational control of turbines;
- (iv) Schedule and protocol for temporary turbine shutdowns during periods that produce flicker to meet required shadow flicker limits; and
- (v) Shielding or blocking measures (such as landscape plantings and window treatments) may also be implemented at receptor locations that exceed the thirty (30)-hour annual limit, with approval by the resident receptor.

(7) Glare for Solar Facilities. Solar panels shall have anti-reflective coatings and the Visual Impacts Minimization and Mitigation Plan shall include an analysis using Sandia National Laboratories Solar Glare Hazard Analysis Tool (SGHAT) methodology or equivalent, that solar glare exposure at any non-participating residence, airport or public roadway will be avoided or minimized, and will not result in complaints, impede traffic movements or create safety hazards.

(8) Planting Plans which shall include the facility substation; energy storage structures; and the POI Switchyard; and for components of solar generating facilities as appropriate to facility setting.

(9) A lighting plan(s), which shall address:

- (i) Security lighting needs at substation and switchyard sites, and any exterior equipment storage yards;
- (ii) Plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement and illumination levels to provide safe working conditions at the collection substation site, and any exterior equipment storage yards or other locations;

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(iii) Exterior lighting design shall be limited to lighting required for health, safety, security, emergencies and operational purposes and shall be specified to avoid off-site lighting effects as follows:

(a) Using task lighting as appropriate to perform specific tasks; limiting the maximum total outdoor lighting output based on the lowest allowable OSHA limits; task lighting fixtures shall be designed to be placed at the lowest practical height and directed to the ground and/or work areas to avoid being cast skyward or over long distances, incorporate shields and/or louvers where practicable, and capable of manual or auto-shut off switch activation rather than motion detection;

(b) Requiring full cutoff fixtures, with no drop-down optical elements (that can spread illumination and create glare) for permanent exterior lighting, , consistent with OSHA requirements and adopted local laws or ordinances, including development standards for exterior industrial lighting, manufacturer's cut sheets of all proposed lighting fixtures shall be provided; and

(c) For wind facilities, lighting shall be installed on turbines for aviation hazard marking as specified by FAA. The applicant shall file a Notice for a Marking and Lighting Study of Aircraft Detection Lighting System(s) (ADLS) and dimmable lighting options with the FAA/Department of Defense (DOD) seeking a written determination approving the use of ADLS or other dimmable lighting option at the Project. If FAA/DOD determine that ADLS or dimmable lighting options are not appropriate for the project, or if the applicant determines installation of ADLS or dimmable lighting options are not technically feasible, the applicant shall consider other means of minimizing lighting effects, such as use of low-intensity lighting, and synchronization of lighting activation with adjoining wind farms.

§900-2.10 Exhibit 9: Cultural Resources

Exhibit 9 shall contain:

(a) A study of the impacts of the construction and operation of the facility, interconnections and related facilities on archeological/cultural resources within the project impact area, including:

(1) A summary of the nature of the probable impact on any archeological/cultural resources identified, addressing how those impacts shall be avoided or minimized;

(2) If required pursuant to section 900-1.3(h) of this Part, a Phase IA archeological/cultural resources study for the proposed facility;

(3) If required pursuant to section 900-1.3(h) of this Part, a Phase IB field study;

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(4) If required by the Phase I study results, as determined pursuant to section 900-1.3(h) of this Part, a Phase II site evaluation study to assess the boundaries, integrity and significance of identified cultural resources;

(5) An Unanticipated Discovery Plan that shall identify the actions to be taken in the unexpected event that resources of cultural, historical, or archaeological importance are encountered during the excavation process. This plan shall include a provision for work stoppage upon the discovery of possible archaeological or human remains and be prepared by a professional archaeologist in accordance with the New York Archaeological Council (NYAC) standards.

(b) A study of the impacts on historic resources within the project impact area, including the results of field inspections, a review of the statewide inventory of historic property, and consultation with local historic preservation groups and federal/state-recognized Indian Nations to identify sites or structures listed or eligible for listing in the State or National Register of Historic Places within the PIA, including an analysis of potential impact on any standing structures which appear to be at least fifty (50) years old and potentially eligible for listing in the State or National Register of Historic Places, based on an assessment by a qualified individual.

§900-2.11 Exhibit 10: Geology, Seismology and Soils

Exhibit 10 shall contain:

(a) A study of the geology, seismology, and soils impacts of the facility consisting of the identification and mapping of existing conditions, an impact analysis, and proposed impact avoidance and mitigation measures, including:

(1) A map delineating existing slopes (0-3 percent, 3-8 percent, 8-15 percent, 15-25 percent, 25-35 percent, greater than 35 percent) on and within the drainage area potentially influenced by the facility site and interconnections;

(2) A proposed site plan showing existing and proposed contours at two-foot intervals, for the facility site and interconnections, at a scale sufficient to show all proposed buildings, structures, paved and vegetative areas, and construction areas (features may be provided in stand-alone mapping or included as part of site plans required in 900-2.6(f)(1)(i) and (ii) of this Part);

(3) A description of excavation techniques to be employed;

(4) A description of the characteristics and suitability for construction purposes of the material excavated for the facility and of the deposits found at foundation level, including factors such as soil corrosivity (for both steel and concrete), bedrock competence, and subsurface hydrologic characteristics and groundwater levels; analysis should be based on a geotechnical engineering report verifying subsurface conditions, including the results of borings and/or test pits at a subset of turbine locations (for wind facilities) or solar array locations (for solar facilities) that

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are representative of mapped soil and bedrock formations within the facility site. Identify appropriate mitigation measures required in locations with highly corrosive soils, soils with a high frost risk, and soils with high shrink/swell potential. Characterize subsurface conditions where hydraulic horizontal directional drilling is proposed and identify all locations where blasting operations will be required;

(5) A plan describing all blasting operations including location, minimum blasting contractor qualifications, hours of blasting operations, estimates of amounts of rock to be blasted, warning measures, measures to ensure safe transportation, storage and handling of explosives, use of blasting mats, conduct of a pre-blasting condition survey of nearby buildings and improvements, and coordination with local safety officials, and measures to protect nearby structures and groundwater wells;

(6) An assessment of potential impacts of blasting to environmental features, above-ground structures and below-ground structures such as pipelines and wells;

(7) An identification and evaluation of reasonable mitigation measures regarding blasting impacts, including the use of alternative technologies and/or location of structures, and including a plan for securing compensation for damages that may occur due to blasting;

(8) A description of the regional geology, tectonic setting and seismology of the facility site;

(9) An analysis of the expected impacts of construction and operation of the facility with respect to regional geology, including analysis of potential impacts in areas of known or anticipated karst, and a description of measures to minimize and/or mitigate risks from construction (including blasting and pile driving) in karst areas;

(10) An analysis of the impacts of typical seismic activity experienced in the facility site based on current seismic hazards maps, on the location and operation of the facility identifying potential receptors in the event of failure, and if the facility is proposed to be located near a young fault or a fault that has had displacement in Holocene time, demonstration of a suitable setback from such fault;

(11) A map delineating soil types on the facility site and interconnection sites;

(12) A description of the characteristics and suitability for construction purposes of each soil type identified above, including a description of the soil structure, texture, percentage of organic matter, and recharge/infiltration capacity of each soil type and a discussion of any dewatering that may be necessary during construction and whether the facility shall contain any facilities below grade that would require continuous dewatering; and

(13) Maps, figures, and analyses delineating depth to bedrock and underlying bedrock types, including vertical profiles showing soils, bedrock, water table, and typical foundation depths on

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the facility site, based on information to be obtained from available published maps and scientific literature, review of technical studies conducted on the facility site, and on-site field observations, test pits and/or borings as available.

(b) An evaluation to determine suitable building and equipment foundations, including:

- (1) A preliminary engineering assessment to determine the types and locations of potential foundations to be employed. The assessment shall investigate the suitability of such foundation types as spread footings, caissons, or piles, including a statement that all such techniques conform to applicable building codes or industry standards;
- (2) If piles are used, a description and preliminary calculation of the number and length of piles to be driven, the daily and overall total number of hours of pile driving work to be undertaken to construct the facility, and an assessment of pile driving impacts on surrounding properties and structures due to vibration;
- (3) Identification of mitigation measures regarding pile driving impacts, if applicable, including a plan for securing compensation for damages that may occur due to pile driving; and
- (4) An evaluation of the vulnerability of the facility site and the operation of the facility to an earthquake event and a tsunami event.

§900-2.12 Exhibit 11: Terrestrial Ecology

Exhibit 11 shall contain:

- (a) An identification and description of the type of plant communities present on the facility site, and adjacent properties within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, based upon field observations and data collection.
- (b) An analysis of the temporary and permanent impact of the construction and operation of the facility and the interconnections on the vegetation identified, including a mapped depiction of the vegetation areas showing the areas to be removed or disturbed.
- (c) An identification and evaluation of avoidance measures or, where impacts are unavoidable, minimization measures, including the use of alternative technologies, regarding vegetation impacts identified.
- (d) A list of the species of mammals, birds, amphibians, terrestrial invertebrates, and reptiles that are likely to occur based on ecological communities present at, and bird and bat migration routes through, the facility, supplemented as necessary by site surveys, site observations and publicly available sources.

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- (e) An analysis of the impact of the construction and operation of the facility and interconnections on wildlife, wildlife habitats, and wildlife travel corridors, other than a NYS threatened or endangered species or species of special concern (which will be addressed pursuant to section 900-2.13 of this Part).
- (f) An identification and evaluation of avoidance measures or, where impacts are unavoidable, minimization measures, including the use of alternative technologies, regarding impacts to wildlife and wildlife habitat.

§900-2.13 Exhibit 12: NYS Threatened or Endangered Species

Exhibit 12 shall contain:

- (a) A wildlife site characterization report prepared pursuant to section 900-1.3(g)(1) of this Part.
- (b) Any reports detailing the results of pre-application survey(s).
- (c) A copy of the Office's determination pursuant to section 900-1.3(g)(7) of this Part as to the existence of occupied habitat at the facility site.
- (d) If the Office determined that there is confirmed or presumed occupied habitat at the site, an identification and evaluation of avoidance and minimization measures incorporated into the facility design, as well as any unavoidable potential impacts to NYS threatened or endangered species or species of special concern. Adverse impacts shall be summarized by species impacted and include an assessment of the acreage and/or an estimate number of individual members of each such species affected.
- (e) For a facility to be determined to have only de minimis impacts to NYS threatened or endangered grassland birds or their habitat, the applicant shall submit a demonstration that the facility has been designed to meet one or more of the following criteria, as applicable:
 - (1) The facility has been designed such that the only impacts would be to occupied habitat identified based on records greater than five (5) years old from the time of the wildlife site characterization report, but for which the applicant conducted appropriate surveys as approved by the Office that demonstrate that the species is not present at the facility site; or
 - (2) Construction of the facility within each mapped area of listed bird occupied habitat (based on the documented area of species' use prior to addition of buffers) will only impact grasslands less than twenty-five (25) acres in size and will not include a recent (i.e., less than five (5) years) confirmed nesting or roosting location; or
 - (3) The facility has been designed such that the only impacts would be to occupied habitat identified for NYS threatened or endangered species for which the NYSDEC has issued a Notice of Adoption of regulations delisting or downlisting to Special Concern.

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(f) For a facility that would adversely impact any NYS threatened or endangered species or their habitat, a copy of a Net Conservation Benefit Plan prepared in compliance with section 900-6.4(o) of this Part.

§900-2.14 Exhibit 13: Water Resources and Aquatic Ecology

Exhibit 13 shall contain:

(a) Groundwater:

(1) Hydrologic information reporting depths to high groundwater and bedrock, including a site map based on publicly available information showing depth to high groundwater and bedrock in increments appropriate for the facility site.

(2) A survey based on publicly available information and the results of a private, active groundwater well survey distributed to non-participating property owners and residents within one thousand (1,000) feet of the facility site. The application shall include information on groundwater quality, and the location, depth, yield and use of all public and private groundwater wells or other points of extraction of groundwater, and a delineation and description of well head and aquifer protection zones, to the extent such information is publicly available or obtained through the private well survey. Parcel-based maps shall be provided based on publicly available information and the results of the private well survey, showing the locations of all identified groundwater wells, delineating all groundwater aquifers and groundwater recharge areas, and identifying groundwater flow direction, and shall distinguish the following features:

(i) All existing, active water supply wells or water supply intakes located within one hundred (100) feet of any collection lines or access roads;

(ii) All existing, active water supply wells or water supply intakes located within five hundred (500) feet of horizontal directional drilling operations;

(iii) All existing, active water supply wells or water supply intakes located within two hundred (200) feet of solar pier/post driving locations and turbine excavations not requiring blasting; and

(iv) All existing, active water supply wells or water supply intakes located within one thousand (1,000) feet of any blasting operations.

(3) An analysis and evaluation of potential impacts (during normal and drought conditions) from the construction and/or operation of the facility on drinking water supplies, groundwater quality and quantity in the facility area, including potential impacts on public and private water supplies, including private wells within a one (1)-mile radius of the facility site, and wellhead and aquifer protection zones.

(b) Surface Water:

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- (1) A map or series of maps showing delineated boundaries of all federal, state , and locally regulated surface waters present on the facility site and within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, as determined by the Office pursuant to section 900-1.3(f) of this Part. For adjacent properties without accessibility, surface water delineations may be based on remote sensing data, interpretation of wetlands and soils mapping, observations from adjacent accessible properties, and aerial imagery.
- (2) Any reports detailing the results of the surface water delineation survey(s).
- (3) For the surface waters depicted on the map(s) required in paragraph (1) of this subdivision, a description of the New York State listed Water Quality Standards and Classification, ambient standards and guidance values, flow, presence of aquatic invasive species and other characteristics of such surface waters, including intermittent streams, based on actual on-site surface water observations conducted pursuant to section 900.1-3(f) of this Part.
- (4) An identification of any downstream surface water drinking-water supply intakes within one mile, or if none within one (1) mile, an identification of the nearest one (giving location of the intakes by longitude and latitude) that could potentially be affected by the facility or interconnections, including characterization of the type, nature, and extent of service provided from the identified source.
- (5) If the Office determines pursuant to section 900-1.3(f) of this Part that there are jurisdictional surface waters at the site, a demonstration of avoidance and minimization of impacts to such NYS protected waters by siting all components more than fifty (50) feet from any delineated NYS protected waterbody.
- (6) If the applicant cannot avoid all impacts to NYS protected waters, an explanation of all efforts the applicant made to minimize the impacts, including a discussion of all best management practices used during design, including the following:
 - (i) No solar panel racking or perimeter fence shall span a NYS protected waterbody unless it is a first order stream;
 - (ii) Excavation, grading, or placement of fill within the bed shall only occur for access roads at locations in compliance with all uniform standards and conditions set forth in Subpart 900-6 of this Part;
 - (iii) Stream crossings are located in the straight sections of the channel/bed and as perpendicular to the direction of flow as practicable;

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(iv) How the facility design minimizes all tree clearing requirements to the extent practicable within fifty (50) feet of NYS protected waters;

(v) How the facility design takes into account the slopes of the NYS protected waters, as well as surrounding surface slope and erosion potential, when siting within fifty (50)-feet of NYS protected waters;

(vi) How the facility design minimizes surface grading requirements to the extent practicable within fifty (50) feet of NYS protected waters; and

(vii) How the facility will incorporate and maintain low height stabilizing vegetation with fine root biomass and some stream shading potential (e.g., low scrub shrub like willows or dogwood).

(7) For facilities which require compensatory mitigation as described in Table 1, the applicant shall submit a Stream Restoration and Mitigation Plan pursuant to section 900-10.2(f)(3) of this Part, in accordance with the following, unless determined otherwise by the Office in consultation with the NYSDEC:

(i) Implement mitigation at the ratios as set forth in Table 1 below, as follows:

(a) Category: Prescribed Mitigation Ratio and Type

(1) A: Allowed; no mitigation required

(2) A(M1): Allowed; mitigation required; applicant shall replace one (1) existing substandard culvert for each new crossing with a culvert designed in accordance with section 900-6.4(r)(6) of this Part. Substandard culverts are those with a significant barrier to aquatic organism passage and/or those that cannot pass a four (4) percent design flow event.

(3) A(M2): Allowed; mitigation required; applicant shall replace two (2) existing substandard culverts for each new crossing with a culvert designed in accordance with section 900-6.4(r)(6) of this Part. Substandard culverts are those with a significant barrier to aquatic organism passage and/or those that cannot pass a four (4) percent design flow event.

(b) Within the same HUC 8 sub-basin; and

(c) Within a location that is subject to NYSDEC jurisdiction under ECL Article 15 and of the same standard of the impacted water(s) (e.g., (t) and (ts) impacts shall be mitigated for in (t) or (ts) streams).

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(ii) Implement culvert replacement or restoration/enhancement to meet the mitigation requirement.

Table 1: Waterbody Mitigation Requirements

	Impact Type	Protected Stream (15-0501)	Navigable Water (15-0505)
Activities Requiring Grading or Filling	Reconstructed road/stream crossing using a single culvert or bridge designed in accordance with section 900-6.4(r)(6) of this Part.	A	A
	New road/stream crossing with a bridge designed to meet the flow and width requirements in section 900-6.4(r)(6) of this Part.	A	A
	New road/stream crossing with a single culvert designed in accordance with section 900-6.4(r)(6) of this Part.	A(M1)	A(M1)
	Below ground stream crossing for transmission/collection lines installed using trenchless methods (e.g., horizontal directional drilling) or installed as part of the construction of a new or replacement road/stream crossing.	A	A
	Below ground stream crossings for transmission/collection lines installed using a dry trench where trenchless methods are not practicable.	A(M2)	A(M2)
Activities Not Requiring Grading or Filling	Above-ground stream crossing for transmission/collection lines.	A	A

(c) Stormwater:

(1) A Stormwater Pollution Prevention Plan (SWPPP) for the collection and management of stormwater discharges from the facility site during construction. The SWPPP will be prepared in accordance with the applicable New York State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity and the New York State Standards and Specifications for Erosion and Sediment Control (see section 900-15.1(i)(1)(i) of

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this Part). If the facility is not eligible for coverage under the SPDES General Permit, a completed application for an individual SPDES Permit.

(2) To the extent not covered in paragraph (1) of this subdivision, a preliminary plan, prepared in accordance with the New York State Stormwater Management Design Manual (see section 900-15.1(i)(1)(ii) of this Part), which identifies the post-construction stormwater management practices that will be used to manage stormwater runoff from the developed facility site. This can include runoff reduction/green infrastructure practices, water quality treatment practices, and practices that control the volume and rate of runoff.

(d) Chemical and Petroleum Bulk Storage:

(1) A description of the spill prevention and control measures to be in place for ammonia storage, fuel oil storage, wastewater storage, and other chemical, petroleum or hazardous substances stored on the facility site, including an evaluation of alternatives and mitigation measures.

(2) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or hazardous substances, or disposal of solid wastes on the facility site is subject to regulation under the State's chemical and petroleum bulk storage programs, and if so, a demonstration of compliance with such regulations.

(3) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or hazardous substances on the facility site is subject to regulation under local law (County, City, Town or Village), and if so, a demonstration of the degree of compliance with such local laws.

(e) Aquatic Species and Invasive Species:

(1) An analysis of the impact of the construction and operation of the facility on biological aquatic resources, including species listed as endangered, threatened, or species of special concern in 6 NYCRR Part 182, and including the potential for introducing and/or spreading invasive species listed in 6 NYCRR Part 575.

(2) An identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such biological aquatic resources, including species and invasive species impacts to be addressed pursuant to the Invasive Species Control and Management Plan to be prepared pursuant to section 900-10.2(f)(4) of this Part (if any) and assure compliance with applicable water quality standards (6 NYCRR Part 703).

(f) Water Quality Certification.

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- (1) A request for a Water Quality Certification pursuant to section 900-1.4(b) of this Part, if applicable, indicating that the proposed activity will be in compliance with state water quality standards.
- (2) A copy of all pertinent federal permit applications related to the Water Quality Certification shall be submitted along with the request for the Water Quality Certification.
- (3) A demonstration of compliance with 6 NYCRR Section 608.9.
- (4) Pertinent contact information for the district engineer of the U.S. Army Corps of Engineers or other federal agency to use in contacting the Office as to the applicable time period or any other issue.
- (5) If the request does not accompany the application, the applicant shall provide a statement describing its plan for making such a request, including a timetable.

§900-2.15 Exhibit 14: Wetlands

Exhibit 14 shall contain:

- (a) A map or series of maps showing jurisdictional boundaries of all federal, state and locally regulated wetlands and adjacent areas present on the facility site and within one hundred (100) feet of areas to be disturbed by construction, including the interconnections, as determined by the Office pursuant to section 900-1.3(e) of this Part, and provide federal jurisdictional determination, if available. For adjacent properties without accessibility, initial surveys may be based on remote-sensing data, interpretation of existing wetlands and soils mapping, observation from adjacent accessible properties, and current and historical aerial imagery.
- (b) Any reports detailing the results of the delineation survey(s).
- (c) A qualitative and descriptive wetland functional assessment, including seasonal variations, for all delineated wetlands that would be impacted for groundwater recharge/discharge, flood flow alteration, fish and shellfish habitat, sediment/toxicant retention, nutrient removal, sediment/shoreline stabilization, wildlife habitat, recreation, uniqueness/heritage, visual quality/aesthetics, and protected species habitat.
- (d) An analysis of all off-site wetlands within one hundred (100) feet beyond the limit of disturbance that may be hydrologically or ecologically influenced by development of the facility and the wetlands identified on the map required by subdivision (a) of this section, observed in the field where accessible to determine their general characteristics and relationship, if any, to delineated wetlands.
- (e) If the Office has determined pursuant to section 900-1.3(e) of this Part that there are jurisdictional wetlands at the site, a demonstration of avoidance of impacts to such wetlands and their one hundred (100)-foot adjacent areas by siting all components more than one hundred (100) feet from any delineated NYS wetlands.

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(f) If the applicant cannot avoid impacts to all wetlands and adjacent areas, an explanation of all efforts the applicant made to minimize the impacts to wetlands and adjacent areas identified during wetland surveys. The impact minimization summary shall address the following criteria for each proposed impact area:

- (1) Why the facility design and siting cannot avoid NYS wetlands and adjacent areas, as applicable;
- (2) How the facility design has minimized proposed impacts to NYS wetlands and adjacent areas, as applicable;
- (3) How the facility design and siting minimize impacts to NYS wetlands, or portions of the wetlands, and the function and values currently provided by these wetlands; and
- (4) How the facility design and siting will maximize and/or improve the function and values provided by the remaining adjacent areas surrounding the NYS wetlands.

(g) For facilities for which compensatory mitigation is required in Table 1, unless determined otherwise by the Office in consultation with the NYSDEC, the applicant shall submit a Wetland Restoration and Mitigation Plan pursuant to section 900-10.2(f)(2) of this Part, in accordance with the following:

- (1) Purchase of existing wetland mitigation bank credits for unavoidable wetland impacts wherever there is an existing wetland mitigation bank with a service area that includes the location of the facility. The purchase of mitigation banking credits shall occur within the same HUC 8 Watershed within which the facility is located; or
- (2) Implement applicant-responsible wetland and/or adjacent area mitigation at the ratios as set forth in Table 1 below as follows, unless determined otherwise by the Office in consultation with the NYSDEC:

(i) Category: Prescribed mitigation ratio & type

- (a) X: Not an allowable feature or activity.
- (b) A: Allowed; no mitigation or enhancement required.
- (c) A(M1): Allowed, mitigation required (3:1 mitigation ratio by area of impact - creation only, broken down by cover type)
- (d) A(M2): Allowed, mitigation required (2:1 mitigation ratio by area of impact - creation, restoration, and enhancement)
- (e) A(M3): Allowed, mitigation required (1:1 mitigation ratio by area of impact – creation, restoration and enhancement)
- (f) A(E): Allowed, enhancements and/or mitigation required (e.g., planting of adjacent area, mitigating hydrological changes)

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(ii) Within the same HUC 8 sub-basin; and

(iii) Within a location that is subject to NYSDEC jurisdiction under ECL article 24, which includes the following:

(a) Contiguous with an existing NYS-regulated wetland; or

(b) Within fifty (50) meters (one hundred sixty-four (164) feet) of an existing NYS-regulated wetland;

(iv) Where creation, enhancement, and restoration mean the following:

(a) Creation, in cases of activities requiring fill, means making a new wetland or expanding an existing wetland in lands that were not previously occupied by a wetland. Creation, in cases of activities not requiring fill, can include planting trees and/or shrubs in an existing wetland currently devoid of trees and shrubs.

