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Via Electronic Delivery

February 14, 2020

Hon. Michelle L. Phillips
Secretary
New York State Board on Electric Generation
Siting and the Environment
Three Empire State Plaza
Albany, New York 12233-1350

Re: Case 17-F-0597 – Application of High River Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Electric Generating Facility Located in the Town of Florida, Montgomery County.

Dear Secretary Phillips:

Attached for filing in the above-captioned proceeding, please find the “Supplement to the Application,” comprising the responses of High River Energy Center, LLC (“High River”) to the deficiencies identified in the letter from the Chair, dated December 9, 2019. The Supplement to the Application presents sequentially the requests made in the Chair’s letter followed by the applicable response.

Also attached is an affidavit of service affirming that service of the Supplement to the Application was made “on all entities entitled to receive a copy of the Application pursuant to PSL §164, as well as any additional parties on any established Party List in this proceeding.”

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

Respectfully submitted,

READ AND LANIADO, LLP
Attorneys for High River Energy
Center, LLC

By: _____ /s/
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cc: DMM Party List
Statutory Service List

Attachments

Case 17-F-0597 - Application of High River Energy Center, LLC

**16 NYCRR § 1000.6(a) Service List
Supplement to the Article 10 Application**

NAME & ADDRESS	NUMBER OF COPIES
Hon. Michelle L. Philips Secretary to the Commission New York State Public Service Commission Empire State Plaza Agency Building 3 Albany, NY 12223-1350	10 paper copies 1 electronic copy
Basil Seggos, Commissioner NYS Department of Environmental Conservation 625 Broadway Albany, NY 12233	4 paper copies
Keith Goertz, Regional Director (Region 4) NYS Department of Environmental Conservation 1130 North Westcott Road Schenectady, NY 12306-2014	3 paper copies
Howard A. Zucker, M.D., J.D. Commissioner NYS Department of Health Corning Tower Empire State Plaza Albany, NY 12237	2 paper copies
Richard L. Kaufmann, Board Chairman New York State Energy Research and Development Authority 17 Columbia Circle Albany, NY 12203-6399	2 paper copies
Howard Zemsky, Commissioner NYS Department of Economic Development Attn: Vincent Ravaschiere Senior Vice President, Energy and Incentives 633 Third Avenue New York, NY 10017	2 paper copies
Eric Mead, Supervisor Town of Florida 214 Ft. Hunter Road Amsterdam, NY 12010	1 paper copy

Case 17-F-0597 - Application of High River Energy Center, LLC

**16 NYCRR § 1000.6(a) Service List
Supplement to the Article 10 Application**

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Rossana Rosado, Secretary of State NYS Department of State Attn: Erin Hogan Director, Utility Intervention Unit One Commerce Plaza 99 Washington Avenue Albany, NY 12231-0001	1 paper copy
Letitia James NYS Attorney General Office of Attorney General State Capital Building Albany, NY 12224	1 paper copy
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Erik Kulleseid, Commissioner NYS Office of Parks, Recreation & Historic Preservation 625 Broadway Albany, New York 12207	1 paper copy
Andrew Davis Office of Energy Efficiency and the Environment NYS Department of Public Service 3 Empire State Plaza Albany, NY 12223-1350	1 electronic copy 2 paper copies of entire Application

Case 17-F-0597 - Application of High River Energy Center, LLC

**16 NYCRR § 1000.6(a) Service List
Supplement to the Article 10 Application**

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Amsterdam Free Library 28 Church Street Amsterdam, NY 12010	1 paper copy
Fort Hunter Free Library 167 Fort Hunter Road Amsterdam, NY 12010	1 paper copy
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Case 17-F-0597 - Application of High River Energy Center, LLC

**16 NYCRR § 1000.6(a) Service List
Supplement to the Article 10 Application**

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Case 17-F-0597 - Application of High River Energy Center, LLC

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Case 17-F-0597 - Application of High River Energy Center, LLC

**16 NYCRR § 1000.6(a) Service List
Supplement to the Article 10 Application**

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AFFIDAVIT OF SERVICE

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

High River Energy Center
Town of Florida, Montgomery County, New York

Case No.: 17-F-0597

Applicant:
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February 2020

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- Attachment A. New Figure 3-1A. Project Component Locations
- Attachment B. New Figure 9-1A. Preliminary Project Layout with Fixed Panels Only
- Attachment C. New Figure 4-10. Project Component Locations with Proposed Tree Clearing Areas
- Attachment D. Updated Proposed Layout Site Plan and Civil Design
- Attachment E. Revised Lighting Plan
- Attachment F. Revised Table 22-12. State & Federally Listed Species Occurring or Likely to Occur within the Project Area
- Attachment G. Photographic Simulations
- Attachment H. Fire/Ambulance and Police Routes
- Attachment I. Montgomery County Public Works Department Permits and Standards
- Attachment J. SEQRA Determination
- Attachment K. Updated Proposed Layout Impact Calculations
- Attachment L. Addendum to the Pre-Construction Noise Impact Assessment