(b) Restoration means reclaiming a degraded wetland or adjacent area to bring back one or more functions that have been partially or completely lost.

(c) Enhancement means altering an existing functional wetland or adjacent area to increase selected functions and benefits that offsets losses of these functions or benefits in another wetland or adjacent area or parts of the same wetland or adjacent area.

(3) Implement a combination of the mitigation required pursuant to paragraphs (1) and (2) of this subdivision to meet the mitigation requirement.

Table 1: Wetland Mitigation Requirements

Feature/Activity	Class I ^a		Class II ^a		Class III & IV ^a Unmapped >12.4 acres	
	FWW	AA	FWW	AA	FWW	AA
Major Activities						
Wind Turbines	X	A(M3)**	X	A(E)*	A(M3)	A
Solar Panels	X	A(E)**	A(M2)	A(E)*	A(M3)	A
Energy Storage	X	A(M3)**	X	A(E)*	A(M3)	A
Access Roads	A(M1)	A(E)*	A(M2)	A(E)*	A(M3)	A
Power interconnections (including clearing for interconnections)	A(M1)	A(E)*	A(M2)	A(E)*	A(M3)	A
Clearing of forest	X	A(M3)**	A(M2)	A(E)*	A(M3)	A
Other activities and structures integral to the project involving placement of fill	X	A(M3)**	A(M2)	A(E)*	A(M3)	A
Intermediate Activities						
Security fence	X	A(E)*	A(M3)	A	A	A
Clearing and manipulation of undisturbed herbaceous vegetation	X	A(E)*	A(M3)	A	A(M3)	A
Other activities integral to the project involving grading	X	A(E)*	A(M3)	A	A(M3)	A
Minor Activities						
Grading and manipulation of disturbed areas (active hay/row crops, existing commercial/industrial development)	X	A(E)*	A(M3)	A	A(E)	A
Selective cutting of trees and shrubs	A	A	A	A	A	A
<p>*No enhancements or mitigation required with 75 foot or more setback</p> <p>** 75-foot setback from wetland boundary required in undisturbed adjacent area</p> <p>^a ECL Article 24 classification as determined under 6 NYCRR Part 664.</p>						

§900-2.16 Exhibit 15: Agricultural Resources

Exhibit 15 shall contain:

- (a) An assessment within the study area, which shall include the following data sets and illustrations:
- (1) Land in NYS Certified Agricultural Districts by tax parcel;
 - (2) Land receiving Real Property Agricultural Value Assessment by tax parcel;
 - (3) Municipal zoning districts or overlay zones including those designated for renewable energy;
 - (4) Most recent United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) Cropland Data Layer (CDL), National Landcover Data Base (NLCD) data and/or the results of on-site surveys and mapping identifying plant communities and calculating

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percentages of agricultural land use compared to non-agricultural land uses (e.g., disturbed, developed, woodland/forested areas, successional non-agricultural areas, wetlands, etc.);

(5) Existing energy infrastructure and completed renewable energy facilities;

(6) Active agricultural businesses and/or facilities and all related infrastructure;

(7) Potential construction impacts and the methods available to facilitate farming activity during construction; and

(8) Temporary and/or permanent impacts to agricultural production areas within the proposed facility footprint (including all planned structures, fenced facility areas, etc.), and areas not feasible to continue farming.

(b) Maps showing the following within the study area:

(1) Field-verified active agriculture land use (including all lands involved in the production of crops, livestock and livestock products for three (3) of the last five (5) years);

(2) All agricultural production acreage proposed to remain in agricultural use;

(3) Any agreed upon landowner-imposed development restrictions (e.g., locations within the facility site on which the landowner will not allow facility development);

(4) Locations of known or suspected sub-surface drainage systems (including outlets), surface drainages, irrigation lines, or other unique agricultural facilities;

(5) USDA soil mapping for the facility site; and

(6) NYS Agricultural Land Classification Mineral Soil Groups 1 through 10 for impacted agricultural areas within the facility site.

(c) An Agricultural Plan, consistent with the New York State Department of Agriculture and Markets Guidelines (see sections 900-15.1(l)(1)(i) and (ii) of this Part) to the maximum extent practicable, to avoid, minimize, and mitigate agricultural impacts to 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.

(d) A remediation plan to address inadvertent damages to surface or sub-surface drainage, including:

(1) A demonstration of the likelihood of impacts to surface of subsurface drainage and how the interruption of drainage may impact farmland within and outside of the facility site; and

(2) An identification of methods of repair for damaged drainage features.

(e) 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.).

§900-2.17 Exhibit 16: Effect on Transportation

Exhibit 16 shall contain:

(a) A conceptual site plan, drawn at an appropriate scale, depicting all facility site driveway and roadway intersections, showing:

(1) Horizontal and vertical geometry, the number of approach lanes, the lane widths, shoulder widths, traffic control devices by approaches, and sight distances; and

(2) For wind facilities, access road locations and widths, including characterizations of road intersection suitability.

(b) A description of the pre-construction characteristics of the public roadways in the vicinity of the facility, as determined pursuant to the pre-application meeting(s) required pursuant to section 900-1.3(a) of this Part, including:

(1) A review of existing data on vehicle traffic, use levels and accidents;

(2) A review of transit facilities and routes, including areas of school bus service;

(3) An identification of potential approach and departure routes to and from the facility site for police, fire, ambulance and other emergency vehicles; and

(4) A review of available load bearing and structural rating information for expected facility traffic routes (existing culverts to be traversed by construction vehicles shall also be considered in the analyses).

(c) An estimate of the trip generation characteristics of the facility during construction, including:

(1) For each major phase of construction, and for the operation phase, an estimate of the number and frequency of vehicle trips, including an estimation of daily trips (identifying whether trips will occur during day or night) by size, weight and type of vehicle;

(2) For major cut or fill activity (spoil removal or deposition at the facility site and affected interconnection areas), a separate estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure distribution, and including a delineation of approach and departure routes, by size, weight and type of vehicle; and

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- (3) An identification of approach and departure routes to and from the facility site for construction workers and employees of the facility.
- (d) An analysis and evaluation of the traffic and transportation impacts of the facility, including:
- (1) For wind facilities, a discussion of projected future traffic conditions with and without the facility, the analysis to be conducted separately for the peak construction impacts of the facility and for the typical operations of the completed facility, including in congested urbanized areas a calculation and comparison of the level of service for each representative intersection, giving detail for each turning movement;
 - (2) An evaluation of the adequacy of the road system to accommodate the projected traffic, the analysis to be conducted separately for the peak construction impacts of the facility (for both wind and solar facilities) and for the typical operations of the completed facility (analyses to be provided only for operational wind generation) and to include an identification of the extent and duration of traffic interferences during construction of the facility and any interconnections;
 - (3) An assessment of over-size load deliveries, and the adequacy of roadway systems to accommodate oversize and over-weight vehicles, improvements necessary to accommodate oversize or overweight deliveries, impacts associated with such improvements, and mitigation measures appropriate to minimize such impacts; and
 - (4) An identification and evaluation of practicable mitigation measures regarding traffic and transportation impacts, including time restrictions, the use of alternative technologies, the construction of physical roadway improvements, the installation of new traffic control devices, and the repair of local roads or other features due to damage by heavy equipment or construction activities during construction or operation of the facility.
- (e) An analysis and evaluation of the impacts of the facility on airports and airstrips, railroads, buses and any other mass transit systems in the vicinity of the facility, as determined pursuant to the pre-application meeting(s) held pursuant to section 900-1.3(a) of this Part. The analysis and evaluation shall include impacts on military training and frequent military operations in the National Airspace System and Special Use Airspace designated by the FAA.
- (f) If any construction or alteration is proposed that requires a Notice of Proposed Construction to be submitted to the administrator of the FAA in accordance with 14 Code of Federal Regulations Part 77 (see section 900-15.1(h)(1)(i) of this Part):
- (1) The application shall include a statement that the applicant has:
 - (i) Received an informal Department of Defense review of the proposed construction or alteration in accordance with 32 Code of Federal Regulations Section 211.7 (see section 900-15.1(f)(1)(ii) of this Part); or

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(ii) Received a formal Department of Defense review of the proposed construction or alteration in accordance with 32 Code of Federal Regulations Section 211.6 (see section 900-15.1(f)(1)(i) of this Part).

(2) If such construction or alteration of a wind facility is proposed to be located:

(i) Within twelve (12) miles of the nearest point of the nearest runway of a commercial service, cargo service, reliever or general aviation (public use) airport or a military airport with at least one (1) runway more than three thousand two hundred (3,200) feet in actual length; or

(ii) Within six (6) miles of the nearest point of the nearest runway of a commercial service, cargo service, reliever or general aviation (public use) airport or a military airport with its longest runway no more than three thousand two hundred (3,200) feet in actual length; or

(iii) Within three (3) miles of the nearest point of the nearest point of the nearest landing and takeoff area of a commercial service, cargo service, reliever or general aviation (public use) heliport or military heliport:

(a) The application shall include a statement that the applicant has consulted with the operators of such airports and heliports that are non-military facilities, has provided a detailed map and description of such construction or alteration to such operators, and has requested review of and comment on such construction or alteration by such operators; and

(b) The application shall include a statement that the applicant has provided a detailed map and description of such construction or alteration to the operators (base commanders) of such airports and heliports that are military facilities.

(3) The application shall include a detailed description of the responses received in such reviews and consultations required in paragraphs (1) and (2) of this subdivision, including specifically whether and why such operators believe such construction or alteration should be:

(i) Unrestricted;

(ii) Subject to site-specific requirements; or

(iii) Excluded from certain areas.

§900-2.18 Exhibit 17: Consistency with Energy Planning Objectives

Exhibit 17 shall contain:

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- (a) A statement demonstrating the degree of consistency of the construction and operation of the facility with New York State energy policies, including CLCPA targets and long range energy planning objectives and strategies contained in the most recent State Energy Plan at the time of filing the application, including consideration of the information required by subdivisions (b) through (g) of this section;
- (b) A description of the impact the facility would have on reliability in the state;
- (c) A description of the impact the facility would have on fuel diversity in the state;
- (d) A description of the impact the facility would have on regional requirements for capacity;
- (e) A description of the impact the facility would have on electric transmission constraints;
- (f) An analysis of the comparative advantages and disadvantages of reasonable and available alternative locations or properties identified for construction of the facility; and
- (g) A statement of the reasons why the facility will promote public health and welfare, including minimizing the public health and environmental impacts related to climate change.

§900-2.19 Exhibit 18: Socioeconomic Effects

Exhibit 18 shall contain:

- (a) An estimate of the average construction work force, by discipline, for each quarter, during the period of construction; and an estimate of the peak construction employment level.
- (b) An estimate of the annual construction payroll, by trade, for each year of construction and an estimate of annual direct non-payroll expenditures likely to be made in the host municipality(ies) (materials, services, rentals, and similar categories) during the period of construction.
- (c) An estimate of the number of jobs and the on-site payroll, by discipline, during a typical year once the facility is in operation, and an estimate of other expenditures likely to be made in the host municipality(ies) during a typical year of operation.
- (d) An estimate of incremental school district operating and infrastructure costs due to the construction and operation of the facility, this estimate to be made after consultation with the affected school districts.
- (e) An estimate of incremental municipal, public authority, or utility operating and infrastructure costs that will be incurred for police, fire, emergency, water, sewer, solid waste disposal, highway maintenance and other municipal, public authority, or utility services during the construction and operation the facility (this estimate to be made after consultation with the affected municipalities, public authorities, and utilities).

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- (f) An identification of all jurisdictions (including benefit assessment districts and user fee jurisdictions) that levy real property taxes or benefit assessments or user fees upon the facility site, its improvements and appurtenances and any entity from which payments in lieu of taxes will or may be negotiated.
- (g) For each jurisdiction, a description of the host community benefits to be provided, including an estimate of the incremental amount of annual taxes (and payments in lieu of taxes, benefit charges and user charges) it is projected would be levied against the post-construction facility site, its improvements and appurtenances, payments to be made pursuant to a host community agreement or other project agreed to with the host community.
- (h) For each jurisdiction, a comparison of the fiscal costs to the jurisdiction that are expected to result from the construction and operation of the facility to the expected tax revenues (and payments in lieu of taxes, benefit charge revenues and user charge revenues) generated by the facility.
- (i) An analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local emergency response capacity (this analysis to be made after consultation with the affected local emergency response organizations).
- (j) A detailed statement indicating how the proposed facility and interconnections are consistent with each of the State smart growth public infrastructure criteria specified in ECL Section 6-0107, or why compliance would be impracticable.
- (k) A statement as to the host community benefit(s) to be provided by the applicant.

§900-2.20 Exhibit 19: Environmental Justice

Exhibit 19 shall contain:

- (a) An identification and evaluation of significant and adverse disproportionate environmental impacts of the facility on an Environmental Justice (EJ) area, if any, resulting from its construction and operation, including any studies which were used in the evaluation and identifying the author and dates thereof. The evaluation shall be conducted consistent with the applicable requirements of 6 NYCRR Part 487.10. The impact study area for purposes of EJ analysis shall be:
 - (1) At a minimum, be within a one-half (0.5)-mile radius around the proposed facility; or
 - (2) A greater radius based on site-specific factors, including nature, scope and magnitude of the environmental impacts, the projected range of those impacts on various environmental resources, and the geography of the area surrounding the location of the proposed facility.
- (b) Separately identified to the fullest extent possible and with sufficient detail, the nature and magnitude of all significant and adverse disproportionate environmental impacts of the facility resulting

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from its construction and operation required to be identified pursuant to subdivision (a) of this section, a description of:

- (1) The specific measures the applicant proposes to take to avoid such impacts to the maximum extent practicable for the duration of the siting permit, including a description of the manner in which such impact avoidance measures will be verified and a statement of the cost of such measures;
- (2) If such impacts cannot be avoided, measures the applicant proposes to take to minimize such impacts to the maximum extent practicable for the duration that the siting permit is granted, including a description of the manner in which such impact mitigation measures will be verified and a statement of the cost of such measures; and
- (3) If such impacts cannot be avoided, the specific measures the applicant proposes to take to offset such impacts to the maximum extent practicable for the duration that the siting permit is in effect, including a description of the manner in which such impact offset measures will be verified and a statement of the cost of such measures.

(c) A qualitative and, where possible, quantitative analysis demonstrating that the scope of avoidance, mitigation and offset measures is appropriate given the scope of significant and adverse disproportionate environmental impacts of the facility resulting from its construction and operation.

(d) A summary of the applicant's final EJ analysis, including the evaluation of any significant and adverse disproportionate environmental impacts in the impact study area. The statement shall provide a detailed explanation of the rationale for any conclusions made related to EJ issues and identify the individual studies and investigations relied upon in conducting each element of the EJ analysis. The applicant shall articulate the reasons why the proposed measures to avoid, minimize, or offset any disproportionate environmental impacts of the proposed facility will, to the maximum extent practicable, avoid, minimize or offset any identified significant and adverse disproportionate impacts, including a description of the manner in which such measures can be verified and a statement of the cost of such measures.

§900-2.21 Exhibit 20: Effect on Communications

Exhibit 20 shall contain:

- (a) A detailed description of the proposed telecommunications interconnection, including all interconnecting facilities, line route, design details, size, functions, and operating characteristics.
- (b) For wind facilities, an identification of all existing broadcast communication sources within a two (2)-mile radius of the facility and the electric interconnection between the facility and the point of interconnection, unless otherwise noted, including:
 - (1) AM radio;

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- (2) FM radio;
- (3) Television;
- (4) Telephone;
- (5) Microwave transmission (all affected sources, not limited to a two-mile radius);
- (6) Emergency services;
- (7) Municipal/school district services;
- (8) Public utility services;
- (9) Doppler/weather radar (all affected sources, not limited to a two (2)-mile radius);
- (10) Air traffic control (all affected sources, not limited to a two (2)-mile radius);
- (11) Armed forces (all affected sources, not limited to a two (2)-mile radius);
- (12) Global Positioning Systems (GPS); and
- (13) Amateur radio licenses registered to users.

(c) For solar and wind facilities, an identification of all existing underground cable and fiber optic major transmission telecommunication lines within a one (1)-mile radius of the facility and the electric interconnection between the facility and the point of interconnection.

(d) A statement describing the anticipated effects of the facility and the electric interconnection between the facility and the point of interconnection on the communications systems required to be identified pursuant to subdivisions (b) and/or (c) of this section, including the potential for:

- (1) Facility structures to interfere with broadcast patterns by re-radiating the broadcasts in other directions;
- (2) Structures to block necessary lines-of-sight;
- (3) Physical disturbance by construction activities;
- (4) Adverse impacts to co-located lines due to unintended bonding; and
- (5) Any other potential for interference.

(e) An analysis demonstrating that there will be sufficient capacity to support the requirements of the facility.

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(f) An evaluation of the design configuration of the facility and electric interconnection between the facility and the point of interconnection demonstrating that there shall be no adverse effects on the communications systems required to be identified pursuant to subdivisions (b) and/or (c) of this section.

(g) A description of post-construction activities that shall be undertaken to identify and mitigate any adverse effects on the communications systems required to be identified pursuant to subdivisions (b) and/or (c) of this section that occur despite the design configuration of the proposed facility and electric interconnection between the facility and the point of interconnection.

(h) A description of the status of negotiations, or a copy of agreements that have been executed, with companies or individuals for providing the communications interconnection including any restrictions or conditions of approval placed on the facility imposed by the provider, and a description of how the interconnection and any necessary system upgrades will be installed, owned, maintained and funded.

§900-2.22 Exhibit 21: Electric System Effects and Interconnection

Exhibit 21 shall contain:

(a) A detailed description of the proposed electric interconnection, including:

- (1) The design voltage and voltage of initial operation;
- (2) The type, size, number and materials of conductors;
- (3) The insulator design;
- (4) The length of the transmission line;
- (5) The typical dimensions and construction materials of the towers;
- (6) The design standards for each type of tower and tower foundation;
- (7) For underground construction, the type of cable system to be used and the design standards for that system;
- (8) For underground construction, indicate on a profile of the line the depth of the cable and the location of any oil pumping stations and manholes;
- (9) Equipment to be installed in any proposed switching station or substation including an explanation of the necessity for any such switching station or substation;
- (10) Any terminal facility; and
- (11) The need for cathodic protection measures.

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(b) A system reliability impact study, performed in accordance with the Federal Energy Regulatory Commission-approved Open Access Transmission Tariff (OATT) of the New York Independent System Operator, Inc. (NYISO), available at www.nyiso.com, that shows expected flows on the system under normal, peak and emergency conditions and effects on stability of the interconnected system, including the necessary technical analyses (thermal, voltage, short circuit and stability) to evaluate the impact of the interconnection. The study shall include the new electric interconnection between the facility and the point of interconnection, as well as any other system upgrades required.

(c) An evaluation of the potential significant impacts of the facility and its interconnection to transmission system reliability at a level of detail that reflects the magnitude of the impacts.

(d) A discussion of the benefits and detriments of the facility on ancillary services and the electric transmission system, including impacts associated with reinforcements and new construction necessary as a result of the facility.

(e) An estimate of the increase or decrease in the total transfer capacity across each affected interface, and if a forecasted reduction in transfer capability across affected interfaces violates reliability requirements, an evaluation of reasonable corrective measures that could be employed to mitigate or eliminate said reduction.

(f) A description of criteria, plans, and protocols for generation and ancillary facilities' design, construction, commissioning, and operation, including as appropriate to generation technology:

- (1) Engineering codes, standards, guidelines and practices that apply;
- (2) Generation facility type certification;
- (3) Procedures and controls for facility inspection, testing and commissioning; and
- (4) Maintenance and management plans, procedures and criteria.

(g) For facilities where it is contemplated that a portion of a new interconnection substation to be built will be transferred to the transmission owner:

- (1) Describe the substation facilities to be transferred and the contemplated future transaction, including a timetable for the future transfer;
- (2) Describe how the substation-interconnection design will meet the transmission owner's requirements; and
- (3) Define the operational and maintenance responsibilities for the substation and how they will meet the transmission owner's standards.

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(h) If the applicant will entertain proposals for sharing above-ground infrastructure with other utilities (communications, cable, phone, cell phone relays, and similar facilities), criteria and procedures for review of such proposals.

(i) A status report on equipment availability and expected delivery dates for major components including towers, turbines, solar panels, inverters, transformers, and related major equipment.

§900-2.23 Exhibit 22: Electric and Magnetic Fields

Exhibit 22 shall contain:

(a) For the entire ROW of the proposed interconnection line, or any collection line rated over sixty-nine (69)-kV, providing the electrical interconnection between the facility, and any transmission line between the facility and the existing electric transmission and distribution system: identify every ROW segment having unique electric and magnetic field (EMF) characteristics due to structure types and average heights, ROW widths, and co-location of other transmission facilities in the ROW.

(b) For each identified ROW segment, provide both "base case" and "proposed" cross-sections to scale showing:

(1) All overhead electric transmission, sub-transmission and distribution facilities including the proposed facility showing structural details and dimensions and identifying phase spacing, phasing, and any other characteristics affecting EMF emissions;

(2) All underground electric transmission, sub-transmission and distribution facilities;

(3) All underground gas transmission facilities;

(4) All right-of-way boundaries; and

(5) Structural details and dimensions for all structures (dimensions, phase spacing, phasing, and similar categories) and include a station number identifying the location.

(c) A set of the aerial photos/drawings enhanced by showing the exact location of each:

(1) Identified ROW segment;

(2) Cross-section; and

(3) Nearest residence or occupied non-residential building in each identified ROW segment with a stated measurement of the distance between the edge of ROW and the nearest edge of the residence or building.

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(d) An EMF study with calculation tables and field strength graphs for each identified ROW segment cross-section, as follows:

- (1) The study shall be signed and stamped/sealed by a licensed professional engineer registered and in good standing in the State of New York;
- (2) Provide the name of the computer software program used to model the facilities and make the calculations;
- (3) Regarding electric fields, model the circuits at rated voltage and provide electric field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations;
- (4) Regarding magnetic fields, model the circuit phase currents equal to the summer normal, summer short term emergency (STE sum), winter- normal, and winter short term emergency (STE win) loading conditions and provide magnetic field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations;
- (5) Regarding magnetic fields, also model the circuit phase currents equal to the maximum average annual load estimated to be occurring on the power lines within ten (10) years after the proposed facility is put in operation and provide magnetic field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations;
- (6) Regarding magnetic fields, also model a "base case" with the circuit phase currents equal to the maximum average annual load currently estimated to be occurring on the existing power lines within the ROW (without construction or operation of the proposed facility) and provide magnetic field calculation tables and field strength graphs calculated at one (1) meter above ground level with five (5)-foot measurement intervals depicting the width of the entire ROW and out to five hundred (500) feet from the edge of the ROW on both sides, including digital copies of all input assumptions and outputs for the calculations; and
- (7) Provide a demonstration that the facilities, including interconnection transmission lines, will conform with the Public Service Commission's Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities (see section 900-15.1(m)(1)(i) of this Part) at the proposed ROW edges.

§900-2.24 Exhibit 23: Site Restoration and Decommissioning

Exhibit 23 shall contain:

(a) A Decommissioning and Site Restoration Plan for site restoration in the event the facility cannot be completed or after end of the useful life of the facility (to be identified) which shall, at a minimum, address the following:

- (1) Safety and the removal of hazardous conditions;
- (2) Environmental impacts;
- (3) Aesthetics;
- (4) Recycling;
- (5) Potential future uses for the site;
- (6) Funding; and
- (7) Schedule.

(b) For facilities to be located on lands owned by others, a description of all site restoration, decommissioning and security agreements between the applicant and landowner, municipality, or other entity, including provisions for turbines, foundations, and electrical collection, transmission, and interconnection facilities.

(c) A gross and net decommissioning and site restoration estimate, the latter including projected salvage value (including reference to the salvage value data source), with line items (and associated dollar amounts) for decommissioning of all facility components removed four (4) feet below grade in agricultural land and three (3) feet below grade in non-agricultural land and removal and restoration of access road locations, where appropriate, based on the facility layout. The gross cost estimates shall include a fifteen (15) percent contingency cost based on the overall decommissioning and site restoration estimate. The net amount shall be allocated between Cities, Towns, or Villages based on the estimated cost associated with the removal and restoration of the facilities located in each City, Town, or Village.

§900-2.25 Exhibit 24: Local Laws and Ordinances

Exhibit 24 shall contain:

(a) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the facility, which includes interconnection electric transmission lines, that are of a substantive nature, together with a statement that the location of the

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facility as proposed conforms to all such local substantive requirements, except any that the applicant requests that the Office elect not to apply. Copies of zoning, flood plain and similar maps, tables and/or documents shall be included in the exhibit when such are referenced in such local substantive requirements.

(b) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the interconnection to or use of water, sewer, and telecommunication lines in public rights of way that are of a substantive nature, together with a statement that the location of the facility as proposed conforms to all such local substantive requirements, except any that the applicant requests that the Office elect not to apply.

(c) A list of all local substantive requirements identified pursuant to subdivision (a) or (b) of this section for which the applicant requests that the Office elect to not apply to the facility. Pursuant to Executive Law Section 94-c, the Office may elect to not apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed facility. For each local substantive requirement identified by the applicant, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the applicant, that the request cannot reasonably be obviated by design changes to the facility, that the request is the minimum necessary, and that the adverse impacts of granting the request shall be mitigated to the maximum extent practicable consistent with applicable requirements set forth in this Part. The statement shall include a demonstration:

- (1) For requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable;
- (2) For requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the identified local substantive requirements would outweigh the benefits of applying such provisions; and
- (3) For requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the identified local substantive requirements.

(d) A summary table of all local substantive requirements identified pursuant to subdivisions (a) and (b) of this section in two columns listing the provisions in the first column, and a discussion or other showing demonstrating the degree of compliance with the substantive provisions in the second column.

(e) Identification of the city, town, village, county, or State agency qualified by the Secretary of State that shall review and approve the building plans, inspect the construction work, and certify compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation

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Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing or building code. If no other arrangement can be made, the Department of State should be identified. The statement of identification shall include a description of the preliminary arrangement made between the applicant and the entity that shall perform the review, approval, inspection, and compliance certification, including arrangements made to pay for the costs thereof including the costs for any consultant services necessary due to the complex nature of such facilities. If the applicable City, Town or Village has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local electric, plumbing and building codes, the applicant may request that the Office expressly authorize the exercise of the electric, plumbing and building permit application, inspection and certification processes by such City, Town or Village.

(f) An identification of the zoning designation or classification of all lands constituting the facility site and a statement of the language in the zoning ordinance or local law by which it is indicated that the facility is a permitted use at the facility site. If the language of the zoning ordinance or local law indicates that the facility is a permitted use at the facility site subject to the grant of a special exception, a statement of the criteria in the zoning ordinance or local law by which qualification for such a special exception is to be determined.

§900-2.26 Exhibit 25: Other Permits and Approvals

Exhibit 25 shall contain:

(a) A list of any Federal or federally-delegated, or federal or state recognized Indian Nation, permit, consent, approval or license that will be required for the construction or operation of the facility, which shall specify the date on which an application for any such approval was made or the estimated date on which it will be made. The applicant shall notify the Office of any significant change in the status of each such application.

(b) A statement as to whether the applicant knows of others who have any pending applications or filings for any federal or federally-delegated, federal or state recognized Indian Nation, state or local permit, consent, approval or license which concerns the facility. If any such applications or filings are identified, the applicant shall indicate whether the granting of any such application or filing will have any effect on the grant or denial of a siting permit, and whether the grant or denial of a siting permit will have any effect upon the grant or denial of any such other application or filing. The applicant shall notify the Office of any significant change in the status of each such application or filing.

Subpart 900-3 Transfer Applications from PSL Article 10 or alternative permitting proceeding

§900-3.1 Transfer Applications for Opt-In Renewable Energy Facilities

(a) Applicants for opt-in renewable energy facilities shall provide the following:

(1) Written notice to ORES at least fourteen (14) days in advance of filing;

(2) A copy of the written notice to the lead agency conducting the environmental impact review pursuant to the New York State Environmental Quality Review Act advising of the applicant's election to be subject to Executive Law Section 94-c;

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- (3) A completed transfer of application form;
 - (4) The exhibits set forth in Subpart 900-2 of this Part;
 - (5) Copies of documentation identifying those matters and issues that have been identified and resolved in the alternate permitting process;
 - (6) Any additional information that may be required in order to enable the Office to make the findings and determinations required by law;
 - (7) The fee to be deposited in the local agency account in an amount equal to one thousand dollars for each one thousand (1,000) kilowatts of capacity, which may be adjusted from time to time by the Office to account for inflation; and
 - (8) The ORES fee to recover the costs of reviewing and processing an application in an amount equal to one thousand dollars for each one thousand (1,000) kilowatts of capacity.
- (b) For any matters and issues that have been identified and resolved in the alternate permitting proceeding, the siting permit will reflect such resolution and those provisions will not be the subject of any adjudicatory hearing conducted pursuant to Subpart 900-8 of this Part.
- (c) The applicant shall comply with requirements for filing, service and publication of the application pursuant to section 900-1.6 of this Part.

§900-3.2 Transfer Applications for Pending Article 10 Facilities

- (a) For pending Article 10 facilities for which a completeness determination has been issued pursuant to PSL Article 10:
- (1) The applicant shall provide the following:
 - (i) Written notice to ORES at least fourteen (14) days in advance of filing;
 - (ii) A copy of the written notice to the Secretary of the PSC advising of the applicant's election to be subject to Executive Law Section 94-c;
 - (iii) A completed transfer of application form;
 - (iv) A copy of the application materials submitted pursuant to the PSL Article 10; and, to the extent the applicant wishes to be subject to a uniform standard or condition set forth in Subpart 900-6 of this Part, an explanation as to how the PSL Article 10 application materials demonstrate compliance with such permit condition;
 - (v) Copies of documentation identifying those matters and issues that have been identified and resolved in the PSL Article 10 proceeding;
 - (vi) Any additional information that may be required in order to enable the Office to make the findings and determinations required by law;

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(vii) The fee to be deposited in the local agency account in an amount equal to one thousand dollars for each one thousand (1,000) kilowatts of capacity, which may be adjusted from time to time by the Office to account for inflation; and

(viii) The ORES fee to recover the costs of reviewing and processing an application in an amount equal to one thousand dollars for each one thousand (1,000) kilowatts of capacity.

(2) Such applications shall be deemed complete upon filing; provided, however, that if the Office determines that the applicant has not demonstrated compliance with the uniform standards and conditions set forth in Subpart 900-6 of this Part, the Office will develop the necessary site-specific conditions to avoid, minimize and mitigate significant adverse environmental impacts to the maximum extent practicable, including requirements for additional compliance filings beyond those set forth in Subpart 900-10 of this Part, as necessary.

(b) Applicants for pending Article 10 facilities for which the application has been filed, but has not yet been deemed to be in compliance with Article 10 application requirements, shall provide the following:

(1) Written notice to ORES at least fourteen (14) days in advance of filing;

(2) A copy of the written notice to the Secretary of the PSC of applicant's intent to become subject to this Part;

(3) A completed transfer of application form;

(4) The exhibits required in Subpart 900-2 of this Part;

(5) Copies of documentation identifying those matters and issues that have been identified and resolved in the PSL Article 10 process;

(6) Any additional information that may be required in order to enable the Office to make the findings and determinations required by law;

(7) The fee to be deposited in the local agency account in an amount equal to one thousand dollars for each one thousand (1,000) kilowatts of capacity, which may be adjusted from time to time by the Office to account for inflation; and

(8) The ORES fee to recover the costs of reviewing and processing an application in an amount equal to one thousand dollars for each one thousand (1,000) kilowatts of capacity.

(c) For any matters and issues that have been identified and resolved in the PSL Article 10 process, the siting permit will reflect such resolution and those provisions will not be the subject of any adjudicatory hearing conducted pursuant to Subpart 900-8 of this Part.

(d) The applicant shall comply with requirements for filing, service and publication of the application pursuant to section 900-1.6 of this Part.

Subpart 900-4 Processing of Applications

§900-4.1 Office of Renewable Energy Siting Action on Applications

(a) Applications shall be submitted to the Office pursuant to section 900-1.6(a) of this Part for initiation of review and a determination of completeness. It is the responsibility of the applicant to ensure the Office is notified of all address changes.

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- (b) The Office reserves the right in its sole discretion to elect to inspect the site(s) and during an inspection, among other things, measurements may be made, physical characteristics of the site may be analyzed, including without limitation soils and vegetation, and photographs may be taken. Ordinarily, such site visit shall occur between 7:00 a.m. and 8:00 p.m. Monday through Friday. An applicant's failure to allow access to the site can be grounds for, and may result in, a notice of incomplete application or statement of intent to deny.
- (c) The Office shall make its determination of completeness or incompleteness on or before sixty (60) days of receipt of the application and provide notice of such determination to the applicant via electronic mail and regular mail.
- (d) If the application is determined to be incomplete, the notice shall include a listing of all identified areas of incompleteness and a description of the specific deficiencies.
- (e) Applications shall remain incomplete until all requested items are received by the Office. A partial submission of the requested material shall not change the incomplete status. The Office shall notify the applicant of the application status within sixty (60) days of receipt of all requested material.
- (f) Failure of the applicant to respond in writing to the Office's notice of incomplete application may result in the application being deemed withdrawn without prejudice pursuant to the following procedures:
- (1) If the applicant fails to respond to a notice of incomplete application within three (3) months, the Office may send a follow-up notice of incomplete application requesting, by a reasonable date to be identified by the Office, the necessary items for a complete application; and
 - (2) If the applicant fails to respond to such follow-up notice of incomplete application by the date identified by the Office, the Office may notify the applicant that the application is deemed withdrawn without prejudice.
- (g) If the application is determined to be complete by the Office, a notice of complete application shall be prepared, posted on the Office's website and served upon:
- (1) The applicant, as directed in subdivision (c) of this section;
 - (2) The chief executive officer of each municipality in which any portion of the such proposed facility is to be located, via regular mail; and
 - (3) Any person who has previously expressed in writing an interest in receiving such notification, via regular mail.
- (h) If the Office fails to provide notice of its determination of completeness or incompleteness within the time period set forth in subdivision (c) of this section, the application shall be deemed complete. Nothing in this section waives any applicable statutory requirements to obtain other permits that may be required, including, but not limited to, federal and federally-delegated permits, or precludes the Office from requesting additional information as set forth in this Part.
- (i) Time frames and deadlines set forth in this Part are calculated in accordance with the General Construction Law, Article 2, Section 20, where day one is the day after a pertinent time-sensitive event, such as date of receipt or day of publication. Unless indicated otherwise, days are calculated as calendar days.

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(j) Unless otherwise specified in this Part, the applicant and Office may extend the time periods for a completeness determination or final determination on the application by mutual consent, provided that the time frame for final determination may only be extended for an additional thirty (30) days.

Subpart 900-5

§900-5.1 Local Agency Account

(a) Local agencies and potential community intervenors seeking funds from the local agency account shall submit a request to the Office, as set forth in subdivision (h) of this section, within thirty (30) days after the date on which a siting permit application has been filed by the applicant pursuant to section 900-1.6 of this Part.

(b) Within thirty (30) days after the deadline for requests for funds from the local agency account, the ALJ shall award local agency funds, to local agencies and potential community intervenors whose requests comply with the provisions of subdivision (h) of this section, so long as use of the funds will contribute to a complete record leading to an informed permit decision as to the appropriateness of the site and the facility, and for local agencies, shall include the use of funds to determine whether a proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations.

(c) A local agency or potential community intervenor (except an applicant) may request funds from the local agency account to defray expenses for experts.

(d) Local agencies and potential community intervenors are encouraged to consider the consolidation of requests with similar funding proposals.

(e) Subject to the availability of funds in the local agency account, the Office may fix additional dates for submission of fund requests.

(f) At the time vouchers are submitted or as otherwise required by the Office, any local agency or potential community intervenor receiving an award of funds shall submit to the Office a report:

(1) Detailing an accounting of the monies that have been spent; and

(2) Showing:

(i) The results of any studies and a description of any activities conducted using such funds; and

(ii) Whether the purpose for which the funds were awarded has been achieved; if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved; and if applicable, why further expenditures are warranted.

(g) Disbursement of funds from the local agency account.

(1) All disbursements from the local agency account to any local agency or potential community intervenor shall be made by NYSERDA, at the direction of the Office, on vouchers approved by the Office.

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- (2) The Office shall reserve at least seventy-five (75) percent of the local agency account funds for each project for potential awards to local agencies.
 - (3) All vouchers shall be submitted for payment no later than six (6) months after withdrawal of a permit application or the Office's final determination on the application.
 - (4) Any funds that have not been disbursed after the expiration of time for final voucher submittals pursuant to paragraph (3) of this subdivision shall be returned to the applicant.
- (h) Each request for funds from the local agency account shall be completed on an ORES-approved form and contain:
- (1) A statement that the facility falls within the local agency's jurisdiction or that a permit or approval from the local agency would have been required in the absence of Section 94-c of the Executive Law;
 - (2) For individual potential community intervenors, a statement of the number of persons and the nature of the interests the requesting person represents, and proof of residency (e.g., a New York State driver's license, permit or non-driver identification card, a recent bank statement, a recent pay stub or a recent utility bill);
 - (3) for any non-profit organization potential community intervenors, a statement of a concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to its mission;
 - (4) A statement of the availability of funds from the resources of the local agency or potential community intervenor and of the efforts that have been made to obtain such funds;
 - (5) The amount of funds being sought;
 - (6) To the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;
 - (7) If known, the name of any other local agency, potential community intervenor or entity who may, or is intending to, employ such expert;
 - (8) A detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility;
 - (9) If a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;
 - (10) A copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person; and
 - (11) A completed authorization form for electronic Automated Clearing House payment, or payment instructions for payments by check.

Subpart 900-6 Uniform Standards and Conditions

§900-6.1 Facility Authorization

(a) *Compliance.* The permittee shall implement any impact avoidance, minimization and/or mitigation measures identified in the exhibits, compliance filings and/or contained in a specific plan required under this Part 900, as approved by the Office. If there is any discrepancy between an exhibit or compliance filing and a permit condition, the permittee shall comply with the permit condition and notify the Office immediately for resolution.

(b) *Property Rights.* Issuance of a siting permit does not convey any rights or interests in public or private property. The permittee shall be responsible for obtaining all real property, rights-of-way (ROW), access rights and other interests or licenses in real property required for the construction and operation of the facility.

(c) *Eminent Domain.* Issuance of a siting permit to a permittee that is an entity in the nature of a merchant generator and not in the nature of a fully regulated public utility company with an obligation to serve customers does not constitute a finding of public need for any particular parcel of land such that a condemner 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.

(d) *Other Permits and Approvals.* Prior to the permittee's commencement of construction, the permittee shall be responsible for obtaining all necessary federal and federally-delegated permits and any other approvals that may be required for the facility and which the Office is not empowered to provide or has expressly authorized. In addition, the Office expressly authorizes:

(1) The PSC to require approvals, consents, permits, other conditions for the construction or operation of the facility under PSL Sections 68, 69, 70, and Article VII, as applicable, with the understanding that the PSC will not duplicate any issue already addressed by the Office and will instead only act on its police power functions related to the entity as described in the body of this siting permit;

(2) The NYSDOT to administer permits associated with oversize/overweight vehicles and deliveries, highway work permits, and associated use and occupancy approvals as needed to construct and operate the facility; and

(3) The pertinent agency to implement the New York State Uniform Fire Prevention and Building Code.

(e) *Water Quality Certification.* Prior to commencing construction, the permittee shall request and obtain from the Office a water quality certification pursuant to Section 401 of the Clean Water Act, if required.

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(f) *Host Community Benefits.* The permittee shall provide host community benefits, such as Payments in Lieu of Taxes (PILOTs), other payments pursuant to a host community agreement or other project(s) agreed to by the host community.

(g) *Notice to Proceed with Construction.* The permittee and its contractors shall not commence construction until a “Notice to Proceed with Construction” has been issued by the Office. Such Notice will be issued promptly after all applicable pre-construction compliance filings have been filed by the permittee and approved by the Office. The Notice will not be unreasonably withheld. The Office may issue a conditional “Notice to Proceed with Site Preparation” for the removal of trees, stumps, shrubs and vegetation from the facility site as indicated on Office-approved site clearing plans to clear the facility site for construction, as well as setting up and staging of the laydown yard(s), including bringing in equipment, prior to the submission of all pre-construction compliance filings.

(h) *Expiration.* The siting permit will automatically expire if the facility does not achieve commencement of commercial operation within seven (7) years from the date of issuance.

(i) *Partial Cancellation.* If the permittee decides not to commence construction of any portion of the facility, it shall so notify the Office promptly after making such decision. Such decisions shall not require a modification to the siting permit unless the Office determines that such change constitutes a major modification to the siting permit pursuant to section 900-11.1 of this Part.

(j) *Deadline Extensions.* The Office may extend any deadlines established by the siting permit for good cause shown. Any request for an extension shall be in writing, include a justification for the extension, and be filed at least fourteen (14) business days prior to the applicable deadline.

(k) *Office Authority.* The permittee shall regard NYSDPS staff, authorized pursuant to PSL Section 66(8), as the Office’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 siting permit, compliance filings or any other supplemental filings, such NYSDPS staff may issue a stop work order for that location or activity pursuant to section 900-12.1 of this Part.

§900-6.2 Notifications

(a) *Pre-Construction Notice Methods.* At least fourteen (14) business days prior to the permittee’s commencement of construction date, the permittee shall notify the public as follows:

- (1) Provide notice by mail to all persons residing within one (1) mile of a solar facility or within five (5) miles of a wind facility;
- (2) Provide notice to local Town and County officials and emergency personnel;
- (3) Publish notice by mail in the local newspapers of record for dissemination, including at least one free publication, if available (e.g., Pennysaver);

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(4) Provide notice for display in public places, which shall include, but not be limited to, the Town Halls of the host municipalities, at least one (1) library in each host municipality, at least one (1) post office in each host municipality, the facility website, and the facility construction trailers/offices; and

(5) File notice with the Office for posting on the Office website.

(b) *Proof of Notice to Office.* At least fourteen (14) business days prior to commencement of construction, the permittee shall file with the Office an affirmation that it has provided the notifications required by subdivision (a) of this section and include a copy of the notice(s), as well as a distribution list.

(c) *Post-Construction Notice.* Prior to the completion of construction, the permittee shall notify the entities identified in paragraphs (a)(1)-(5) of this section with the contact name, telephone number, email and mailing address of the facility operations manager, as well as all information required in subdivision (d)(1)-(2) and (4)-(7) of this section.

(d) *Contents of Notice.* The permittee shall write the notice(s) required in subdivisions (a) and (c) of this section in plain language reasonably understandable to the average person and shall ensure that the notice(s) contain(s):

(1) A map of the facility;

(2) A brief description of the facility;

(3) The construction schedule and transportation routes;

(4) The name, mailing address, local or toll-free telephone number, and email address of the appropriate facility contact for development, construction and operations;

(5) The procedure and contact information for registering a complaint;

(6) Contact information for the Office and the NYSDPS; and

(7) A list of public locations where information on the facility, construction, and the permittee will be posted.

(e) *Notice of Completion of Construction and Restoration.* Within fourteen (14) days of the completion of final post-construction restoration, the permittee shall notify the NYSDPS, with a copy to the Office, that all such restoration has been completed in compliance with the siting permit and applicable compliance filings and provide an anticipated date of commencement of commercial operation of the facility.

§900-6.3 General Requirements

(a) *Local Laws.* The permittee shall construct and operate the facility in accordance with the substantive provisions of the applicable local laws as identified in section 900-2.25 of this Part, except for those provisions of local laws that the Office determined to be unreasonably burdensome, as stated in the siting permit.

(b) *Federal Requirements.* The permittee shall construct and operate the facility in a manner that conforms to all applicable federal and federally-delegated permits identified in section 900-2.26 of this Part. If relevant facility plans require modifications due to conditions of federal permits, the final design drawings and all applicable compliance filings shall be revised accordingly and submitted for review and approval pursuant to section 900-11.1 of this Part.

(c) *Traffic Coordination.* The permittee shall coordinate with State, county, and local highway agencies to respond to and apply applicable traffic control measures to any locations that may experience any traffic flow or capacity issues.

§900-6.4 Facility Construction and Maintenance

(a) *Construction Hours.* Construction and routine maintenance activities on the facility shall be limited to 7 a.m. to 8 p.m. Monday through Saturday and 8 a.m. to 8 p.m. on Sunday and national holidays, with the exception of construction and delivery activities, which may occur during extended hours beyond this schedule on an as-needed basis.

(1) Construction work hour limits apply to facility construction, maintenance, and to construction-related activities, including maintenance and repairs of construction equipment at outdoor locations, large vehicles idling for extended periods at roadside locations, and related disturbances. This condition shall not apply to vehicles used for transporting construction or maintenance workers, small equipment, and tools used at the facility site for construction or maintenance activities.

(2) If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the permittee shall notify the NYSDPS, the Office, affected landowners and the municipalities. Such notice shall be given at least twenty-four (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 twenty-four (24) hours in advance. In such cases, as much advance notice as is practical shall be provided.

(b) *Environmental and Agricultural Monitoring.*

(1) The permittee shall hire an independent, third-party environmental monitor to oversee compliance with environmental commitments and siting permit requirements. The

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environmental monitor shall perform regular site inspections of construction work sites and, in consultation with the NYSDPS, issue regular reporting and compliance audits.

(2) The environmental monitor shall have stop work authority over all aspects of the facility. Any stop work orders shall be limited to affected areas of the facility. Copies of the reporting and compliance audits shall be provided to the host town(s) upon request.

(3) The permittee shall identify and provide qualifications and contact information for the independent, third-party environmental monitor to the NYSDPS, with a copy to the Office.

(4) If the environmental monitor is not qualified, the permittee shall also retain an independent, third-party agriculture-specific environmental monitor as required in section 900-6.4(s) of this Part.

(5) The permittee shall ensure that its environmental monitor and agricultural monitor are equipped with sufficient access to documentation, transportation, and communication equipment to effectively monitor the permittee's contractor's compliance with the provisions of the siting permit with respect to such permittee's facility components and to applicable sections of the Public Service Law, Executive Law, Environmental Conservation Law, and Clean Water Act Section 401 Water Quality Certification.

(c) *Pre-Construction Meeting.* At least fourteen (14) days before the commencement of construction, the permittee shall hold a pre-construction meeting with staff of the Office, NYSDPS, NYSDEC, NYSAGM, NYSDOT, municipal supervisors/mayors and highway departments, and county highway departments. The balance of plant (BOP) construction contractor, the agricultural monitor and environmental monitor shall be required to attend the pre-construction meeting.

(1) An agenda, the location, and an attendee list shall be agreed upon between staff of the Office and the NYSDPS and the permittee and distributed to the attendee list at least one (1) week prior to the meeting;

(2) Maps showing designated travel routes, construction worker parking and access road locations and a general facility schedule shall be distributed to the attendee list at least one (1) week prior to the meeting;

(3) The permittee shall supply draft minutes from this meeting to the attendee list for corrections or comments, and thereafter the permittee shall issue the finalized meeting minutes; and

(4) If, for any reason, the BOP contractor cannot finish the construction of the facility, and one (1) or more new BOP contractors are needed, there shall be another pre-construction meeting with the same format as outlined in this section.

(d) *Construction Reporting and Inspections.* During facility construction, the permittee shall report construction status and support inspections as follows:

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(1) Every two (2) weeks, the permittee shall provide NYSDPS and Office staff, and the host municipalities with a report summarizing the status of construction activities, and the schedule and locations of construction activities for the next two (2) weeks.

(2) Prior to entry onto the facility site for on-site inspections, the permittee shall conduct a tailgate meeting to communicate required safety procedures and worksite hazards to site inspectors.