Attachment M. Alternative Layout Site Plan

Attachment N. Alternative Layout Impact Calculations

In response to the December 9, 2019 letter received from the Board on Electric Generation Siting and the Environment (Siting Board) regarding the Application submitted by High River Energy Center, LLC (Applicant) pursuant to N.Y. Public Service Law (PSL) 164 for a Certificate of Environmental Compatibility and Public Need for the High River Energy Center Project (the Project), supplemental information is provided below and attached. The organization of this document (hereafter referred to as the “Supplement to the Application”) is consistent with the Siting Board’s December 9, 2019 letter and presents each comment followed by the Applicant’s response to the comment.

In addition to the response to deficiencies, this Supplement to the Application proposes two updated layouts, based upon feedback from the Applicant’s Public Involvement Program, that are designed to avoid or minimize impacts even further. They are discussed in Sections 2 and 3 below. The Updated Proposed Layout (further discussed in Section 2, below), optimizes and refines the layout previously presented in Exhibit 3 of the Application (and Exhibit 9, Section 9(c)(1)(i)) by relocating some of the Project Components. This includes removing panels in Area 5 as depicted in Exhibit 9, Figure 9-2. Additional minor changes include relocating 9 of the 28 inverters and updates to 2,345 feet of access roads in selected portions of the Project Area. The Alternative Layout includes a new parcel the Applicant has recently acquired and eliminates panels from other parcels parcel. A Site Plan showing the Alternative Layout using the additional parcel is further discussed in Section 3, below, and included herein.

Section 1. Response to Comments

Exhibit 1: General Requirements

1. Stipulation 1(d) states, “the Applicant will provide the NYSDEC and DPS, contemporaneously with the filing of the Application, shapefiles suitable for use in GIS software via ESRI’s ArcGIS suite of software containing all applicable Project and survey components.” Shapefiles were not provided. Please provide all required GIS data, including the specific GIS files required per Stipulations 11(j), 19(o), 22(a), 22(b)(1)(iv), 22(i)(5), 22(p)(2), and 23(b)(1).

Response: The shapefiles pursuant to the referenced stipulations are being provided to the New York State Department of Public Service (NYSDPS) and New York State Department of Environmental Conservation (NYSDEC) under separate cover.

Exhibit 3: Location of Facilities

1. Stipulation 3(a)(1) requires “[t]he most recent USGS maps (1:24,000 topographic edition) reproduced at original scale showing...locations of all Project components.” Figure 3-1 of the Application does not include USGS topographic edition base mapping. Please provide mapping of all proposed Facilities on topographic mapping base.

Response: Figure 3-1 has been updated with USGS topographic contours, as requested, and is included herein as a new Figure 3-1A in Attachment A. The updated Figure 3-1A has been prepared using the Updated Proposed Layout (discussed further in Section 2, below).

2. 16 NYCRR § 1001.3(a)(1) requires maps showing the locations of “any reasonable and available alternative location sites” on New York State Department of Transportation or USGS maps (1:24,000 topographic edition). Alternate arrangement of facilities is mapped at Figure 9-1, however, that figure is not based on USGS topographic base map and is not presented at 1:24,000 scale. Please provide a revised Figure 9-1 to indicate alternative arrangement on topographic mapping at an appropriate scale.

Response: Figure 9-1 has been updated with a USGS topographic base map at 1:24,000 scale, as requested, and is included herein as a new Figure 9-1A in Attachment B.

3. 16 NYCRR 1001.3(b) and Stipulation 3(b) require “[m]aps clearly showing the locations the proposed Project Area...in relation to municipal boundaries [and] taxing jurisdictions.” Exhibit 3(c) describes the location of the Project Area as being in two school taxing jurisdictions; however, the referenced Figure 3-1 does not indicate the location of the taxing jurisdiction boundaries. Please provide revised mapping to indicate the location of the taxing jurisdiction boundaries.

Response: Figure 3-1 has been updated with taxing jurisdiction boundaries, as requested, and is included herein as a new Figure 3-1A in Attachment A. The updated Figure 3-1A has been prepared using the Updated Proposed Layout (discussed further in Section 2, below). The Project Area is located entirely within the Amsterdam City School District.