(3) The permittee shall accommodate reviews of any of the following during a monthly inspection and at other times as may be determined by NYSDPS staff:

(i) The status of compliance with siting permit conditions;

(ii) Field reviews of the facility site;

(iii) Actual or planned resolutions of complaints;

(iv) Significant comments, concerns, or suggestions made by the public, municipalities, or other agencies and indicate how the permittee has responded to the public, local governments, or other agencies; and

(v) The status of the facility in relation to the overall schedule established prior to the commencement of construction; and

(vi) Other items the permittee, NYSDPS staff, or Office staff consider appropriate.

(4) After every monthly inspection, the permittee shall provide the municipalities and agencies involved in the inspection with a written record of the results of the inspection, including resolution of issues and additional measures to be taken.

(e) *Flagging.* At least two (2) weeks before tree clearing or ground disturbing activities, the permittee shall stake or flag the planned limits of disturbance (LOD), the boundaries of any delineated NYS-regulated wetlands, waterbodies or streams in the LOD (as identified in the delineations prepared pursuant to sections 900-1.3(e) and (f) of this Part), and any known archeological sites identified in the approved Cultural Resources Avoidance, Minimization and Mitigation Plan required in section 900-10.2(g) of this Part, all on or off ROW access roads, limits of clearing and other areas needed for construction, including, but not limited to, turbine or solar array work areas, proposed infiltration areas for post-construction stormwater management, and laydown and storage areas. In addition, archeological sites shall be surrounded with construction fencing and a sign stating restricted access.

(f) *Dig Safely NY.* Prior to the commencement of construction, the permittee shall become a member of Dig Safely New York. The permittee shall require all contractors, excavators, and operators associated

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with its facilities to comply with the requirements of the PSC's regulations regarding the protection of underground facilities at 16 NYCRR Part 753.

(g) *Natural Gas Pipeline Cathodic Protection.* The permittee shall contact all pipeline operators within the facility site and land owners, if necessary, on which facility components are to be located or whose property lines are within the zone of safe siting clearance, if any, and shall reach an agreement with each operator to provide that the facility's collection and interconnection systems 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 and interconnection systems, specifically addressing 16 NYCRR Section 255.467 (External corrosion control; electrical isolation).

(h) *Pole Numbering.* The permittee shall comply with all requirements of the PSC's regulations regarding identification and numbering of above ground utility poles at 16 NYCRR Part 217.

(i) *Fencing.* All mechanical equipment, including any structure for storage of batteries, shall be enclosed by fencing of a minimum height of seven (7) feet with a self-locking gate to prevent unauthorized access.

(j) *Air Emissions.* To minimize air emissions during construction, the permittee shall:

- (1) Prohibit contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used;
- (2) Implement dust control procedures to minimize the amount of dust generated by construction activities in a manner consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Control (see section 900-15.1(i)(1)(i) of this Part);
- (3) Use construction equipment powered by electric motors where feasible, or by ultra-low sulfur diesel; and
- (4) Dispose or reuse cleared vegetation in such a way that that minimizes greenhouse gas emissions (e.g., lumber production or composting).

(k) *Construction Noise.* To minimize noise impacts during construction, the permittee shall:

- (1) Maintain functioning mufflers on all transportation and construction machinery;
- (2) Respond to noise and vibration complaints according to the complaint resolution protocol approved by the Office; and
- (3) Comply with all substantive provisions of all local laws regulating construction noise unless they are waived.

(l) *Visual Mitigation.*

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(1) *Wind Facilities.* The permittee shall implement the approved Visual Impacts Minimization and Mitigation Plan required in section 900-2.9 of this Part, including the following:

- (i) Adoption of visual design features requirements;
- (ii) Visual contrast minimization and mitigation measures;
- (iii) Operational effects minimization measures, including shadow flicker minimization mitigation and other measures necessary to achieve a maximum of thirty (30) hours annually at any non-participating residential receptor, subject to verification using shadow prediction and operational controls at appropriate wind turbines;
- (iv) Lighting Plan; and
- (v) Screen Planting Plans.

(2) *Solar Facilities.* The permittee shall implement the approved Visual Impacts Minimization and Mitigation Plan as required in section 900-2.9 of this Part, including the following:

- (i) Visual contrast minimization and mitigation measures;
- (ii) Lighting Plan;
- (iii) Solar glare mitigation requirements; and
- (iv) Screen Planting Plans.

(3) *Screen Planting Plans.* The permittee shall retain a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two (2) years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The permittee shall remove and replace plantings that fail in materials, workmanship or growth within two (2) years following the completion of installing the plantings.

(m) *General Environmental Requirements.*

(1) *Limits of Disturbance (LOD).* Construction shall not directly disturb areas outside the construction limits shown on the design drawings.

(2) *Blasting.* 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 (see section 900-15.1(k)(1)(i) of this Part) 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(see section 900-15.1(k)(1)(ii) of this Part) to protect structures from damage.

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(3) *Karst*. Blasting 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 licensed to practice in the State of New York.

(4) *E&S Materials*. Permanent erosion control fabric or netting used to stabilize soils prior to establishment of vegetative cover or other permanent measures shall be one hundred (100) percent biodegradable natural product, excluding silt fence. Use of hay for erosion control or other construction-related purposes is prohibited to minimize the risk of introduction of invasive plant species.

(5) *Spill Kits*. All construction vehicles and equipment shall be equipped with a spill kit. All equipment shall be inspected daily for leaks of petroleum, other fluids, or contaminants; equipment may only enter a stream channel if found to be free of any leakage. Any leaks shall be stopped and cleaned up immediately. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the NYSDEC's Spill Hotline within two (2) hours, in accordance with the NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance (see section 900-15.1(i)(1)(iii) of this Part). The Office and the NYSDPS shall also be notified of all reported spills in a timely manner.

(6) *Construction Debris*. Any debris or excess construction materials shall be removed to a facility duly authorized to receive such material. No burying of construction debris or excess construction materials is allowed.

(7) *Clearing Areas*. Tree and vegetation clearing shall be limited to the minimum necessary for facility construction and operation, and as detailed on final construction plans.

(8) *Clearing Methods*. When conducting clearing, the permittee shall:

(i) Comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and ECL Section 9-1303 and any quarantine orders issued thereunder;

(ii) Not create a maximum wood chip depth greater than three (3) inches, except for chip roads (if applicable), nor store or dispose wood chips in wetlands, within stream banks, delineated floodways, or active agricultural fields;

(iii) Not dispose of vegetation or slash by burning anywhere or burying within a wetland or adjacent area; and

(iv) Coordinate with landowners to salvage merchantable logs and fuel wood. Where merchantable logs and fuel wood will not be removed from the facility site during clearing activities, final construction plans shall indicate locations of stockpiles to be established for removal from site or future landowner resource recovery.

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(9) *Invasive Insects.* To control the spread of invasive insects, the permittee shall provide training for clearing and construction crews to identify the Asian Longhorn Beetle and the Emerald Ash Borer and other invasive insects of concern as a potential problem at the facility site. If these insects are found, they shall be reported to the NYSDEC as soon as practicable.

(n) *Water Supply Protection.*

(1) *For wind facilities:*

(i) No wind turbine shall be located within one hundred (100) feet of an existing, active water supply well or water supply intake.

(ii) Blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property.

(iii) The permittee 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 construction and after completion of construction to ensure the wells are not impacted, provided the permittee is granted access by the property owner:

(a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;

(b) Blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property; and

(c) Horizontal Directional Drilling (HDD) operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing, as required by subparagraph (iii) of this paragraph, conclude that the water supplied by an existing, active water supply well met federal (see section 900-15.1(j)(1)(i) of this Part) and state standards for potable water (see 10 NYCRR Part 75, Appendix 75-c) prior to construction, but failed to meet such standards after construction as a result of facility activities, the permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least five hundred (500) feet from wind turbines, as practicable given siting constraints and landowner preferences. The results of such tests and reports shall be made available to the relevant municipalities upon request.

(2) *For solar facilities:*

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(i) Pier and post driving activities, except for fence and utility poles, shall be prohibited within one hundred (100) feet of any existing, active drinking water supply well; use of earth screws is permitted.

(ii) If required, blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property.

(iii) The permittee 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 the permittee is granted access by the property owner:

(a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;

(b) Blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property;

(c) Pier or post installations within two hundred (200) feet of an existing, active water supply well on a non-participating property; and

(d) HDD operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing conclude that the water supplied by an existing, active water supply well met federal (see section 900-15.1(j)(1)(i) of this Part) and state standards for potable water (see 10 NYCRR Part 75, Appendix 75-c) prior to construction, but failed to meet such standards post construction as a result of facility activities, the permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least two hundred (200) feet from all other facility components. The results of such tests and reports shall be made available to the relevant municipalities upon request.

(o) Threatened and Endangered Species.

(1) For facilities that would impact NYS threatened or endangered species other than NYS threatened or endangered grassland birds or their habitat, the permittee shall implement an approved Net Conservation Benefit Plan (NCBP) that shall include the following:

(i) A demonstration that the NCBP results in a positive benefit on each of the affected species;

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- (ii) Detailed explanation of the net conservation benefit to the species based on the actual location and type of minimization measures to be taken for each of the affected species;
 - (iii) Full source information supporting a determination as to the net conservation benefit for each of the affected species;
 - (iv) A consideration of potential minimization and mitigation measures for each of the affected species;
 - (v) A consideration of potential sites for mitigation measures for each of the affected species;
 - (vi) The identification and detailed description of the mitigation actions that will be undertaken by the permittee to achieve a net conservation benefit to the affected species, including, if applicable, payment of a required mitigation fee into the Endangered and Threatened Species Mitigation Fund established pursuant to section 99(hh) of the New York State Finance Law; and
 - (vii) To the extent that physical mitigation will be performed, a letter or other indication of the permittee's financial and technical capability and commitment to fund and execute such management, maintenance and monitoring for the life of the facility/term of the siting permit.
- (2) For facilities determined pursuant to the procedures set forth in §900-2.13(e)(2) to have de minimis impacts to NYS threatened or endangered grassland birds:
- (i) If an active nest is identified within the facility site prior to or during construction, and the facility results in adverse impacts to the nest or grasslands twenty-five (25) acres or more in size that were previously (during pre-application) or newly (prior to or during construction) determined to be occupied habitat, then the permittee shall coordinate with the NYSDPS and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed or the permittee shall pay into the Endangered and Threatened Species Mitigation Bank Fund the required mitigation fee commensurate with the actual acreage taken.
- (3) For facilities that will have more than a de minimis impact on NYS threatened or endangered grassland birds, the permittee shall implement the following as part of the NCBP:
- (i) The permittee shall implement environmental monitoring immediately prior to and during construction in the occupied habitat to search for NYS threatened or endangered species occurrence based on the species' seasonal windows for presence.
 - (ii) If active nests of the NYS threatened or endangered species are found within the occupied habitat, then the permittee shall coordinate with the NYSDPS and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed.

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(iii) To avoid direct impacts to NYS threatened or endangered grassland bird species, the following work windows apply for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat:

(a) In NYS threatened or endangered grassland bird occupied breeding habitat, work shall be conducted only between August 16 and April 22;

(b) In NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted only between April 1 and November 14;

(c) In areas of the facility where both breeding and wintering occupied habitat occurs, work shall be conducted only between August 16 and November 14, and between April 1 and 22.

(iv) If fields within identified occupied breeding habitat are planted with row crops (e.g., corn, beans, or vegetables) in the farming season prior to the commencement of facility construction and such fields were historically used for row crops during at least one of the prior five (5) years, these fields will not be subject to the construction timing restrictions set forth in subparagraphs (iii)(a) and (c) of this paragraph.

(v) If the permittee has identified construction activities that must occur between November 15 and March 31 in identified NYS threatened or endangered grassland bird occupied wintering habitat, or between April 23 and August 15 in identified NYS threatened or endangered grassland bird occupied breeding habitat outside of row crop areas described above, the occupied habitat area(s) proposed for active construction shall be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered grassland bird species. The surveys shall occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the Office. If no NYS threatened or endangered grassland bird species are detected during the survey, the area shall be considered clear for seven (7) days, when another survey shall be performed. If NYS threatened or endangered grassland bird species are detected, the permittee shall comply with subdivision (o)(7) of this section.

(vi) All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of facility construction, restoration, or maintenance activities shall be restored utilizing a native herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the landowner. These temporarily disturbed or modified areas include all areas within the facility site that do not have impervious cover,

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such as temporary roads, material and equipment staging and storage areas, and electric line rights of way.

(vii) The permittee shall implement the avoidance and minimization measures identified in section 900-2.13 of this Part and the other conditions herein to minimize potential take of the species.

(viii) To the extent that the Office has determined that the facility would result in impacts to grassland bird occupied habitat requiring mitigation, the permittee shall pay the required mitigation fee commensurate with the actual acreage of occupied habitat taken into the Endangered and Threatened Species Mitigation Bank Fund with the sole purpose to conserve habitat of similar or higher quality or otherwise achieve a net conservation benefit to the impacted species.

(ix) If the permittee proposes a NCBP involving permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee pursuant to subparagraph (viii) of this paragraph, the required mitigation ratio shall be 0.4 acres of mitigation for every acre of occupied grassland bird breeding habitat determined to be taken and 0.2 acres of mitigation for every acre of occupied grassland bird wintering habitat determined to be taken. These mitigation requirements are based upon multiplying impacts by the ratios described above and dividing impacts by five lifecycles of habitat succession (e.g., a 30-year mitigation project term and 5-year timeframe in which unmanaged grassland would naturally succeed into scrub/shrub habitat, minus one lifecycle to provide a net conservation benefit).

(4) For facilities that will impact NYS threatened or endangered bat species, the permittee shall implement the following as part of the NCBP:

(i) No facility component shall be sited or located within one hundred fifty (150) feet of any known northern long-eared bat maternity roost, within five hundred (500) feet of any known Indiana bat maternity roost, or one quarter (0.25) mile of any known northern long-eared bat or Indiana bat hibernaculum.

(ii) If at any time during the life of the facility, an active NYS threatened or endangered bat species maternity colony roost tree (or structure) is discovered within the facility site, the NYSDPS and the Office shall be notified within twenty-four (24) hours of discovery (during construction) and forty-eight (48) hours of discovery (during operation), and the colony site shall be marked. A five hundred (500)-foot radius around the colony shall be posted and avoided until notice to continue construction, ground clearing, grading, non-emergency maintenance or restoration activities, as applicable, at that site is granted by the NYSDPS or the Office. A re-evaluation of the potential impacts of the Project on listed bat species shall be provided to the NYSDPS and Office.

(iii) Tree Clearing Limitations for Northern Long-eared Bats

(a) No tree clearing activities shall occur at any time within one hundred fifty (150) feet of any known maternity roost or one quarter (0.25) mile of any known hibernaculum.

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(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within one and a half (1.5) miles of a maternity roost site or five (5) miles of a hibernaculum site, but not subject to clause (a) of this subparagraph, shall be conducted during the hibernation season (between November 1 and March 31) without further restrictions unless otherwise approved by the Office. This limitation does not include trees less than or equal to four (4) inches in diameter at breast height (DBH).

(c) From April 1 to October 31, the following restrictions shall be implemented for all tree clearing activities in the facility site, unless otherwise agreed by the Office:

(1) The permittee shall leave uncut all snag and cavity trees, as defined under the NYSDEC Program Policy ONRDLF-2 Retention on State Forests, unless their removal is necessary for protection of human life and property. This restriction pertains to trees that are greater than or equal to four (4) inches DBH. When necessary, snag or cavity trees may be removed after being cleared by an environmental monitor who shall conduct a survey for bats exiting the tree. This survey shall begin thirty (30) minutes before sunset and continue until at least one (1) hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing area shall be removed within forty-eight (48) hours of observation.

(2) If any bats are observed flying from a tree, or from a tree that has been cut, tree clearing activities within distances required in clause (a) of this subparagraph, depending on the potential species present, shall be suspended and the NYSDPS and the Office shall be notified as soon as possible. The permittee shall have an environmental monitor present on site during all tree clearing activities. If any bat activity is noted, a stop work order will immediately be issued and shall remain in place until such time as the NYSDPS and the Office have been consulted and authorize resumption of work.

(iv) Tree Clearing Limitations for Indiana Bats.

(a) No tree clearing activities shall occur at any time within five hundred (500) feet of any known maternity roost or one quarter (0.25) mile of any known hibernaculum.

(b) All tree clearing activities (except for hazard tree removal to protect human life or property) occurring within two and a half (2.5) miles of a maternity roost site or hibernaculum site, but not subject to clause (a) of this subparagraph, shall

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be conducted during the hibernation season (between November 1 and March 31), without further restrictions unless otherwise approved by the Office. This limitation does not include trees less than or equal to four (4) inches in DBH or locations above three hundred (300) meters in elevation.

(c) From April 1 to October 31, tree clearing within two and a half (2.5) miles of a maternity roost site or hibernaculum site is limited to trees less than or equal to four (4) inches in DBH or locations above three hundred (300) meters in elevation.

(d) Tree clearing may not reduce forest habitat below thirty-five (35) percent of the landcover within two and a half (2.5) miles of the maternity roost site or hibernaculum site.

(v) To minimize impacts to bats from wind facilities, the permittee shall comply with the following requirements:

(a) Curtailment is required for all wind facilities from July 1 – October 1 when wind speeds are at or below five and a half (5.5) m/s and temperatures are at or above ten (10) degrees Celsius (fifty (50) degrees Fahrenheit) from thirty (30) minutes before sunset to thirty (30) minutes after sunrise. Curtailment shall be on an individual turbine basis and shall be determined by weather conditions as measured by each individual weather station on the turbine nacelle.

(b) The permittee shall submit a review of curtailment operations to the Office as part of the post-construction bat mortality monitoring requirements set forth in the NCBP or every five (5) years (or sooner if requested by the permittee). The review shall assess if changes in technology or knowledge of impacts to bats supports modification of the existing curtailment regime. Modifications to the existing curtailment regime that further decrease mortality may be proposed or negotiated. Any such modifications shall not be costlier than the existing curtailment regime, unless voluntarily supported by the permittee.

(5) For each applicable NCBP, the permittee shall pay the required mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund commensurate with the anticipated number of individuals taken with the sole purpose to achieve a net conservation benefit to the impacted species.

(6) To avoid and minimize impacts to bald eagles, the permittee shall implement the following:

(i) If, at any time during construction and operation of the facility, an active bald eagle nest or roost is identified within the facility site, the NYSDPS and the Office shall be notified within forty-eight (48) hours of discovery and prior to any disturbance of the nest or immediate area. An area one quarter (0.25) mile for nests without a visual buffer and six hundred sixty (660) feet in radius for nests with a visual buffer from the nest tree shall

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be posted and avoided to the maximum extent practicable until notice to continue construction at that site is granted by the NYSDPS and the Office.

(ii) Tree removal is not allowed:

(a) Within six hundred sixty (660) feet from an active nest during breeding season (January 1 – September 30);

(b) Within one quarter (0.25) mile from an important winter roost during the wintering period (December 1 – March 31); or

(c) Of overstory trees within three hundred thirty (330) feet of an active nest at any time.

(iii) Operational Impacts from Wind Facilities. If at any time during the operation of the facility a bald eagle is injured or killed due to collision with project components, the permittee shall pay the required mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund commensurate with number of eagles taken with the sole purpose to achieve a net conservation benefit to the impacted species.

(7) *Record All Observations of NYS Threatened or Endangered Species.* During construction and restoration of the facility and associated facilities, the permittee shall maintain a record of all observations of NYS threatened or endangered species as follows:

(i) *Construction.* During construction, the on-site environmental monitor shall be responsible for recording all occurrences of NYS threatened or endangered species within the facility site. All occurrences shall be reported in a biweekly monitoring report submitted to the NYSDPS, with a copy to the Office, and such reports shall include the information described in subparagraph (iii) of this paragraph. If a NYS threatened or endangered bird species is demonstrating breeding behavior, it shall be reported to the NYSDPS and the Office within forty-eight (48) hours.

(ii) *Restoration.* After construction is complete, incidental observations of any NYS threatened or endangered species shall be documented and reported to the NYSDPS, with a copy to the Office, in accordance with the reporting requirements in subparagraph (iii) of this paragraph.

(iii) *Reporting Requirements.* All reports of NYS threatened or endangered species shall include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); Global Positioning System (GPS) coordinates of each individual observed (if operation and maintenance staff do not have GPS available, the report shall include the nearest turbine number or solar panel array and cross roads location); behavior(s) observed; identification and contact information of

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the observer(s); and the nature of and distance to any facility construction, maintenance or restoration activity.

(8) Discovery of Nests or Dead or Injured NYS Threatened or Endangered Bird Species

(i) Excluding Bald Eagles, if an active nest of a federal or NYS threatened or endangered bird species is discovered (by the permittee's environmental monitor or other designated agents) within the facility site, the following actions shall be taken:

(a) The NYSDPS and the Office shall be notified within forty-eight (48) 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;

(b) An area at least five hundred (500) feet in radius around the active nest shall be posted and avoided until notice to continue construction, ground clearing, grading, maintenance or restoration activities are granted by the Office; and

(c) The active nest(s) or nest tree(s) shall not be approached under any circumstances unless authorized by the Office.

(ii) If any dead or injured federal or NYS threatened or endangered bird species, or eggs or nests thereof, are discovered by the permittee's on-site environmental monitor or other designated agent at any time during the life of the facility, the permittee shall immediately (within 24 hours) contact the NYSDEC and the United States Fish and Wildlife Service (USFWS) for federally-listed species, to arrange for recovery and transfer of the specimen(s). The NYSDPS and the Office shall also be notified. 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 or nest;

(d) Condition of the carcass, or state of the nest or live animal;

(e) GPS coordinates of the location(s) of discovery;

(f) Name(s) and contact information of the person(s) involved with the incident(s) and find(s);

(g) Weather conditions at the facility site for the previous forty-eight (48) hours;

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(h) Photographs, including scale and of sufficient quality to allow for later identification of the animal or nest; and

(i) An explanation of how the mortality/injury/damage occurred, if known.

Electronic copies of each record, including photographs, shall be kept with the container holding the specimen(s) and given to the NYSDEC or the USFWS at the time of transfer. If the discovery is followed by a non-business day, the permittee shall ensure all the information listed above is properly documented and stored with the specimen(s). Unless otherwise directed by the NYSDEC or the USFWS, after all information has been collected in the field, the fatality specimen(s) shall 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.

(9) The provisions of subdivision (o) of this section shall remain in effect for as long as the relevant species is listed as endangered or threatened in New York State.

(p) *Wetlands, Waterbodies, and Streams.* The permittee shall implement the following procedures for construction within wetlands and adjacent areas subject to ECL Article 24, and waterbodies and streams regulated pursuant to ECL Article 15 (as identified in the delineations approved by the Office pursuant to sections 900-1.3(e) and (f) of this Part):

(1) *Environmentally Sensitive Area (ESA) Flagging.* Prior to performing construction in an ESA, defined herein as any NYS-regulated wetlands, waterbodies or streams and associated adjacent areas identified in the delineations approved by the Office pursuant to sections 900-1.3(e) and (f) of this Part, the permittee shall mark the boundaries of the ESA with colored flagging, “protected area” signs, or erosion and sediment control measures specified by the SWPPP. As necessary to prevent access by motorized vehicles into ESAs where no construction is planned, the permittee shall install additional markers or signs stating, “No Equipment Access.”

(2) *Equipment Maintenance and Refueling.* Equipment storage, refueling, maintenance, and repair shall be conducted and safely contained more than one hundred (100) feet from all wetlands, waterbodies, and streams and stored at the end of each workday unless moving the equipment will cause additional environmental impact. Dewatering pumps operating within one hundred (100) feet of wetlands, waterbodies, or streams may be refueled in place and shall be within a secondary containment large enough to hold the pump and accommodate refueling. All mobile equipment, excluding dewatering pumps, shall be fueled in a location at least one hundred (100) feet from wetlands, waterbodies and streams unless moving the equipment will cause additional environmental impact.

(3) *Fuel Storage.* Fuel or other chemical storage containers shall be appropriately contained and located at least three hundred (300) feet from wetlands, waterbodies, and streams.

(4) *Clean Fill.* All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, demolition debris, broken concrete, garbage, household refuse,

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tires, woody materials, and metal objects. Reasonable efforts shall be made to use fill materials that are visually free of invasive species based on onsite and source inspections. The introduction of materials toxic to aquatic life is expressly prohibited.

(5) *Turbid Water*. Turbid water resulting from dewatering operations shall not be allowed to enter any wetland, waterbody, or stream. Water resulting from dewatering operations shall be discharged directly to settling basins, filter bags, or other approved device. All necessary measures shall be implemented to prevent any substantial visible contrast due to turbidity or sedimentation downstream of the work site.

(6) *Truck Washing*. Washing of trucks and equipment shall occur one hundred (100) feet or more from an ESA, and waste concrete and water from such activities shall be controlled to avoid it flowing into a wetland or adjacent area, waterbody or stream. If runoff from such activities flows into any wetlands and adjacent areas subject to ECL Article 24, or waterbodies and streams regulated pursuant to ECL Article 15, the NYSDEC Regional Supervisor of Natural Resources shall be contacted within two (2) hours.

(7) *Concrete Washouts*. Concrete washouts and batch plants, or concrete from truck cleanout activity, any wash water from trucks, equipment, or tools, if done on site, shall be located and installed to minimize impacts to water resources. Locations should be at least one hundred (100) feet from any wetland, waterbody or stream, and located outside wetland adjacent areas to the maximum extent practicable. Disposal of waste concrete or wash water shall be at least one hundred (100) feet from any wetland, waterbody or stream.

(8) *Use of Horizontal Direction Drilling*. Installation of underground collection lines across wetlands, waterbodies and streams shall be performed via HDD to the maximum extent practicable.

(9) *Trenching*. Open cut trenching in wetlands, waterbodies and streams shall be conducted in one continuous operation and shall not exceed the length that can be completed in one (1) day.

(10) *Inadvertent Return Flows*. HDD under wetlands, waterbodies and streams shall be performed in accordance with the inadvertent return flow plan required pursuant to section 900-10.2(f)(5) of this Part.

(11) *Discharge Notice and Response*. The permittee shall notify the NYSDEC, the Office and the NYSDPS within two (2) hours if there is a discharge to an area regulated under Articles 15 or 24 of the ECL resulting in a violation of New York Water Quality Standards at 6 NYCRR Section 703. The permittee shall immediately stop work until authorized to proceed by the Office.

(q) *Wetlands*. The permittee shall implement the following requirements for freshwater wetlands and adjacent areas subject to ECL Article 24:

(1) *Construction in Wetlands and Adjacent Areas*. All construction activities completed within wetlands and/or adjacent areas shall adhere to the following requirements:

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- (i) In breeding areas for NYS threatened or endangered amphibian species, construction should not occur during the peak amphibian breeding season (April 1 to June 15) unless additional measures are implemented to prevent impacts or exclude species from the workspace, such as silt fences.
- (ii) Work should be conducted during dry conditions without standing water or when the ground is frozen, where practicable.
- (iii) Excavation, installation, and backfilling in wetlands shall be performed in one continuous operation.
- (iv) Temporary construction matting shall be used as necessary to minimize disturbance to the wetland soil profile during all construction and maintenance activities. All temporary construction matting shall be removed as soon as practicable but no later than four months following installation from the wetland and cleaned of any invasive species (seed, plant materials, insects, etc.) after construction/maintenance activities are completed and removal shall be verified with the on-site environmental monitor after construction. Matting shall be removed by equipment stationed on a mat or areas outside the wetland or adjacent area.
- (v) In the event that construction results in an unanticipated alteration to the hydrology of a wetland (i.e., lowering), the breach shall be immediately sealed, and no further activity shall take place until the NYSDPS and the Office is notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved.
- (vi) 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.
- (vii) Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction.
- (viii) In wetland areas, the topsoil shall be removed and stored separate from subsoil. The top twelve (12) inches of wetland topsoil shall be removed first and temporarily placed onto a geo-textile blanket.
- (ix) Only the excavated wetland topsoil and subsoil shall be utilized as backfill, with the exception of clean bedding material for electrical collection lines and/or conduits, provided there is no change to the pre-construction contours upon restoration; and trench-breakers are used to prevent draining the wetland.
- (x) Subsoil dug from the trench shall be sidecast on the opposite side of the trench on another geo-textile blanket running parallel to the trench, if necessary.
- (xi) Trenches shall be backfilled with the wetland subsoil and the wetland topsoil shall be placed back on top. All excess materials shall be completely removed to upland areas more than one hundred (100) feet from the wetland and suitably stabilized.

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(xii) 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.

(xiii) All disturbed soils within wetlands and adjacent areas shall be seeded with an appropriate native wetland seed mix, shrubs, live stakes, or tree planting as site conditions and design allow, as appropriate for existing land uses. Straw mulch shall be maintained until the disturbed area is permanently stabilized. Hay shall not be used for mulching of wetlands or adjacent areas.

(xiv) In agricultural or farmed wetlands, crop covers consistent with existing agricultural uses shall be utilized in all areas of soil disturbance.

(xv) Installation of underground collection lines in wetlands shall be performed using the following methods:

(a) The permittee shall implement best management practices to minimize soil compaction;

(b) During excavation, all topsoil shall be stripped and segregated from subsoils. The permittee shall consolidate trenching areas to the maximum extent practicable to minimize impacts to agricultural soils;

(c) All reasonable efforts shall be made to backfill open trenches within the same workday if rain is predicted and as soon as practicable otherwise; and

(d) All excess materials shall be completely removed from wetlands to upland areas. Excess topsoil from agricultural areas shall be spread within the immediate agricultural areas within the approved LOD, or within other nearby areas that will still be used for agricultural production.

(2) *Wetland Restoration.*

(i) Wetland restoration shall be completed according to the approved Wetland Restoration and Mitigation Plan submitted pursuant to section 900-10.2(f)(2) of this Part.

(ii) The permittee shall restore disturbed areas, ruts, and rills within of NYSDEC-regulated wetlands and adjacent areas to original grades and conditions with permanent native re-vegetation and erosion controls appropriate for those locations.

(iii) Restoration of temporary impacts to NYS-regulated wetlands and adjacent areas (as delineated pursuant to section 900-1.3(e) of this Part) to pre-construction contours shall be completed within forty-eight (48) hours of final backfilling of the trench/excavated areas and restored to pre-construction contours as soon as practicable.

(iv) Immediately upon completion of grading, and as consistent with existing land use/land cover, the area shall be seeded with an appropriate native species mix for

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wetlands and upland areas adjacent to wetlands, except that adjacent areas may be reseeded differently at the request of the landowner.

(v) The permittee shall attain eighty (80) percent vegetative cover across all disturbed soil areas by the end of the first full growing season following construction. Overall vegetative cover in restored areas shall be monitored for a minimum of five (5) years. Post-construction monitoring shall continue until an eighty (80) percent survivorship of native woody species or eighty-five (85) percent absolute cover of native herbaceous species appropriate wetland indicator status has been reestablished over all portions of the replanted area, unless the invasive species baseline survey indicates a smaller percentage of survivorship or cover of appropriate native species exists prior to construction.

(3) *Cut Vegetation.* Cut vegetation in wetlands, with the exception of invasive species, may be left in place (i.e., drop and lop or piled in dry or seasonally saturated portions of wetlands and adjacent areas to create wildlife brush piles).

(4) *Access Roads Through Wetlands.* Installation of access roads through wetlands shall be performed using the following methods:

(i) Temporary access roads shall use timber/construction matting that is completely removed after construction/maintenance activities are completed and removal shall be verified with the NYSDPS by the on-site environmental monitor after construction, or by the facility operator after maintenance work is completed.

(ii) Permanent access roads shall use a layer of geotextile fabric and a minimum of six (6) inches of gravel shall be placed in the location of the wetland crossing after vegetation and topsoil is removed. Access roads shall be designed and constructed to adequately support the type and frequency of the anticipated vehicular traffic and include suitable culverting or other drainage infrastructure as needed to minimize the impact to wetland hydrology.

(5) *Solar Panel Support Installation.* Installation and construction techniques shall minimize the disturbance of the wetland soil profiles (e.g., the use of helical screws and driven H-pile with no backfilling for solar arrays sites in wetlands).

(6) *Tree Clearing.* Tree clearing shall be minimized to the extent practicable in wetlands and adjacent areas.

(7) *Fill Placement.* The placement of fill in wetlands shall be designed to maintain pre-construction surface water flows/conditions between remaining on- or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Construction activity and final design shall not restrict or impede the passage of normal or expected high flows.

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(8) *Concrete Use.* For activities involving the placement of concrete into regulated wetlands, watertight forms shall be used. The forms shall be dewatered prior to the placement of the concrete. The use of tremie-supplied concrete is allowed if it complies with NYS water quality standards.

(9) *Stormwater Setback.* Any new stormwater management infrastructure shall be located outside of the wetland and adjacent area to the extent practicable.

(10) *Mitigation.* The permittee shall implement the approved Wetland Restoration and Mitigation Plan submitted pursuant to section 900-10.2(f)(2) of this Part.

(r) *Work in NYS-protected waters.* The permittee shall implement the following:

(1) *Dry Conditions.* In-stream work shall only occur in dry conditions, using appropriate water handling measures to isolate work areas and direct stream flow around the work area. Any waters accumulated in isolated work areas shall be discharged to an upland settling basin, field, or wooded area to provide for settling and filtering of solids and sediment before water is return to the stream. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

(2) *In-Water Work Windows.* In-stream work shall be prohibited from September 15 through May 31 in cold water fisheries and March 15 through July 15 in warm water fisheries unless the permittee receives site-specific approval from the Office.

(3) *Stream Channels.* The restored stream channel shall be equal in width, depth, gradient, length and character to the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. The planform of any permanent stream shall not be changed, unless dictated by restoration or mitigation objectives. All disturbed stream banks shall be mulched within two (2) days of final grading, stabilized with one hundred (100) percent natural or biodegradable fiber matting, and seeded with an appropriate riparian seed mix.

(4) *Felled Trees in an ESA.* Trees shall not be felled into an ESA stream or its stream bank. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion.

(5) *Culvert Repairs.* If a culvert is blocked or crushed, or otherwise damaged by construction or maintenance activities, the permittee shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage, embedment and aquatic connectivity.

(6) *Access Road Crossings of Streams.* The creation, modification or improvement of any permanent road crossing of a NYS-protected waterbody shall meet the following requirements:

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- (i) New culvert pipes that the permittee is required to install shall be designed to safely pass the one (1) percent annual chance storm event;
- (ii) Culvert pipes shall be embedded beneath the existing grade of the stream channel;
- (iii) Width of the structure shall be a minimum of one and a quarter (1.25) times the width of the mean high-water channel, as practicable; and
- (iv) The culvert slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than three (3) percent, an open bottom culvert shall be used.

(7) *Overhead Lines Across NYSDEC-Protected Streams.* If construction of overhead power line crossings requires cutting of trees or shrubs within fifty (50) feet of a NYS-protected waterbody:

- (i) Cut materials shall be left on the ground; and
- (ii) Stumps and root systems shall not be damaged to facilitate stump sprouting.

(8) *Stream Flows.* During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site. If measures fail to divert all flow around the work area, in-stream work shall stop until dewatering measures are functioning properly.

(9) *No Aquatic Impediments.* In-stream work, including the installation of structures and bed material, but excluding dewatering associated with dry trench crossings, shall not result in an impediment to aquatic organisms. 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.

(10) *Drop Height.* Any in-stream structures placed in a stream shall not create a drop height greater than six (6) inches.

(11) *Restoration and Mitigation.* The permittee shall implement the approved Stream Restoration and Mitigation Plan submitted pursuant to section 900-10.2(f)(3) of this Part.

(s) *Agricultural Resources.*

(1) In all instances in which the applicant for a solar facility proposes to permanently or temporarily impact 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, the permittee shall:

- (i) Construct the facility consistent with the NYSAGM "Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands", dated 10/18/2019 (see section 900-15.1(l)(1)(i) of this Part), to the maximum extent practicable; and

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(ii) Hire an independent, third-party agricultural monitor to oversee compliance with agricultural conditions and requirements, including the approved Agricultural Plan required pursuant to section 900-2.16(c) of this Part, the approved Remediation Plan required pursuant to section 900-2.16(d) of this Part and any approved co-utilization plan prepared according to section 900-2.16(e). The Office, in consultation with the NYSAGM, shall verify and approve the qualifications required to fulfill the role of the agricultural monitor have been met. If the Office, in consultation with the NYSAGM, agrees that the independent third-party monitor is qualified on agricultural issues, one monitor can act as both the general environmental monitor as well as the agricultural-specific environmental monitor.

(2) In all instances in which the applicant for a wind facility proposes to permanently or temporarily impact 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, the permittee shall:

(i) Construct the facility consistent with the NYSAGM "Guidelines for Agricultural Mitigation for Wind Power Projects", revised 4/19/2018 (see section 900-15.1(l)(1)(ii) of this Part), to the maximum extent practicable; and

(ii) Hire an independent, third-party agricultural monitor to oversee compliance with agricultural conditions and requirements, including the approved Agricultural Plan required pursuant to section 900-2.16(c) of this Part and the approved Remediation Plan required pursuant to section 900-2.16(d) of this Part. The Office, in consultation with the NYSAGM, shall verify and approve the qualifications required to fulfill the role of the agricultural monitor have been met. If the Office, in consultation with the NYSAGM, agrees that the independent third-party monitor is qualified on agricultural issues, one monitor can act as both the general environmental monitor as well as the agricultural-specific environmental monitor.

(t) *Hazardous Materials*. The permittee shall comply with the NYSDEC-approved Site Management Plan for the facility site, or any portion thereof, if applicable.

(u) *Cultural Resources Avoidance, Minimization and Mitigation Plan*. The permittee shall implement the approved Cultural Resources Avoidance, Minimization and Mitigation Plan required in section 900-10.2(g) of this Part.

§900-6.5 Facility Operation

(a) *Noise Limits for Wind Facilities*

(1) Noise levels by all noise sources from the wind facility(ies) shall:

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(i) Comply with a maximum noise limit of forty-five (45) dBA Leq (8-hour) at the outside of any non-participating residence, and fifty-five (55) dBA Leq (8-hour) at the outside of any participating residence existing as of the issuance date of the siting permit;

(ii) Prominent tones are defined by using the constant level differences listed under ANSI/ASA S12.9-2005/Part 4 Annex C (sounds with tonal content) (see section 900-15.1(a)(1)(iii) of this Part) at the outside of any non-participating residence existing as of the issuance date of the siting permit. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated non-participating position shall be increased by five (5) dBA for evaluation of compliance with subparagraphs (i) and (v) of this paragraph;

(iii) Comply with a maximum noise limit of sixty-five (65) dB Leq (1-hour) at the full octave frequency bands of sixteen (16), thirty-one and a half (31.5), and sixty-three (63) Hertz outside of any non-participating residence existing as of the issuance date of the siting permit, in accordance with Annex D of ANSI/ASA standard S12.9-2005/Part 4 Section D.2.(1) (Analysis of sounds with strong low-frequency content) (see section 900-15.1(a)(1)(iii) of this Part);

(iv) Not produce human perceptible vibrations inside any non-participating residence existing as of the issuance date of the siting permit that exceed the limits for residential use recommended in ANSI/ASA Standard S2.71-1983 "Guide to the evaluation of human exposure to vibration in buildings" (see section 900-15.1(a)(1)(i) of this Part);

(v) Comply with a noise limit of forty (40) dBA Leq (1-hour) at the outside of any non-participating residence existing as of the issuance date of the siting permit from the collector substation equipment; and

(vi) Emergency situations are exempt from the limits specified in this subdivision.

(2) *Post-Construction Noise Compliance and Monitoring for Wind Facilities.* To evaluate compliance with noise-related conditions, the permittee shall comply with the following requirements:

(i) Compliance with subparagraphs (1)(i)-(v) of this section for the facility shall be evaluated by the permittee by implementing a sound testing compliance protocol that shall follow the provisions and procedures for post-construction noise performance evaluations approved by the Office and stated in the siting permit;

(ii) At least two sound compliance tests conforming to the sound testing compliance protocol shall be performed by the permittee after the commercial operation date of the facility: one during the "leaf-off" season and one during the "leaf-on" season;

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(iii) Within seven (7) months after the commercial operation date of the facility, the permittee shall perform and complete the first sound compliance test and the results shall be submitted by filing a report from an independent acoustical or noise consultant, no later than eight (8) months after the commercial operation date, specifying whether or not the facility is found in compliance with all siting permit conditions on noise during the “leaf on” or “leaf off” season as applicable; and

(iv) The second sound compliance test shall be performed, and results shall be submitted subject to the same provisions contained in subparagraph (iii) of this paragraph, but no later than thirteen (13) months after the commencement of commercial operation of the facility.

(3) *Noise Exceedances from Wind Facilities.* If the results of the first or second post-construction sound compliance test, or any subsequent test, or any compliance or violation test, indicate that the facility does not comply with siting permit conditions on noise and vibration, the permittee shall:

(i) Present minimization options to the NYSDPS, with a copy to the Office, within sixty (60) days after the filing of a non-compliance test result or the finding of a noncompliance or a violation of siting permit conditions on noise, as follows:

(a) Operational minimization options related to noise or vibrations caused by the wind turbines that shall be considered, including, at a minimum, modifying or reducing times or duration of turbine operation, incorporating noise reduced operations, shutting down relevant turbines, and modifying operational conditions of the turbines;

(b) Physical minimization options related to noise or vibration caused by the wind turbines that shall be considered, including installation of serrated edge trails on the turbine blades, replacement or maintenance of noisy components of the equipment, and any other measures as feasible and appropriate; and

(c) If applicable, any minimization measures related to noise from transformers (such as walls or barriers), emergency generators (such as installation of noise walls or barriers, adding or replacing enclosures or silencers to the emergency generator), or any other noise sources (such as HVAC equipment or energy storage systems), shall be considered, as well as any other mitigation measures as feasible and appropriate.

(ii) Upon approval from the NYSDPS and the Office, the permittee shall implement any operational noise or vibration mitigation measures within ninety (90) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

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(iii) Upon approval from the NYSDPS and the Office, the permittee shall implement any physical noise or vibration mitigation measures within one hundred fifty (150) days after the finding of a non-compliance or siting permit violation, as necessary to achieve compliance.

(iv) If the permittee cannot meet the timelines for implementation of mitigation measures set forth in subparagraphs (ii) and (iii) of this paragraph, permittee shall cease operation of the turbines of the facility that caused the non-compliance or siting permit violation until the operational or physical minimization measures that are presented and approved by the NYSDPS and the Office have been implemented. Once implemented, the permittee shall not operate the facility without the mitigation measures presented and approved by the NYSDPS and the Office.

(v) Test, document and present results of any minimization measures and compliance with all siting permit conditions on noise, no later than ninety (90) days after the minimization measures are implemented.

(4) Noise and Vibration Complaints from Wind Facilities. The permittee shall adhere to the following conditions regarding noise complaints:

(i) The permittee is required to maintain a log of complaints received relating to noise and vibrations caused by the operation of the facility. 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.

(ii) The permittee shall provide the host municipalities with a phone number, email address, and mailing address where complaints can be notified.

(iii) All complaints received shall be reported to the NYSDPS staff, with a copy to the Office, monthly during the first year of commercial operations and quarterly thereafter, by filing during the first ten (10) days of each month (or the first ten (10) days of each quarter after the first year). Reports shall include copies of the complaints and, if available, a description of the probable cause (e.g., outdoor or indoor noise, tones, low frequency noise, amplitude modulation, vibrations, rumbles, rattles, etc., if known); the status of the investigation, summary of findings and whether the facility has been tested and found in compliance with applicable siting permit conditions on noise or minimization measures have been implemented. If no noise or vibration complaints are received, the permittee shall submit a letter indicating that no complaints were received during the reporting period.

(iv) Should complaints related to excessive and persistent amplitude modulation occur at any non-participating residence existing as of the issuance date of the siting permit, with measured or modeled sound levels exceeding forty (40) dBA Leq (1-hour), the permittee

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shall investigate and measure amplitude modulation at the affected receptors during the time frame when the worst conditions are known, or, if not known, expected to occur. If the L90-10-minute noise levels (dBA), including any amplitude modulation and prominent tone penalties exceed a noise level of forty-five (45) dBA and amplitude modulation is in excess of a five (5) dB modulation depth at the evaluated receptor(s) for more than five (5) percent of the time during the identified time frame of evaluation (which shall not exceed eight consecutive hours), the permittee shall continue with the investigation, identify frequency of occurrence and the conditions that may be favorable for its occurrence, and propose minimization measures to avoid or minimize the impacts. Minimization measures that avoid, minimize, resolve, or mitigate the amplitude modulation impacts shall be identified and reported by filing the identified minimization measures and implementing such measures after, and consistent with, review and approval. Compliance with this requirement shall be finally demonstrated by conducting a test that shows that the L90-10-minute sound levels (dBA), including a five (5)-dBA penalty for amplitude modulation (if amplitude modulation depth is in excess of five (5) dB for more than five (5) percent of the time in any eight (8) consecutive hours) at that particular location and any additional prominent tone penalties, are lower than or equal to forty-five (45) dBA. For any complaints that do not exceed the limits established in the foregoing, the permittee shall handle those complaints under the complaint resolution protocol approved by the Office. Amplitude Modulation depth will be evaluated as indicated in the document entitled "A Method for Rating Amplitude Modulation in Wind Turbine Noise", 09 August 2016, Version 1 (see section 900-15.1(c)(1)(i) of this Part).

(v) The permittee shall investigate all other noise and vibration complaints by following the complaint resolution protocol approved by the Office, and consistent with the limits imposed by the siting permit.

(5) *Facility Logs for Wind Facilities.* The permittee is required to maintain a log of operational conditions of all the turbines with a ten (10)-minute time interval to include, at a minimum, wind velocity and wind direction at the hub heights, angular speed of the rotors, generated power, and notes indicating operational conditions that could affect the noise levels (e.g., maintenance, shutdown, etc.). A schedule and log of noise-reduced operations for individual turbines shall also be kept and updated as necessary. These records shall be maintained by the permittee for five (5) years from occurrence.

(b) *Noise Standards for Solar Facilities.* The permittee shall implement the approved design as required by section 900-2.8 of this Part.

(c) *Operational Compliance.* The permittee shall operate the facility to abide by applicable rules and regulations of the PSL and 16 NYCRR with respect to matters such as enforcement, investigation, safety and reliability. The permittee shall abide by standard Good Utility Practice, and abide by all rules, guidelines and standards of the serving utilities, the New York Independent System Operator (NYISO), the Northeast Power Coordinating Council (NPCC), the New York State Reliability Council (NYSRC), the North American Electric Reliability Corporation (NERC) and successors. When applied to the permittee, the term

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“Good Utility Practice” shall mean the standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

(d) *Annual Inspection.* The permittee shall have an annual inspection program for its facilities. An annual inspection report shall summarize maintenance and inspection activities performed and include details of any repairs undertaken. Reports shall identify any major damage, defects or other problems, or indicate that no such damage, defect or problem was found. Reports shall be made readily available upon request by the NYSDPS or the Office.

(e) *Equipment Replacement.* Replacement of major facility components with different make, model, size, or other material modification, shall be subject to review and approval of the Office pursuant to section 900-11.1 of this Part.

(f) *Interconnection Changes.* Throughout the life of the facility, the permittee shall provide a copy of the following interconnection documents to the secretary of the NYSDPS, with a copy to the Office:

(1) Any updates or revisions to the Interconnection Agreement or Facility Agreements between the permittee, the serving utilities and NYISO; and

(2) Any System Reliability Impact Study (SRIS) required as part of a future facility modification or uprate, performed in accordance with the NYISO Open Access Transmission Tariff (OATT), available at www.nyiso.com.

(g) *Facility Transmission Interconnection Related Incidents.*

(1) The permittee shall contact the NYSDPS Emergency Line within one (1) hour to report any transmission related incident on its owned and operated interconnection facilities which affects the operation of the facility, or that poses a public safety concern, and shall provide notification to the Office within twenty-four (24) hours.

(2) The permittee shall file with the secretary of the NYSDPS a report on any such incident, upon request within seven (7) days, and provide a copy of the report to the serving utility and the Office. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented.

(h) *Facility Malfunction*

(1) In the event of any catastrophic incident, including but not limited to blade failure, fire, tower collapse or other catastrophic event involving the facility and its associated equipment, the permittee shall notify the Office and the NYSDPS no later than twelve (12) hours following such an event.

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(2) In the event of a malfunction of the facility or facility components which causes a significant reduction in the capability of such facility to deliver power for an extended duration (i.e., expected to last longer than one (1) month), the permittee shall promptly file with the NYSDPS, and provide to the serving utility and the Office, 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.

§900-6.6 Decommissioning.

(a) The permittee shall implement the approved Decommissioning and Site Restoration Plan as required by section 900-2.24 of this Part. The permittee shall adhere to all state laws and regulations in effect at the time of decommissioning regarding the disposal and recycling of components.

(b) The financial security regarding decommissioning and site restoration activities shall be in the form of a letter of credit (LOC) or other financial assurance approved by the Office, and shall be established by the permittee to be held by each City, Town, or Village hosting facility components. The total amount of the financial security created for the Cities, Towns, or Villages shall be equal to the net decommissioning and site restoration estimate; the net decommissioning and site restoration estimate is equal to the gross decommissioning and site restoration estimate (which is the overall decommissioning and site restoration estimate plus a fifteen (15) percent contingency cost) less the total projected salvage value of facility components; reference to salvage value data shall also be included in the Decommissioning and Site Restoration Plan required at 900-2.24 of this Part. If the permittee and the host municipalities cannot come to an agreement as to the appropriate amount of financial security to be provided, the Office shall make the final determination. The financial security shall remain active until the facility is fully decommissioned. The LOC shall be irrevocable and state on its face that it is expressly held by and for the sole benefit of the specific Town, City, or Village.

Subpart 900-7

§900-7.1 Amendment of an application

(a) Pending applications may only be amended prior to issuance of a notice of complete application. In addition, a major amendment to the application may only be filed with the express written permission of the Office, as set forth in this section.

(b) Requests for Permission to Submit an Amendment

(1) An applicant wishing to amend a pending application shall submit a written request to the Office, setting forth:

- (i) The proposed change to the application;
- (ii) A justification as to why such changes are required; and
- (iii) An anticipated timeframe for resubmission.

(2) The Office shall review the request and, within fifteen (15) days of receipt thereof, inform the permittee as to its determination as to whether such changes constitute a minor amendment to be processed by the Office or a major amendment subject to subdivision (c) of this section.

(c) Submission of a Major Amendment to an Application

(1) An applicant shall submit only those application materials that reflect changes from the original submission, including a redlined version of the relevant materials.

(2) If the applicant proposes to increase the nameplate capacity of the facility, the applicant shall submit any additional required payment to the local agency account simultaneously with its request for a major amendment.

(3) The applicant shall publish notice of the major amendment, clearly identifying the changes from the original application and notice thereof, in accordance with section 900-1.6 of this Part.

(d) The time for the Office to make its completeness determination on the original application shall be suspended while the ORES is reviewing a request to amend a pending application.

(e) All applicable statutory time frames for completeness determination, publication of draft permit conditions and final determination on the application shall run from the submission of a major amendment in accordance with subdivision (c) of this section.

Subpart 900-8 Hearing process

§900-8.1 Publication of draft siting permit.

(a) No later than sixty (60) days following the date upon which an application has been deemed complete, and following consultation with any relevant state agency or authority, the ORES shall publish

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on its website for public comment draft permit conditions prepared by the Office or a statement of intent to deny.

(b) No later than sixty (60) days following the date upon which an application has been deemed complete, a combined notice of availability of draft permit conditions or statement of intent to deny, public comment period and public comment hearing, and issues determination, as defined in section 900-8.2(d) of this Part, shall be published on the ORES website.

§900-8.2 Notice of hearing.

(a) *When notice is required.* Unless otherwise provided by statute or regulation, the Office of Hearings shall publish notice of a public comment hearing (as set forth in section 900-8.1(b) of this Part) or adjudicatory hearing on the Office's website and provide notice to the applicant and to persons who have made written request to participate. The applicant shall provide for and bear the cost of publication of the notice in a newspaper having general circulation in the area within which the proposed project is located. The notice shall be published at least once, and not less than twenty-one (21) days prior to the hearing date. These requirements are minimums and the assigned ALJ shall direct the applicant to provide additional notice or to provide the notice further in advance of the hearing where the ALJ finds it necessary to do so in order to adequately inform the potentially affected public about the hearing. Where the ALJ finds that a large segment of the potentially affected public has a principal language other than English, the ALJ shall direct the publication of the notice in a foreign language newspaper(s) serving such persons. Nothing herein shall authorize the ALJ to delay the commencement of the hearing beyond the deadlines established in this Part without the applicant's consent.

(b) *Required contents of notice.* The notice shall be in the form specified by the Office and shall contain the following information:

- (1) The date of issuance of the notice of hearing, the date of the notice of complete application, and the date of publication of the draft siting permit conditions or statement of intent to deny;
- (2) The date, time, location and purpose of the hearing and any pre-hearing conference, if scheduled. The location shall be in the Town, Village or City in which the project is located, as reasonably near the project site as practicable, depending upon the availability of suitable venues. However, another location may be selected based on the convenience of parties and witnesses at the discretion of the ALJ;
- (3) The name and address of the applicant or permittee;
- (4) That the application is seeking a siting permit, with citations to applicable Section 94-c of the Executive Law and this Part 900;
- (5) A description of the project;
- (6) The accessibility and location for review of the available application materials, and the draft siting permit conditions or statement of intent to deny.

(c) *Optional contents.* The notice may also specify the issues of concern to the ORES and the public.

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(d) *Combined notice of availability of draft permit conditions or statement of intent to deny, public comment period and public comment hearing, and issues determination.* In addition to the contents of a notice required by subdivision (b) and (c) of this section, the combined notice shall contain the following information:

- (1) The deadline and instructions for filing public comments on the draft permit conditions or statement of intent to deny by mail or at a public comment hearing, and of the provisions for their review. The period for filing public comments shall be a minimum of sixty (60) days from the date of issuance of the combined notice;
- (2) The date, time, and location of the public comment hearing scheduled pursuant to section 900-8.3(a) of this Part;
- (3) Notice of commencement of the issues determination procedure required by section 900-8.3(b) of this Part and instructions for filing a petition for party status pursuant to section 900-8.4 of this Part. The period for filing a petition for party status shall be a minimum of sixty (60) days from the date of issuance of the combined notice; and
- (4) The deadline and instructions to municipalities to file the statement of compliance with local laws and regulations required by section 900-8.4(d) of this Part.

(e) *Service on specific persons.* Not less than twenty-one (21) days prior to the hearing date, individual copies of the notice shall be sent to the chief executive officer of any municipality in which any part of the project is located, or municipality which may be adversely impacted by the project and such other persons as the Office deems to have an interest in the application. The ALJ shall direct the applicant to provide notice further in advance of the hearing to those persons specified in this subdivision where the ALJ finds it necessary to do so in order to adequately inform them about the hearing. Nothing herein shall authorize the ALJ to delay the commencement of the hearing beyond the deadlines established in this Part without the applicant's consent.

§900-8.3 Public comment hearing and issues determination.

(a) *Public comment hearing.*

- (1) Not less than sixty (60) days from the date of issuance of the combined notice required by section 900-8.2(d) of this Part, a public comment hearing shall be convened to hear and receive the unsworn statements of parties and non-parties relating to the siting permit application. A stenographic transcript of such statements shall be made but shall not be part of the record of the hearing, as defined by section 900-8.11 of this Part.
- (2) The ALJ may require that lengthy statements be submitted in writing and summarized for oral presentation.
- (3) The statements made at the public comment hearing shall not constitute evidence, but may be used by the ALJ as a basis to inquire further of the parties and potential parties at the issues determination stage.

(b) *Issues determination.*

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(1) In the combined notice required by section 900-8.2(d) of this part, the mandatory parties identified in section 900-8.4(b) and any potential parties shall be provided with the opportunity to file papers concerning potential substantive and significant issues, which shall be determined in advance of the adjudicatory hearing. The issues determination procedure shall be conducted solely on papers, unless the ALJ, in their sole discretion, determines that oral argument is necessary to fully understand the issues proposed by the parties and potential parties. At the ALJ's discretion, an issues determination may be revisited at any time prior to the issuance of a final decision in order to consider issues based on new information upon a showing that such information was not reasonably available at the time of the issues determination. Upon a demonstration that the public review period for the application prior to the issues determination was insufficient to allow potential parties to adequately prepare for the issues determination procedure, the ALJ may adjourn the issues determination, extend the time for written submittals or make some other fair and equitable provision to protect the rights of the potential parties.

(2) The purpose of the issues determination procedure is:

- (i) To receive argument on whether party status should be granted to any petitioner;
- (ii) To narrow or resolve disputed issues of fact without resort to taking testimony;
- (iii) To receive argument on whether disputed issues of fact that are not resolved meet the standards for adjudicable issues set forth in subdivision (c) of this section;
- (iv) To determine whether legal issues exist whose resolution is not dependent on facts that are in substantial dispute and, if so, to receive argument on the merits of those issues; and
- (v) To decide any pending motions.

(3) The ALJ shall preside over the issues determination procedure. Participants shall include Office Staff, staff from other involved State agencies, the applicant, and any person who has filed a petition for party status pursuant to section 900-8.4(c) of this Part.

(4) Within fifteen (15) days after the close of the public comment period, the filing of petitions for party status, or the filing of a statement of compliance with local laws and regulations, whichever event occurs later:

- (i) Office Staff may file and serve a response to any petitions for party status, any statement of issues by applicant, and the statement of compliance with local laws and regulations.
- (ii) The applicant may file and serve a response to any petition for party status or statement of compliance with local laws and regulations. In addition, the applicant shall file and serve on Office Staff a response to public comments received during the public comment period, including any supplemental information.

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(5) In no event later than thirty (30) days after the date of receipt of written submissions for issues determination and responses thereto, the ALJ shall:

- (i) Determine which persons will be granted party status;
- (ii) Determine which issues satisfy the requirements for being adjudicable issues as set forth in subdivision (c) of this section, and define those issues as precisely as possible;
- (iii) Rule on the merits of any legal issue where ruling does not depend on the resolution of disputed issues of fact;
- (iv) Decide any pending motions to the extent practicable; and
- (v) Summarize comments received on the application and draft permit conditions or intent to deny.

(c) Standards for adjudicable issues.

(1) *Generally applicable rules.* Subject to the limitations set forth in paragraphs (6) and (7) of this subdivision, an issue is adjudicable if:

- (i) It relates to a substantive and significant dispute between Office Staff and the applicant over a proposed term or condition of the draft siting permit, including uniform standards and conditions;
- (ii) Public comments, including comments provided by a municipality, on a draft siting permit condition published by the Office raise a substantive and significant issue;
- (iii) It relates to a matter cited by Office Staff as a basis to deny the siting permit and is contested by the applicant; or
- (iv) It is proposed by a potential party and is both substantive and significant.

(2) An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry. In determining whether such a demonstration has been made, the ALJ shall consider the proposed issue in light of the application and related documents, the standards and conditions, or siting permit, the statement of issues filed by the applicant, the content of any petitions filed for party status, the record of the issues determination and any subsequent written or oral arguments authorized by the ALJ.

(3) An issue is significant if it has the potential to result in the denial of a siting permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit, including uniform standards and conditions.

(4) In situations where Office Staff has reviewed an application and finds that a component of the applicant's project, as proposed or as conditioned by the draft siting permit, conforms to all applicable requirements of statute and regulation, the burden of persuasion is on the potential party proposing any issue related to that component to demonstrate that it is both substantive and significant.

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(5) If the ALJ determines that there are no adjudicable issues, the ALJ shall direct that no adjudicatory hearing be held and that Office Staff continue processing the application to issue the requested siting permit, including issuance of a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in the ALJ's ruling.

(6) The completeness of an application, as defined in this Part, shall not be an issue for adjudication.

(7) ORES-initiated modifications. The only issues that may be adjudicated are those related to the basis for modification cited in the Office's notice to the permittee. Whenever such issues are proposed for adjudication, the determination to require adjudication shall be made according to the standards set forth in paragraph (1) of this subdivision.

§900-8.4 Hearing participation.

(a) Participation in the adjudicatory hearing may be as a full party or as *amicus*, depending upon the demonstrated compliance with the criteria set forth in subdivisions (b) through (e) of this section. Non-parties who wish to have their comments recorded shall be permitted to submit oral or written comments during the public comment portion of the proceedings, or as otherwise provided by the ALJ, as set forth in this Part. Such public statements shall not constitute evidence in the adjudicatory hearing but may be used by the ALJ as a basis to inquire further of all parties and potential parties at the issues determination stage.

(b) *Mandatory parties.* The applicant and assigned Office Staff are full parties to the proceeding. Other State and local agencies are full parties to the proceeding if they were consulted during the pre-application or application process, or if issues related to the jurisdiction or authority of those agencies are joined for adjudication in the rulings on issues provided for in section 900-8.3(c) of this Part.

(1) *Applicant's statement of issues:* No later than the date set in the combined notice provided for in section 900-8.2(d) of this Part for the filing of petitions for party status, or an earlier date set in the exercise of the ALJ's discretion, the applicant shall file and serve on Office Staff a statement of issues the applicant intends to raise with respect to any determination of the Office. The applicant shall serve the statement of issues on persons filing petitions for party status within five (5) days of such filing. The applicant's statement of issues shall:

(i) identify an issue for adjudication which meets the criteria of section 900-8.3(c) of this Part; and

(ii) present an offer of proof specifying the witness(es), the nature of the evidence the applicant expects to present and the grounds upon which the assertion is made with respect to that issue.

(c) *Other parties.* By the date set in the combined notice provided for in section 900-8.2(d) of this Part, a person desiring party status shall file a petition in writing which includes the requirements of either paragraphs (1) and (2) or paragraphs (1) and (3) of this subdivision.

(1) Required contents of petition for party status:

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- (i) Identification of the proposed party together with the name(s), address, telephone number and email address of the person or persons who will act as representative of the party;
- (ii) Statement of the petitioner's interest related to the standards and conditions established by the ORES for the siting, design, operation, and construction of the project;
- (iii) Identification of any interest relating to statutes administered by other State agencies or the ORES relevant to the project;
- (iv) Statement as to whether the petition is for full party or *amicus* status;
- (v) Identification of the precise grounds for opposition or support.

(2) Additional contents required for petitions for full party status:

- (i) Identification of an adjudicable issue(s) which meets the criteria set forth in section 900-8.3(c) of this Part; and
- (ii) An offer of proof specifying the witness(es), the nature of the evidence the person expects to present and the grounds upon which the assertion is made with respect each issue identified.

(3) Additional contents required for petitions for *amicus* status:

- (i) identify the nature of the legal or policy issue(s) to be briefed which meets the criteria of section 900-8.3(c) of this Part; and
- (ii) provide a statement explaining why the proposed party is in a special position with respect to that issue.

(4) Inadequate petition. If a potential party fails to file a petition in the form set forth in this subdivision, the ALJ may deny party status or may require additional information from the petitioner.

(5) Supplementation of petitions. Where the ALJ finds that a potential party did not have adequate time to prepare its petition for party status, the ALJ shall provide an opportunity for supplementation of the petition.

(d) *Statement of compliance with local laws and regulations.* No later than the date set in the combined notice provided for in section 900-8.2(d) for the filing of petitions for party status, or an earlier date no less than sixty (60) days from the issuance of the combined notice set in the exercise of the ALJ's discretion, any municipality, political subdivision or an agency thereof that has received notice of the filing of an application shall file and serve on Office Staff and the applicant a statement indicating whether the proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations, if any, concerning the environment, or public health and safety. The applicant shall serve the municipality's statement on persons filing petitions for party status within five (5) days of such filing. Any municipality, political subdivision or an agency thereof that proposes to adjudicate any issues related to a facility's compliance with local laws and regulations shall file a petition

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for party status as provided for in subdivision (c) of this section, and shall include the statement of compliance with local law and regulation in the petition.

(e) Late filed petitions for party status.

(1) Petitions filed after the date set in the combined notice provided for in section 900-8.2(d) of this Part shall not be granted except under the limited circumstances outlined in paragraph (2) of this subdivision.

(2) In addition to the required contents of a petition for party status, a petition filed late shall include the following in order to receive any consideration:

- (i) A demonstration that there is good cause for the late filing;
- (ii) A demonstration that participation by the petitioner will not significantly delay the proceeding or unreasonably prejudice the other parties; and
- (iii) A demonstration that participation will materially assist in the determination of adjudicable issues raised in the proceeding.

(f) Rulings on party status. Rulings on party status shall be made by the ALJ after the deadline for receipt of petitions for party status and responses thereto and shall be set forth in the rulings on issues provided for in section 900-8.3(c) of this Part.

(1) Full party status. The ALJ's ruling of entitlement to full party status shall be based upon:

- (i) A finding that the petitioner has filed an acceptable petition pursuant to subdivisions (c)(1) and (2) of this section;
- (ii) A finding that the petitioner has raised a substantive and significant issue or that the petitioner can make a meaningful contribution to the record regarding a substantive and significant issue raised by another party; and
- (iii) A demonstration of adequate interest related to the standards and conditions established by the ORES for the siting, design, operation, and construction of the project.

(2) Amicus status. The ALJ's ruling of entitlement to *amicus* status shall be based upon:

- (i) A finding that the petitioner has filed an acceptable petition pursuant to subdivisions (c)(1) and (3) of this section;
- (ii) A finding that the petitioner has identified a legal or policy issue which needs to be resolved by the hearing; and
- (iii) A finding that the petitioner has a sufficient interest in the resolution of such issue and through expertise, special knowledge or unique perspective may contribute materially to the record on such issue.

(g) Rights of parties.

(1) A full party has the right to:

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- (i) Engage in and conduct disclosure of any other party to the proceeding;
- (ii) Participate at the hearing in person or through an authorized representative;
- (iii) Present relevant evidence and cross-examine witnesses of other parties;
- (iv) Present argument on issues of law and fact;
- (v) Initiate motions, requests, briefs or other written material in connection with the hearing, and receive all correspondence to and from the ALJ and to and from all other parties which is circulated to the parties generally;
- (vi) Appeal adverse rulings of the ALJ; and
- (vii) Exercise any other right conferred on parties by this Part or the SAPA.

(2) A party with *amicus* status has the right to file a brief and, at the discretion of the ALJ, present oral argument on the issue(s) identified in the ALJ's ruling on its party status but does not have any other rights of participation or submission.

(h) *Loss of party status.* Upon determining that the party or its representative has failed to comply with the applicable laws, rules or directives of the ALJ and has substantially disrupted the hearing process or prejudiced the rights of another party to the proceeding, the ALJ may revoke the party status of the offending party.

§900-8.5 General rules of practice.

(a) Service.

(1) CPLR 2103 governs service of papers except that papers may be served by a party and service upon the party's duly authorized representative may be made by the same means as provided for service upon an attorney. Notwithstanding any other rule to the contrary, service may be made by transmission of papers by electronic transmission, such as email or facsimile, if agreed to in advance by the parties or authorized by the ALJ.

(2) Proof of service shall be made in the same manner as under the CPLR. Any required filing or proof of service shall be filed with the ALJ.

(3) When service of papers by electronic transmission, such as facsimile or email, is agreed to in advance by the parties or authorized by the ALJ, the parties shall simultaneously send a copy of the papers transmitted electronically to the recipient by first class mail.

(b) Computation of time limits.

(1) The rules of New York State General Construction Law Sections 20 and 25-a govern the computation of time limits.

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(2) If a period of time prescribed under this Part is measured from the date of service of a paper or the date of the issuance of a ruling, decision or other communication instead of the date of service,

(i) five (5) days are added to the prescribed period if service or issuance is by first class mail;

(ii) one (1) day is added to the prescribed period if service or issuance is by overnight delivery;

(iii) if service or issuance is by facsimile transmission only, as agreed to or authorized pursuant to subdivision (a)(1) of this section, the service is complete upon the receipt by the sender of a signal from the equipment of the party served that the transmission was received; and

(iv) if service or issuance is by email only, as agreed to or authorized pursuant to subdivision (a)(1) of this section, the service is complete upon transmission. Service by email is not complete upon transmission if the serving party receives notification that the papers sent by email did not reach the person to be served.

(c) Motion practice.

(1) Motions and requests made at any time are part of the record. Motions and requests prior to any hearing shall be in writing. All motion papers shall be filed by personal delivery or first-class mail with the ALJ, together with proof of service of the motion on all parties. In addition to filing by personal delivery or mail, an ALJ may authorize the parties to file additional copies of motions by electronic means. During the course of the adjudicatory hearing, motions may be made orally except where otherwise directed by the ALJ. If no ALJ has been assigned to the proceeding, the motion shall be filed by personal delivery or first-class mail with the Deputy Executive Director of the Office.

(2) Every motion shall clearly state the relief requested, and the legal arguments and any facts on which the motion is based.

(3) All parties have five (5) days after a motion is served to serve a response. Thereafter no further responsive papers shall be allowed without permission of the ALJ. All responsive papers shall be filed by personal delivery or first-class mail with the ALJ, together with proof of service on all parties. An ALJ may authorize the parties to file additional copies of the responsive papers by electronic means.

(4) The ALJ should rule on a motion within five (5) days after a response has been served or the time to serve a response has expired. The ALJ shall rule on all pending motions prior to the close of any adjudicatory hearing. Any motion not ruled upon prior to the close of an adjudicatory hearing shall be deemed denied.

(5) Where a standard of review applicable to a motion or request is not otherwise provided for in this Part, other sources of standards, including statutory law such as SAPA and the CPLR, case law, and administrative precedent, may be consulted.

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(d) *Office of Hearings.*

(1) Prior to the appointment of an ALJ to hear a particular proceeding, the Executive Director of the Office may take any action which an ALJ is authorized to take.

(2) The Executive Director of the Office may establish a schedule for hearing pretrial motions and other matters for proceedings that have no assigned ALJ.

(e) *Expedited Appeals.* The time periods for expedited appeals filed pursuant to section 900-8.7(d)(2) of this Part are as follows:

(1) Expedited appeals pursuant to section 900-8.7(d)(2)(i) of this Part shall be filed with the Executive Director and ALJ in writing within five (5) days of the date of the disputed ruling. All parties have five (5) days after a notice of expedited appeal is served to serve a response to the appeal. Only the Executive Director shall determine whether further responsive pleadings after the responses will be allowed. The parties shall file one (1) original and three (3) copies of any papers filed pursuant to this paragraph.

(2) Motions for permission to appeal pursuant to section 900-8.7(d)(2)(ii) of this Part shall be filed with the Executive Director and ALJ in writing within five (5) days of the date of the disputed ruling. All parties have five (5) days after a motion for permission to appeal is served to serve a response to the motion. The parties shall file one (1) original and three (3) copies of any papers filed pursuant to this paragraph.

(3) Upon being granted permission to appeal, appellant shall file and serve the appeal in writing within five (5) days of permission being granted. Thereafter the other parties may file a response in support of or in opposition to the appeal within five (5) days of service of the appeal.

(f) Video recording or televising the adjudicatory hearing for rebroadcast is prohibited by Section 52 of the New York State Civil Rights Law.

(g) All rules of practice involving time frames may be modified by direction of the ALJ or the Executive Director and, for the same reasons, any other rule may be modified by the Executive Director upon recommendation of the ALJ or upon the Executive Director's own initiative.

§900-8.6 Disclosure.

(a) *Prior to the issues determination.* Discovery is limited to what is afforded under the Freedom of Information Law (New York Public Officers Law – Access to Records). In the absence of extraordinary circumstances, the ALJ shall not grant petitions for further disclosure. This provision does not alter the rights of any person under the Freedom of Information Law, nor does it limit the ability of any party to seek disclosure after the issues determination is made.

(b) *Without permission of the ALJ.* Within ten (10) days after service of the final designation of the issues, any party has the right to serve a disclosure demand upon any other party demanding that party provide:

(1) Documents, in general conformance with CPLR Section 3120(a)(1)(i);

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(2) A list of witnesses to be called, their addresses, and the scope and content of each witness's proposed testimony, and the qualifications and published works of each, in general conformance with CPLR Section 3101(d)(1), except that disclosure of fact witnesses as well as expert witnesses may be demanded;

(3) An inspection of property, in general conformance with CPLR Section 3120(a)(1)(ii), except that drilling and other intrusive sampling and testing is not provided as of right;

(4) A request for admission, in general conformance with CPLR Section 3123; or

(5) Lists of documentary or physical evidence to be offered at the hearing.

(6) Electronically stored information (ESI). Unless authorized by the ALJ, disclosure of ESI is limited only to ESI that is located in a computer's memory or in storage media (including servers, desktop or laptop computers, tablets, cellphones, hard drives, flash drives, compact discs, digital video discs, and portable media players) that is immediately available in the normal course of business.

(c) *By permission.* With permission of the ALJ, a party may:

(1) Obtain discovery prior to the issues determination;

(2) Use discovery devices from the CPLR not provided for in subdivision (b) of this section;

(3) Submit late requests for discovery or vary the time for responding to requests; and

(4) Access real property in the custody or control of another for the purpose of conducting drilling or other sampling or testing. In such instance, all parties shall be given notice of such activities and be allowed to observe and to take split samples or use other specified methods of verification.

(5) Upon motion of any party demonstrating substantial prejudice, the ALJ may order additional disclosure of ESI beyond that provided for in subdivision (b) of this section, subject to any terms and conditions deemed appropriate by the ALJ. Such a motion shall be accompanied by an affirmation of an attorney, or an affidavit of the moving party if not represented by an attorney, describing the good faith efforts to resolve the dispute without resort to a motion.

(d) *Protective order and motion to compel.*

(1) A party against whom disclosure is demanded may make a motion to the ALJ for a protective order, in general conformance with CPLR 3103 to deny, limit, condition or regulate the use of any disclosure device in order to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. Such a motion shall be submitted within ten (10) days of the disclosure demand and shall be accompanied by an affidavit of counsel, or by the moving party or other authorized representative if not represented by counsel, reciting good faith efforts to resolve the dispute without resort to a motion.

(2) If a party fails to comply with a disclosure demand without having made a timely objection, the proponent of the disclosure demand may apply to the ALJ to compel disclosure. The ALJ may direct that any party failing to comply with disclosure after being directed to do so by the ALJ

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suffer preclusion from the hearing of the material demanded. Further, a failure to comply with the ALJ's direction will allow the ALJ or the Executive Director to draw the inference that the material demanded is unfavorable to the noncomplying party's position.

(e) *Pre-filed testimony.* The ALJ shall require the submission of pre-filed written testimony for fact and expert witnesses in advance of an adjudicatory hearing. Such testimony shall be attested to at the hearing and the witness shall be available to be cross-examined on the testimony, unless otherwise stipulated by the parties and directed by the ALJ. Pre-filed written testimony shall provide, or shall be accompanied by, a technical report which provides, a full explanation of the basis for the views set forth therein, including data, tables, protocols, computations, formulae, and any other information necessary for verification of the views set forth, as well as a bibliography of reports, studies and other documents relied upon. Upon ten (10) days' notice (which time may be shortened or extended by the ALJ), the party submitting pre-filed written testimony may also be required to make available all raw data, laboratory notes, and other basic materials, as well as all items on the bibliography provided.

(f) *Subpoenas.* Consistent with the CPLR, any attorney of record in a proceeding has the power to issue subpoenas. A party who is not represented by an attorney admitted to practice in New York State may request the ALJ or if no ALJ has been assigned to the proceeding, the Executive Director, to issue a subpoena, stating the items or witnesses needed by the party to present its case. The service of a subpoena is the responsibility of its sponsor. In addition, the sponsor shall be responsible for all costs arising from the issuance of or compliance with the subpoena. A subpoena shall give notice that the ALJ may quash or modify the subpoena pursuant to the standards set forth under CPLR Article 23. This Part does not affect the authority of an attorney of record for any party to issue subpoenas under the provisions of CPLR Section 2302.

§900-8.7 Conduct of the adjudicatory hearing

(a) *Order of events.* The ALJ has discretion to determine and adjust the order of events and presentation of evidence, and to establish procedures to promote the conduct of a fair and efficient hearing. In general, the order of events at a hearing shall be as follows:

- (1) Formal opening. The ALJ shall convene the hearing by opening the record, identifying the applications involved, and making appropriate procedural announcements.
- (2) Noting appearances. The ALJ shall call the name of each person who has been granted status as a party.
- (3) Opening statements. Prior to the commencement of the adjudicatory sessions, each party may, at its option, offer a brief opening statement of position on the application.
- (4) Admission of evidence. The applicant shall present its direct case first and shall start by identifying all documents which constitute the application, any supplements to the application, and all supporting documents which are relevant to the issues to be adjudicated. A panel of witnesses may be used for presenting testimony or for cross-examination at the ALJ's discretion. Cross-examination shall be conducted by parties in a sequence to be established by the ALJ, which normally will be the sequence in which the parties will present their direct cases. The

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evidence shall be confined to that which is relevant to issues identified in the ALJ's written issues determination.

(5) Close of record. Closing statements of position will be dealt with in the same manner as opening statements. At the concluding session of the hearing, the ALJ shall determine whether to allow the submission of written post-hearing briefs. The hearing record shall be officially closed upon the receipt of the stenographic record by the ALJ, the receipt of additional technical data or other material agreed at the hearing to be made available after the hearing, or the submission of briefs and reply briefs, conclusions of law, memoranda, and exceptions, if any, by the various parties, whichever occurs last. The ALJ shall notify the applicant by certified mail, and all other parties by regular mail, immediately upon official closing of the hearing record.

(6) Where the ALJ permits the filing of briefs, the ALJ shall also determine page limits for said briefs and whether replies will be permitted and the schedule for filing. Simultaneous filing shall normally be required. A party shall give specific reference to the portions of the record, whether transcript or otherwise, relied upon in support of the respective statements of fact made throughout the brief. Briefs shall be considered only as argument and shall not refer to or contain any evidentiary material outside of the administrative record.

(b) *The ALJ.*

(1) In proceedings pursuant to this Part, the ALJ has power to:

- (i) Rule upon all motions and requests, including those that decide the ultimate merits of the case;
- (ii) Set the time and place of the hearing, recesses and adjournments;
- (iii) Administer oaths and affirmations;
- (iv) Issue subpoenas upon request of a party not represented by counsel admitted to practice in New York State. Subpoenas issued by the ALJ are regulated by the Civil Practice Law and Rules;
- (v) Upon the request of a party, quash and modify subpoenas except that in the case of a non-party witness the ALJ may quash or modify a subpoena regardless of whether or not a party has so requested;
- (vi) Summon and examine witnesses;
- (vii) Establish rules for and direct disclosure at the request of any party or upon the ALJ's own motion pursuant to the procedures set out in section 900-8.6 of this Part;
- (viii) Admit or exclude evidence including the exclusion of evidence on grounds of privilege or confidentiality;
- (ix) Hear and determine arguments on fact or law;
- (x) Preclude irrelevant, immaterial or unduly repetitious, tangential or speculative evidence, argument, examination or cross-examination;

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- (xi) Direct the consolidation of parties with similar viewpoints and input;
- (xii) Limit the number of witnesses;
- (xiii) Utilize a panel of witnesses for purposes of direct testimony or cross-examination;
- (xiv) Allow oral argument, so long as it is recorded;
- (xv) Take any measures necessary for maintaining order and the efficient conduct of the proceeding;
- (xvi) Issue orders limiting the length of cross-examination, the form, length and content of motions and briefs and similar matters;
- (xvii) Order a site visit, on notice to all parties; and
- (xviii) Exercise any other authority available to ALJs under this Part or to presiding officers under SAPA Article 3.

(2) Impartiality of the ALJ and motions for recusal.

- (i) The ALJ shall conduct the proceeding in a fair and impartial manner.
- (ii) An ALJ shall not be assigned to any proceeding in which the ALJ has a personal interest.
- (iii) Any party may file with the ALJ a motion in conformance with section 900-8.5(c) of this Part, together with supporting affidavits, requesting that the ALJ be recused on the basis of personal bias or other good cause. Such motions shall be determined as part of the record of the proceeding.

(3) The designation of an ALJ as the Executive Director's representative shall be in writing and filed in the Office of Hearings.

(c) Appearances.

- (1) A party may appear in person or be represented by an attorney licensed in New York State or any other jurisdiction, or by a non-attorney chosen by the party. Any representative of a party who is other than an attorney licensed to practice in New York State shall disclose his or her qualifications to the party. All persons appearing before the ALJ shall conform to the standards of conduct required of attorneys appearing before the courts of the State of New York. Any person signing any papers submitted in or entering an appearance in any proceeding shall be considered to have agreed to conform to those standards. A failure to conform to those standards shall be grounds for exclusion from that and any later proceeding. Nothing in this paragraph authorizes a non-lawyer to engage in the practice of law.
- (2) Any person appearing on behalf of a party in a representative capacity may be required by the ALJ to show and state on the record the person's authority to act in such capacity and to file a notice of appearance with the ALJ.

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(3) If there is a change or withdrawal of a party's attorney or authorized representative, the party shall provide notice of the change or withdrawal to the ALJ and the attorneys or authorized representatives of all other parties, or, if a party appears without an attorney or authorized representative, to the party within ten (10) days of the change or withdrawal.

(d) Appeals of ALJ rulings.

(1) Any ALJ ruling may be appealed to the Executive Director after the completion of all testimony as part of a party's final brief or by notice of appeal and appeal where no final brief is provided for. Where no final brief is provided for, the appellant shall file the notice of appeal and appeal within five (5) days after service of the notice of the official closing of the hearing record.

(i) An ALJ ruling pursuant to section 900-8.3(c)(5) that finally resolves all issues in a proceeding may be appealed to the Executive Director by notice of appeal and appeal. The appellant shall file the notice of appeal and appeal within five (5) days of the ALJ's ruling.

(ii) The notice of appeal and appeal shall be served on all parties and filed with the Executive Director and the ALJ. All parties have five (5) days after an appeal is served to serve and file a response to the appeal. Only the Executive Director shall determine whether further responsive pleadings after the responses will be allowed. The parties shall file one original and three copies of any papers filed pursuant to this paragraph.

(2) During the course of the proceeding, in conformance with section 900-8.5(e) of this Part, the following rulings may be appealed to the Executive Director on an expedited basis:

(i) Any ruling in which the ALJ has denied a motion for recusal; and

(ii) Any other ruling of the ALJ that does not finally resolve all issues in the proceeding, by seeking permission to file an expedited appeal upon a demonstration that the failure to decide such an appeal would be unduly prejudicial to one of the parties or would result in significant inefficiency in the hearing process. In all such cases, the Executive Director's determination to entertain the appeal on an expedited basis is discretionary.

(3) A motion for permission to file an expedited appeal shall demonstrate that the ruling in question falls within the criteria set forth in subparagraph (2)(ii) of this subdivision.

(4) The Executive Director may review any ruling of the ALJ on an expedited basis upon the Executive Director's determination or upon a determination by the ALJ that the ruling should be appealed.

(5) Whenever the Executive Director grants permission to file an expedited appeal, the parties shall be notified. The appellant shall be provided the opportunity to file a brief on appeal and the other parties shall be provided with the opportunity to file a response to the appeal.

(6) Failure to file an expedited appeal or the denial of permission to file an expedited appeal shall not preclude an appeal from the ruling to the Executive Director after the hearing.

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(7) The hearing shall not be adjourned while an appeal or motion for permission to appeal is pending except by permission of the ALJ or the Executive Director.

§900-8.8 Evidence, burden of proof and standard of proof.

(a) Evidence.

- (1) All evidence submitted shall be relevant and all rules of privilege shall be observed. However, other rules of evidence need not be strictly applied. Hearsay evidence may be admitted if it falls within one or more of the exceptions provided by CPLR Article 45 or other law, or is shown to be reasonably reliable, relevant and probative.
- (2) Although relevant, evidence may be excluded if its value as proof is substantially outweighed by a potential for unfair prejudice, confusion of the issues, undue delay, waste of time or needless presentation of repetitious or duplicative evidence.
- (3) Where a part of a document is offered as evidence by one party, any party may offer the entire document as evidence.
- (4) Each witness shall be sworn or make an affirmation before testifying. Opening, closing and other unsworn statements are not evidence but shall be considered as arguments bearing on evidence.
- (5) The ALJ or the Executive Director may take official notice of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Office. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and, on timely request, be afforded an opportunity, prior to the final decision of the Executive Director, to dispute the fact or its materiality.

(b) Burden of proof.

- (1) The applicant has the burden of proof to demonstrate that its proposal shall be in compliance with all applicable laws and regulations administered by the Office.
- (2) Where the Office has initiated a permit modification, the Office Staff bears the burden of proof to show that the modification is supported by the preponderance of the evidence.
- (3) Where an application is made for permit modification, the permittee has the burden of proof to demonstrate that the modified permitted activity is in compliance with all applicable laws and regulations administered by the Office. A demonstration by the permittee that there is no substantive change in the originally permitted activity, environmental conditions or applicable law and regulations constitutes a prima facie case for the permittee.
- (4) The burden of proof to sustain a motion shall be on the party making the motion.

(c) Standard of proof. Whenever factual matters are involved, the party bearing the burden of proof shall sustain that burden by a preponderance of the evidence unless a higher standard has been

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established by statute or regulation. This subdivision does not modify or supplement the questions that may be raised in a proceeding brought pursuant to CPLR Article 78.

§900-8.9 Ex parte rule.

- (a) Except as provided below, an ALJ shall not directly or through a representative, communicate with any person in connection with any issue that relates in any way to the merits of the proceeding without providing notice and an opportunity for all parties to participate.
- (b) An ALJ may consult on questions of law or procedures with supervisors or other staff in the Office of hearings, provided that such supervisors or staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding.
- (c) An ALJ and the Chief ALJ may communicate with any person on ministerial matters, such as scheduling or the location of a hearing.
- (d) Parties or their representatives shall not communicate with the ALJ, the Chief ALJ or the Executive Director, or any person advising or consulting with any of them, in connection with any issue without providing proper notice to all the other parties.

§900-8.10 Payment of hearing costs.

- (a) Within thirty (30) days of the last day at which testimony is taken, the applicant shall pay for the cost of: physical accommodations, if not held in Office or department facilities; publishing any required notices; and any necessary stenographic transcriptions. Except that, when a hearing is held pursuant to an Office initiated modification, suspension or revocation, the Office shall be responsible for the costs listed above.
- (b) The ALJ may require that the applicant post a bond or other acceptable financial guarantee for the costs of the hearing. Such guarantee shall be provided to the Office prior to commencing the hearing or the hearing shall be adjourned until the guarantee is made available.
- (c) If the applicant has not paid the costs of the hearing referred to in subdivision (a) of this section by the date on which the final siting permit is issued, a requirement to submit such payment shall be included as a pre-construction requirement in the final siting permit.

§900-8.11 Record of the hearing.

- (a) All proceedings at a hearing shall be stenographically reported. The ALJ may arrange for a certified reporter to produce a stenographic transcript of the hearing or may permit the applicant to make such arrangements. When a stenographic transcript is made, an original and two (2) copies of the transcript shall be delivered to the ALJ at the expense of the applicant. At the ALJ's discretion, part or all of the transcripts may also be required in electronic or other form.
- (b) The record of the hearing shall include the application (including any supplements to the application) and all notices (including the notice of hearing) and motions; conditions; any affidavit of publication of

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the notice of hearing; the transcript of the testimony taken at the hearing, the exhibits entered into evidence; any motions, appeals or petitions; any admissions, agreements or stipulations; a statement of matters officially noticed; offers of proof, objections thereto and rulings thereon; proposed findings; and the recommended decision and hearing report; and briefs as may have been filed including any comments on the recommended decision and hearing report filed pursuant to section 900-8.12 of this Part.

(c) As soon as the record becomes available, the ALJ shall assure that a complete and current copy of the record is placed in an accessible location for the parties' reference and/or copying.

§900-8.12 Final decision.

(a) *Recommended decision and hearing report.*

(1) The ALJ shall issue a recommended decision and hearing report to the Executive Director and the parties within forty-five (45) days after the close of the record. The report shall include findings of fact, conclusions of law and recommendations on all issues before the ALJ.

(2) All parties to the proceeding have fourteen (14) days after receipt of the recommended decision and hearing report to file comments with the Executive Director. The Executive Director has the sole discretion to authorize responses to comments and any further responsive filings.

(3) Office Staff has fourteen (14) days after receipt of the recommended decision and hearing report to submit to the Executive Director a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in the recommended decision and hearing report.

(b) *Stipulations.* A stipulation executed by all parties resolving any or all issues removes such issue(s) from further consideration in the proceeding. Within five (5) days of the execution of a stipulation, the applicant shall serve a copy of the fully executed stipulation on all parties and file a copy of the fully executed stipulation with the ALJ. Upon receipt of an executed stipulation that resolves all issues in the proceeding, the ALJ shall close the proceeding and remand the matter to Office Staff to continue processing the application to issue the requested siting permit.

(c) *Final decision.* The final decision of the Executive Director shall be issued within thirty (30) days after receipt of all comments on the recommended decision and hearing report.

(d) *Reopening the record.* At any time prior to issuing the final decision, the Executive Director or the ALJ may direct that the hearing record be reopened to consider significant new evidence.

Subpart 900-9

§900-9.1 Final determination on applications

(a) The Office shall mail to the applicant and its representative, if applicable, a determination in the form of: a permit, including all applicable uniform standards and conditions and any site-specific conditions, or a statement that the permit applied for has been denied, with an explanation for the denial, as follows:

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- (1) Within six (6) months of the Office deeming the application complete for major renewable energy facilities in which the proposed site is a repurposed site as defined by this Part; or
- (2) Within one (1) year of the Office deeming the application complete for all other major renewable energy facilities.

(b) Upon mutual consent of the applicant and the Office, the time periods set forth in subdivision (a) of this section may be extended up to an additional thirty (30) days.

Subpart 900-10 Compliance Filings

§900-10.1 Office decisions on compliance filings

(a) Compliance filings required pursuant to section 900-10.2 shall be submitted to the Office. The Office shall review the filing and, within sixty (60) days of receipt thereof, inform the permittee as to whether the compliance filing has been approved. The Office shall not issue a Notice to Proceed with Construction until each such filing is received and approved, as necessary.

(1) If the Office determines that a compliance filing cannot be approved, it shall detail all deficiencies identified and any additional information that shall be provided by the permittee.

(2) The permittee shall resubmit the compliance filing within sixty (60) days of receipt of a notice of deficiency. If the permittee believes it will take more than sixty (60) days to address the deficiencies, it shall request an extension of the time to resubmit within thirty (30) days of receipt of the notice of deficiency.

(3) The Office shall review the revised filing and, within sixty (60) days thereof, inform the permittee as to whether the revised filing has been approved.

(b) Compliance filings required pursuant to section 900-10.3 of this Part shall be submitted to the NYSDPS. The NYSDPS shall review the filing and, within sixty (60) days of receipt thereof, inform the permittee whether the compliance filing has been approved.

(1) If the NYSDPS determines that a compliance filing cannot be approved, it shall detail all deficiencies identified and any additional information that shall be provided by the permittee.

(2) The permittee shall resubmit the compliance filing within sixty (60) days of receipt of a notice of deficiency. If the permittee believes it will take more than sixty (60) days to address the deficiencies, it shall request an extension of the time to resubmit within thirty (30) days of receipt of the notice of deficiency.

(3) The NYSDPS shall review the revised filing and, within sixty (60) days thereof, inform the permittee as to whether the revised filing has been approved.

§900-10.2 Pre-Construction Compliance Filings

(a) Copies of all federal and federally-delegated permits and approvals required for construction and operation of the facility.

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(b) Final Decommissioning.

(1) Final Decommissioning and Site Restoration Plan, including a decommissioning and site restoration estimate (for site restoration and decommissioning of all proposed Facility components removed four (4) feet below grade in agricultural land and three (3) feet below grade in non-agricultural land and removal and restoration of access road locations, where appropriate) and proof that the letter(s) of credit (or other financial assurance approved by the ORES) have been obtained in the decommissioning and site restoration estimate amount, as calculated pursuant to section 900-6.6(b) of this Part.

(2) Letter(s) of credit (or other financial assurance approved by the ORES) and copies of agreements between the permittee and the Towns, Cities, and Villages, establishing a right for each municipality to draw on the letters of credit dedicated to its portion of the facility shall be provided to the Office of Renewable Energy Siting after one year of facility operation and updated every fifth year thereafter specifying changes (due to inflation or other cost increases) to the structure of the letters of credit (or other financial assurance approved by the ORES).

(c) Plans, Profiles, and Detail Drawings.

(1) A statement shall be provided indicating that a professional engineer has reviewed facility details and attests to the accuracy of the final design as reflected in revised and initially filed (unaffected material) maps, site plans, profile figures, and environmental controls and construction details in accordance with sections 900-2.6 and 900-2.17 of this Part.

(2) Foundation drawings, including plan and sections details, to be used for wind turbines or solar facility installations; if multiple foundation designs are to be utilized for the facility, the foundation type at each location will be specified on foundation plans (listed in a table or indicated on corresponding site plans). Applicable criteria regarding foundation design and installation shall be listed and described in the drawings. Foundation drawings shall be stamped and signed by a professional engineer, licensed and registered in New York State.

(3) Copies of any agreements entered with the owners/operators of existing high-pressure gas pipelines regarding the protection of those facilities.

(d) Wind Turbine Certifications.

(1) A design verification, confirming that the wind turbines were designed in accordance with International Electrotechnical Commission (IEC) 61400-1:2019 (see section 900-15.1(b)(1)(i) of this Part).

(e) Construction Management.

(1) A Quality Assurance and Control Plan, which shall include job titles and qualifications necessary, demonstrating how the permittee will monitor and assure conformance of facility design, engineering and installation, including general concrete testing procedures with a plan outlining the monitoring and testing of concrete procedures in conformance with and reference to all applicable codes and standards.

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(2) A Construction Operations Plan, which shall indicate all material lay-down areas, construction preparation areas, temporary concrete batch location, major excavation and soil storage areas, and construction equipment.

(3) A Facility Maintenance and Management Plan, which shall include plans, procedures and criteria specifically addressing the following topics:

(i) Inspections, maintenance, and repairs of turbines, solar panels, inverters, and associated equipment, including conformance with manufacturer's required maintenance schedules, safety inspections, and tower integrity; and

(ii) Electric collection, transmission, and interconnect line inspections, maintenance, and repairs.

(4) A Vegetation Management Plan, which shall include, at a minimum, the following:

(i) Vegetation management practices for switchyard and substation yards and for transmission and interconnection facilities, including danger trees (trees that due to location and condition are a particular threat to fall on and damage electrical equipment) around transmission and interconnection facilities, specifications for clearances, inspection and treatment schedules, and environmental controls to avoid off-site effects;

(ii) Vegetation management recommendations, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;

(iii) Planting of native vegetation, based on on-site surveys of vegetation cover types and growth habits of undesirable vegetation species;

(iv) Restoration of disturbed areas, ruts, and rills to original grades and conditions with permanent re-vegetation and erosion controls appropriate for those locations;

(v) All proposed chemical and mechanical techniques for managing undesirable vegetation. Herbicide use and limitations, specifications, and control measures shall be included;

(vi) Substation fence-line clearances, and overhead wire security clearance zone specifications, indicating applicable safety, reliability and operational criteria;

(vii) Inspection and target treatment schedules and exceptions;

(viii) Standards and practices for inspection of facilities easements for erosion hazard, failure of drainage facilities, hazardous conditions after storm events or other incidents;

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(ix) Review and response procedures to avoid conflicts with future use encroachment or infrastructure development; and

(x) Host landowner notification procedures.

(5) Facility Communications Plan, which shall include the permittee's construction organizational structure, contact list, and protocol for communication between parties. The permittee shall provide to NYSDPS staff, Office staff and the municipalities the names and contact information of all individuals responsible for facility oversight.

(6) Environmental Monitoring Plan, including names and qualifications of companies that will serve as environmental monitors (including agricultural monitor).

(7) A Complaint Management Plan, which shall describe, at a minimum, the following:

(i) Methods for registering a complaint, which shall include a phone number, email address, mailing address, and a form to report complaints;

(ii) Notification to the public of the complaint procedures;

(iii) Process for responding to and resolving complaints in a consistent, timely, and respectful manner;

(iv) Logging and tracking of all complaints received and resolutions achieved, with records of the following for each complaint containing:

(a) The name and contact information of the person filing the complaint;

(b) Location and owner of the property where the complaint originated;

(c) Date and time of the underlying event causing the complaint;

(d) Description of the complaint; and

(e) Current status and description of measures taken to resolve complaint.

(v) Reporting to the Office and the NYSDPS any complaints not resolved within thirty (30) days of receipt;

(vi) Mediating complaints not resolved within sixty (60) days; and

(vii) Providing annual reports of complaint resolution tracking to the Office staff and NYSDPS staff, which shall also be filed with the Executive Director of the Office and Secretary of the NYSDPS.

(8) A Traffic Control Plan shall be in effect during facility construction, to ensure safety and

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minimize potential delays to local traffic during construction, which shall describe, at a minimum, the following:

- (i) Maps and plans showing final haul routes developed in consultation with the host municipalities and NYS, County and municipal highway officials in coordination with the turbine manufacturer. Final haul routes shall be accurately depicted in drawings submitted with the Traffic Control Plan.
- (ii) Copies of all necessary transportation permits from the affected State, County, and municipal agencies for such equipment and/or materials on such route. Such permits shall include but not be limited to: Highway Work Permits to work within the ROW, permits to exceed posted weight limits, Highway Utility Permits to construct facilities within ROW, Traffic Signal Permits to work within ROW, Special Haul Permits for oversize/overweight vehicles, and Divisible Load overweight Permits.
- (iii) Copies of all necessary agreements with utility companies for raising or relocating overhead wires where necessary to accommodate the oversize/overweight delivery vehicles, if applicable.
- (iv) A copy of all road use and restoration agreements, if any, between the permittee and landowners, municipalities, or other entities, regarding repair of local roads damaged by heavy equipment, construction or maintenance activities during construction and operation of the facility.

(f) Environmental.

- (1) Proof that the required payment was made into the Endangered and Threatened Species Mitigation Bank Fund, if required.
- (2) A copy of the Wetland Restoration and Mitigation Plan, if required.
- (3) A copy of the Stream Restoration and Mitigation Plan, if required.
- (4) A copy of the Invasive Species Control and Management Plan (ISCMP), prepared in compliance with 6 NYCRR Part 575, which shall include the following information:
 - (i) Baseline mapping of all invasive species within the facility area and for one hundred (100) feet beyond the facility's limit of disturbance (LOD). The baseline mapping and data shall include the relative abundance and distribution of each invasive species prior to the commencement of any construction activities;
 - (ii) Identification of specific control, removal, and disposal measures to be implemented for each identified and mapped invasive species/plant community during construction activities. The ISCMP shall include a detailed sequence and schedule for all mechanical and chemical control measures to be implemented during construction activities;

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(iii) A detailed monitoring plan and specific sampling protocols for each identified and mapped invasive species/plant community within the facility area and for one hundred (100) feet beyond the LOD;

(iv) Identification of specific control contingency measures to be implemented as part of the ISCMP for each identified and mapped invasive species for the duration of the facility adaptive management and monitoring period (i.e., 5 years, unless extended). The ISCMP shall include a detailed sequence and schedule for all contingency mechanical and chemical control measures to be implemented during the monitoring period;

(v) Specific contingency measures to be implemented (i.e., regrading, re-planting of native species etc.) to achieve the final site restoration criteria (i.e., eighty (80) percent survivorship of appropriate native species reestablishment over all portions of the replanted areas, unless the baseline survey indicates a smaller percentage of appropriate species exists prior to construction);

(vi) Details regarding the responsible party or parties designated to implement the ISCMP and what financial assurances exist to ensure successful monitoring and ISCMP implementation; and

(5) A copy of an Inadvertent Return Flow Plan containing the following requirements:

(i) Erosion and sediment control shall be used at the point of HDD, so that drilling fluid shall not escape the drill site and enter NYS-regulated wetlands, waterbodies and streams (as delineated pursuant to section 900-1.3(e) and (f) of this Part). The disturbed area shall be restored to original grade and reseeded upon completion of HDD;

(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; and

(iv) If the amount of drilling fluids released is not enough to allow practical collection, the affected area shall be diluted with freshwater and allowed to dry and dissipate naturally.

(6) For wind facilities, a Final Geotechnical Engineering Report verifying subsurface conditions within the facility site, including the results of borings and/or test pits at each turbine location.

(g) A copy of a Cultural Resources Avoidance, Minimization and Mitigation Plan, providing:

(1) A demonstration that impacts of construction and operation of the facilities on cultural resources (including archeological sites and any stone landscape features, and historic resources) will be avoided or minimized to the extent practicable by selection the proposed facility's location, design and/or implementation of identified mitigation measures.

(2) A Cultural Resources Mitigation and Offset Plan, either as adopted by federal permitting agency in subsequent National Historic Preservation Act (NHPA) Section 106 review, or as

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required by the Office, in consultation with New York State Historic Preservation Office (SHPO) in the event that the NHPA Section 106 review does not require that the mitigation plan be implemented. Proof of mitigation funding awards for offset facility implementation to be provided within two (2) years of the start of construction of the facility shall be included.

(h) Real Property Rights.

(1) A copy of all necessary titles to or leasehold interests in the facility, including ingress and egress access to public streets, and such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility.

(2) Map of survey of facility site properties with property lines based on metes and bounds survey.

(3) Notarized memos or similar proof of agreement for any participating property whose owner has signed a participation agreement or other type of agreement addressing potential facility impacts (e.g., noise, shadow flicker, setback, etc.).

(i) A copy of any Interconnection Agreements (IA).

(j) Documentation of all host community benefits to be provided by the permittee.

§900-10.3 Post-Construction Compliance Filings.

(a) Any updated information regarding the design, safety and testing for the wind turbines, solar panel, inverters, substation, transformer, and battery storage equipment to be installed during construction as well as information regarding the design, safety, and testing for any equipment installed during facility operation as a replacement of failed or outdated equipment shall be filed within fourteen (14) days of completion of all final post-construction restoration.

(b) As-built plans in both hard and electronic copies shall be filed within nine (9) months of the commencement of commercial operations of the facility and shall include the following:

(1) GIS shapefiles showing all components of the facility (wind turbine locations, solar panel array locations, electrical collection system, substation, buildings, access roads, met towers, point of interconnection, etc.);

(2) Collection circuit layout map; and

(3) Details for all facility component crossings of, and co-located installations of facility components with, existing pipelines: showing cover, separation distances, any protection measures installed, and locations of such crossings and co-located installations.

Subpart 900-11 Modifying, transferring or relinquishing permits

§900-11.1 Permit modifications requested by Permittee

(a) An application by the permittee to modify an existing permit including an approved compliance filing shall contain:

(1) A statement, including supporting information, setting forth the proposed permit or approved compliance filing modifications, identifying the existing condition(s) the permittee is requesting to be modified and whether the permittee considers such change to be a minor or major modification; and

(2) A statement that there are no outstanding permit violations at the facility.

(b) The Office shall review the request and inform the permittee with thirty (30) days as to its determination as to whether such changes constitute a minor modification to be processed by the Office or a major modification subject to subdivision (c) of this section.

(c) Major Modifications.

(1) A request for a major modification to an existing permit or an approved compliance filing shall be noticed, filed and served in the same manner as an application.

(2) A major modification to the permit or approved compliance filing may require the permittee to supplement the local agency account to the extent that the permittee is seeking to increase the base nameplate capacity of the facility.

(3) Major modifications shall be subject to a minimum sixty (60) day public comment period in which comments regarding the proposed modification will be accepted by the Office. In determining whether a major modification should be approved, the Office shall only accept and consider comments with respect to the changes proposed by the permittee.

(4) The permittee shall provide a response to public comments within fifteen (15) days of close of the public comment period.

(5) Major modifications may be subject to an adjudicatory hearing pursuant to Subpart 900-8 of this Part. Such hearing would be limited to only those changes proposed by the permittee for which significant and substantive issues have been identified.

(6) The Office shall mail to the permittee a decision in the form of a modified permit, revised compliance filing requirement, or a statement that the major permit modification applied for has been denied, with an explanation for the denial.

§900-11.2 Transfers of Permit and Pending Applications

(a) A permit in effect may only be transferred to a person, as defined by section 900-1.2(bf) of this Part, who agrees in writing to comply with the terms, limitations, or conditions contained in the permit, and upon the approval of the Office.

(b) Applications for the transfer of permits in effect, or pending permit applications, to a different permittee or applicant, or to change the name of the permittee or applicant, shall be submitted to the Office and shall contain:

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- (1) A statement of the reasons supporting the transfer;
 - (2) A statement showing the transferee is qualified to carry out the provisions of the permit or any pending permit application and requirements of this Part;
 - (3) A verification by all parties to the proposed transfer;
 - (4) If required by the Office, a copy of the proposed transfer agreement; and
 - (5) Name, address, telephone number and electronic mail address of an employee or representative of the permittee or applicant from whom further information may be obtained.
- (c) Applications for transfer of permits in effect, or pending permit applications, should be submitted to the Office at least thirty (30) days prior to transfer, unless a different time period is authorized by the Office.
- (d) An application for a permit transfer shall not include or cause a significant change in the design or operation of the project as approved by the Office in a siting permit issued pursuant to Section 94-c of the Executive Law or as described in an application pending before the Office.
- (e) The new permittee, or applicant, shall satisfy any required financial obligations and insurance coverage prior to approval of a transfer of an issued permit or pending application.
- (f) A new permittee, or applicant, may be subject to a record of compliance review before a decision on permit or application transfer is rendered by the Office.
- (g) Any noncompliance by the existing permittee, associated with a permit proposed to be transferred, shall be resolved to the Office's satisfaction prior to transfer of such permit.

§900-11.3 Relinquishments

- (a) A person may relinquish a permit by sending a written notification to the Office. The notification shall:
- (1) Identify the permit to be relinquished by its permit number;
 - (2) State why the permit is being relinquished;
 - (3) Describe how the provisions and conditions of the permit have been satisfied; and
 - (4) Provide an explanation of any remaining actions required at the site or facility prior to terminating the permit.
- (b) In reviewing a request to relinquish a permit, the Office shall confirm whether or not permit provisions and conditions have been satisfied, including post-operational and decommissioning requirements as set forth in section 900-2.24 of this Part. The Office shall provide written verification of its concurrence with permit relinquishment or provide reasons why the permit shall remain in effect.

§900-11.4 Permit Modifications by the Office

- (a) Permits may be modified or terminated on the basis of any of the following:

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- (1) Materially false or inaccurate statements in the permit application, compliance filings or supporting papers;
 - (2) Failure by the permittee to comply with any terms or conditions of the permit conditions, orders of the Executive Director, or any provisions of law or regulations related to the permitted activity;
 - (3) Exceeding the scope of the project as described in the permit application; or
 - (4) Newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit.
- (b) The Office shall send a notice of intent to modify or terminate a permit to the permittee by certified mail return receipt requested or personal service and publish notice on the Office's website. The notice shall state the alleged facts or conduct which appear to warrant the intended action and shall state the effective date, contingent upon administrative appeals, of the modification.
- (c) Within fifteen (15) days of mailing a notice of intent, the permittee may submit a written statement to the Office, as directed, giving reasons why the permit should not be modified or terminated, requesting a hearing, or both. Failure by the permittee to timely submit a statement shall result in the Office's action becoming effective on the date specified in the notice of intent.
- (d) Where the Office proposes to modify or terminate a permit and the permittee requests a hearing on the proposed modification, the original permit conditions or permit status shall remain in effect until a decision is issued by the Executive Director pursuant to subdivision (f) of this section. At such time, the permit conditions or permit status supported by the Executive Director's decision shall take effect.
- (e) Within fifteen (15) days of receipt of the permittee's statement, the Office shall either:
- (1) Rescind or confirm the notice of intent to modify or terminate based on a review of the information provided by the permittee, if a statement without a request for a hearing is submitted; or
 - (2) Notify the permittee that a hearing shall be held at a date and place to be established by the Office of hearings, if a statement with a request for a hearing has been submitted. The provisions of Subpart 900-8 of this Part apply to hearings conducted pursuant to this section, except that the time periods provided for in section 900-8.1 of this Part shall be measured from date of receipt of the permittee's request for a hearing.
- (f) In the event such a hearing is held, the Executive Director shall, within thirty (30) days of receipt of the complete record, issue a decision which:
- (1) Continues the permit in effect as originally issued; or
 - (2) Modifies the permit; or
 - (3) Terminates the permit.
- (g) Notice of such decision, stating the findings and reasons therefor, shall be provided to the applicant pursuant to the procedures set forth in Subpart 900-9 of this Part.

Subpart 900-12

§900-12.1 Enforcement

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(a) The NYSDPS or PSC shall have the authority to monitor, administer and enforce compliance with all terms and conditions set forth in an Office-issued siting permit, including but not limited to, the authority set forth in Sections 25, 26 and 68 of the Public Service Law and implementing regulations.

(b) Staff from the ORES and the NYSDPS shall have the authority -- in the absence of responsible permittee supervisory personnel, or in the presence of such personnel who, after consultation with ORES or NYSDPS staff, refuses to take appropriate action -- to issue a stop work order and direct the field crews to stop the specific potentially harmful activity immediately, in the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of a siting permit issued by the Office, compliance filings submitted pursuant to Subpart of 900-10 of this Part, or any other supplemental filings. Any stop work order shall be limited to the activity at issue and/or the affected areas of the facility.

(c) If responsible permittee personnel are not on site, ORES and/or NYSDPS staff shall immediately thereafter inform the permittee's construction supervisor(s) and/or environmental monitor(s) of the action taken.

(d) A stop work order shall expire twenty-four (24) hours after issuance, or earlier if the issue promoting the stop work order is resolved, unless confirmed by the Executive Director of the Office or the Commissioner of the PSC. ORES and/or NYSDPS staff shall give the permittee notice by electronic mail of any application to have a stop work order so confirmed. If a stop work order is confirmed, the permittee may seek reconsideration from the Executive Director of the Office or the Commissioner of the PSC.

(e) If the emergency prompting the issuance of a stop work order is resolved to the satisfaction of the Office or the NYSDPS, the stop work order shall be lifted. If the emergency has not been satisfactorily resolved, the stop work order shall remain in effect.

(f) Stop work authority shall be exercised sparingly and 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, ORES and/or NYSDPS staff shall consult wherever practicable with the permittee'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.

(g) Issuance of a stop work order shall not prevent the permittee nor the contractor from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances.

(h) If ORES and/or NYSDPS staff 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 respective staff may, in the absence of responsible permittee supervisory personnel, or in the presence of such personnel who refuse to take appropriate action, direct the permittee or the relevant contractors to implement the corrective measures identified in the approved siting permit or compliance filings. All such directives shall follow the protocol established for communication between

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parties as set forth in the approved Facility Communications Plan submitted pursuant to section 900-10.2(e)(5) of this Part. The field crews shall immediately comply with ORES and/or NYSDPS staff directives as provided through the communication protocol. ORES and/or NYSDPS staff shall immediately thereafter inform the permittee's construction manager(s) and/or environmental monitor(s) of the action taken.

Subpart 900-13

§900-13.1 Severability

If any provision of this Part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination does not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

Subpart 900-14

§900-14.1 Effective date

This Part applies to applications received by the Office on or after the effective date of this Part.

Subpart 900-15

§900-15.1 Material Incorporated by Reference

(a) Acoustical Society of America.

(1) The following publications accredited by the American National Standards Institute (ANSI) and published by the Acoustical Society of America (ASA) are incorporated herein by reference:

- (i) Guide to the Evaluation of Human Exposure to Vibration in Buildings, publication date April 4, 1983, reaffirmed June 19, 2020 (ANSI/ASA Standard S2.71-1983);
- (ii) Quantities and Procedures for Description and Measurement of Environmental Sound-Part 3: Short-term Measurements with an Observer Present, publication date 2013, reaffirmed June 29, 2018 (ANSI/ASA S12.9-2013/ Part 3);
- (iii) Quantities and Procedures for Description and Measurement of Environmental Sound. Part 4: Noise Assessment and Prediction of Long-term Community Response, publication date 2005, reaffirmed June 19, 2020 (ANSI/ASA S12.9-2005/Part 4);
- (iv) Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas, publication date 2014, reaffirmed May 28, 2020 (ANSI/ASA S3/SC1.100-2014-ANSI/ASA S12.100-2014); and
- (v) Acoustics – Attenuation of Sound During Propagation Outdoor-Part 2: General Method of Calculation, publication date 2012, reaffirmed June 22, 2020, (ANSI/ASA S12.62-2012 /ISO 9613-2:1996(MOD).

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(2) Copies of said publications may be obtained from the publisher at the following address: Acoustical Society of America, Standards Secretariat, 1305 Walt Whitman Road, Suite 300, Melville, NY 11747-4300, or from the ANSI online webstore.

(b) International Electrotechnical Commission.

(1) The following publications published by the International Electrotechnical Commission (IEC) are incorporated herein by reference:

- (i) Wind energy generation systems - Part 1: Design requirements. Fourth Edition, publication date 2019-02-08 (IEC 61400-1:2019);
- (ii) Wind Turbines-Part 11: Acoustic Noise Measurement Techniques. Third Edition (3.1), publication date 2018-06-15 (IEC 61400-11:2012+AMD1:2018 CSV); and
- (iii) Wind Turbines-Part 14: Declaration of Apparent Sound Power Level and Tonality Values, First Edition, publication date 2005-03-22 (IEC TS 61400-14:2005).

(2) Copies of said publications may be obtained from the publisher at the following address: IEC Regional Centre for North America (IEC-ReCNA), 446 Main Street, 16th Floor, Worcester, MA 01608, or from the IEC online webstore.

(c) Institute of Acoustics.

(1) The following publication published by the Institute of Acoustics is incorporated herein by reference:

- (i) IOA Noise Working Group (Wind Turbine Noise), Amplitude Modulation Working Group, Final Report. "A Method for Rating Amplitude Modulation in Wind Turbine Noise", 09 August 2016, Version 1.

(2) Copies of said publication are readily available without charge on the internet at https://www.ioa.org.uk/sites/default/files/AMWG%20Final%20Report-09-08-2016_0.pdf, and may be obtained from the publisher at the following address: Institute of Acoustics, 3rd Floor St Peter's House, 45-49 Victoria Street, St. Albans, Hertfordshire, AL1 3WZ, United Kingdom.

(d) World Health Organization.

(1) The following publication published by the World Health Organization is incorporated herein by reference:

- (i) Guidelines for Community Noise, publication date 1999.

(2) Copies of said publication are readily available without charge on the internet at <https://apps.who.int/iris/handle/10665/66217>, and may be obtained from the publisher at the following address: World Health Organization, Avenue Appia 20, 1202, Genève, Switzerland.

(e) North American Electric Reliability Corporation.

(1) The following publication published by the North American Electric Reliability Corporation is incorporated herein by reference:

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(i) Bulk Electric System Definition Reference Document, Version 3 (August 2018).

(2) Copies of said publication are readily available without charge on the internet at: https://www.nerc.com/pa/Stand/2018%20Bulk%20Electric%20System%20Definition%20Reference/BES_Reference_Doc_08_08_2018_Clean_for_Posting.pdf, and may be obtained from the publisher at the following address: North American Electric Reliability Corporation, 1325 G Street NW, Suite 600, Washington, DC 20005.

(f) Department of Defense.

(1) The following publications published by the Department of Defense are incorporated herein by reference:

(i) 32 Code of Federal Regulations 211.6, effective date 01/06/14, which is readily available without charge on the internet at: https://www.ecfr.gov/cgi-bin/text-idx?node=pt32.2.211&rgn=div5#se32.2.211_16; and

(ii) 32 Code of Federal Regulations 211.7, effective date 01/06/14, which is readily available without charge on the internet at: https://www.ecfr.gov/cgi-bin/text-idx?node=pt32.2.211&rgn=div5#se32.2.211_17.

(2) Copies of said publications may be obtained from the publisher at the following address: U.S. Government Publishing Office, 732 North Capital Street, NW, Washington, DC 20401-0001.

(g) International Organization for Standardization.

(1) The following publication published by the International Organization for Standardization (ISO) is incorporated herein by reference:

(i) Acoustics- Attenuation of Sound During Propagation Outdoors- Part 2: General Method of Calculation, First Edition, publication date 1996-12-15 (ISO 9613-2:1996).

(2) Copies of said publication may be obtained from the publisher at the following address: International Organization for Standardization, ISO Central Secretariat, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, or from the ISO online webstore.

(h) Federal Aviation Administration.

(1) The following publication published by the Department of Transportation and Federal Aviation Administration is incorporated herein by reference:

(i) FAA 14 Code of Federal Regulations Part 77, effective date 02/15/2011.

(2) Copies of said publication are readily available without charge on the internet at <https://www.ecfr.gov/cgi-bin/text-idx?node=pt14.2.77&rgn=div5>, and may be obtained from the publisher at the following address: U.S. Government Publishing Office, 732 North Capital Street, NW, Washington, DC 20401-0001.

(i) NYSDEC.

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(1) The following publications published by the NYSDEC, are incorporated herein by reference:

- (i) New York State Standards and Specifications for Erosion and Sediment Control, November 2016, which is readily available without charge on the internet at:
<https://www.dec.ny.gov/chemical/29066.html>;
- (ii) New York State Stormwater Management Design Manual, January 2015, which is readily available without charge on the internet at:
<https://www.dec.ny.gov/chemical/29072.html>; and
- (iii) NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance, undated, which is readily available without charge on the internet at:
https://www.dec.ny.gov/docs/remediation_hudson_pdf/1x1.pdf.

(2) Copies of said publications may be obtained from the publisher at the following address:
New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-0001.

(j) United States Environmental Protection Agency.

(1) The following publication published by the United States Environmental Protection Agency is incorporated herein by reference:

- (i) 2018 Edition of the Drinking Water Standards and Health Advisories Tables, March 2018.

(2) Copies of said publication are readily available without charge on the internet at <https://www.epa.gov/sites/production/files/2018-03/documents/dwtable2018.pdf>, and may be obtained from the publisher at the following address: United States Environmental Protection Agency, Office of Water, 4101M, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

(k) United States Bureau of Mines.

(1) The following publications published by the United States Bureau of Mines are incorporated herein by reference:

- (i) United States Bureau of Mines Report of Investigation 8507, Structure Response and Damage Produced by Ground Vibration From Surface Mine Blasting, Figure B-1, undated, which is readily available without charge on the internet at:
<https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf>; and
- (ii) United States Bureau of Mines Report of Investigation 8485, Structure Response and Damage Produced by Airblast From Surface Mining, including errata, undated, which is readily available without charge on the internet at:
<https://www.osmre.gov/resources/blasting/docs/USBM/RI8485StructureResponseDamageProducedAirblast1980.pdf>.

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(2) Copies of said publications may be obtained from the publisher at the following address:
United States Department of Interior, Office of Surface Mining Reclamation and Enforcement,
1849 C Street NW, Washington, DC 20240.

(l) NYSAGM.

(1) The following publications published by the New York State Department of Agriculture and Markets are incorporated herein by reference:

(i) NYSAGM "Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands", 10/18/2019, which is readily available without charge on the internet at:

https://agriculture.ny.gov/system/files/documents/2019/10/solar_energy_guidelines.pdf
; and

(ii) NYSAGM "Guidelines for Agricultural Mitigation for Wind Power Projects" revised 4/19/18, which is readily available without charge on the internet at:

https://agriculture.ny.gov/system/files/documents/2019/10/wind_farm_guidelines.pdf.

(2) Copies of said publications may be obtained from the publisher at the following address:
New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235.

(m) New York Public Service Commission.

(1) The following publication published by the New York Public Service Commission is incorporated herein by reference:

(i) "Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities," issued and effective September 11, 1990, New York State Public Service Commission, Cases 26529 and 26559, which is readily available without charge on the internet at:

[https://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/0/9C381C482723BE6285256FA1005BF743/\\$File/26529.pdf?OpenElement](https://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/0/9C381C482723BE6285256FA1005BF743/$File/26529.pdf?OpenElement).

(2) Copies of said publication may be obtained from the publisher at the following address: the
New York State Public Service Commission, Empire State Plaza, Agency Building 3, Albany, NY
12223-1350.

§900-15.2 Office Address

The materials referenced above are available for public inspection and copying at the Office of Renewable Energy Siting, New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231- 0001.