Exhibit 4: Land Use

1. 16 NYCRR 1001.4(n) requires “[o]verlays on aerial photographs which clearly identify the facility site and any interconnection route, the limits of proposed clearing or other changes to the topography, vegetation or man-made structures, and the location of access and maintenance routes.” The Application relies on Site Plan figures to show limits of clearing rather than aerial photos at an appropriate scale. Please provide aerial photographs showing the required information.

Response: A figure showing the proposed clearing, access, and Project Components overlaid on aerial photography is included herein as a new Figure 4-10 in Attachment C. The new Figure 4-10 has been prepared using the Updated Proposed Layout (discussed further in Section 2, below).

2. Stipulation 4(s) requires “[t]he Mohawk Valley Heritage Corridor will be addressed in the Application, as applicable, and the Corridor Management Plan adopted by the Mohawk Valley Heritage Corridor Commission will be evaluated, as applicable, in the Application.” The Application does not describe or mention the Corridor Management Plan for the Mohawk Valley Heritage Corridor. Please provide the evaluation of the Corridor Management Plan.

Response: The Applicant was unable to obtain a publicly available digital copy of the Mohawk Valley Heritage Corridor Management Plan. The Applicant contacted the Executive Director of the Mohawk Towpath Scenic Byway Coalition, Inc., to obtain a copy of the Corridor Management Plan and was informed that paper copies would be available at two local libraries. The local libraries, however, did not have paper or digital copies available. For this reason, the Applicant is evaluating herein the Mohawk Towpath Byway Corridor Management Plan (MTB) provided by the Executive Director of the Mohawk

Towpath Scenic Byway Coalition, Inc, in place of the Mohawk Valley Heritage Corridor Management Plan, which was not publicly available. A copy of the Mohawk Towpath Byway Corridor Management Plan can also be found online at: <https://www.dot.ny.gov/display/programs/scenic-byways/mohawk-towpath-byway>.

The Corridor Management Plan (CMP) for the Mohawk Towpath Byway (MTB) provides the following vision and goals statement:

The Mohawk Towpath Scenic Byway is a regional partnership of communities that will balance the promotion of local interests with the protection of scenic, agricultural, recreational and historic resources by: encouraging preservation, visitor accommodations and intermodal access: coordinating interpretation, promotion and signage; and emphasizing the important historic transportation role of the river valleys and the resultant cultural/industrial development so important to the westward expansion of the country.

The Project is located within the Mohawk Valley Heritage Corridor but has been sited away from population centers, waterfront areas, and historic resources. By doing so, the Project will not have an impact on the goals set forth in the CMP. As noted in the Visual Impact Assessment, the Mohawk River Corridor will have very low visibility comprising less than 1% of the entire Visual Study Area. Additionally, vegetative screening will further minimize visibility from such areas to the maximum extent practicable.

Exhibit 11: Preliminary Design Drawings

1. Stipulation 11(a) and 16 NYCRR § 1001.11(a) require “[a] site plan showing all buildings, structures, driveways, parking areas, emergency access lanes, sidewalks, access ways and other improvements at the facility site, depicting the proposed site in relation to adjoining properties, and depicting the layout of onsite facilities and ancillary features. Additional drawings shall be included depicting the layout of all offsite facilities and ancillary features.” Drawing C-001 of Appendix 11-1 includes an outline of the entire Project (key map), including the identification of proposed laydown areas. However, individual site plans related to this key map do not show portions of areas designated as laydown areas. Drawings C-017 and C-018 show some, but not all, of the proposed laydown areas. Also, Site Plans including the proposed laydown areas do not show

laydown parking areas or an access entrance to one of the laydown areas. Drawing C-017 includes access associated with the proposed laydown area situated south and southeast of the proposed site entrance and gate; however, there is no access road associated with the proposed laydown area located north and northwest of the proposed site entrance and gate (shown on Drawing C-017). Please provide updated individual site plans showing the missing portions of the proposed laydown areas, including any designated locations for proposed parking. Further, please provide an updated drawing C-017 showing a proposed access entrance to this laydown area, including identification of all designated parking areas within this location.

Response: The subject site plan drawings have been revised to show the portions of the laydown areas that were omitted. The site plan drawings have also been updated to show laydown parking areas. The site entrance off Thayer Road and associated access road shown on Drawing C-017 will provide direct access to both the laydown area to the south/southeast and the laydown area to the north/northwest. Drawing C-107 has been updated to show that the laydown areas are adjacent to this site entrance and access road. The updated site plans and drawings requested are included as Attachment D. The site plans and drawings have been prepared using the Updated Proposed Layout (discussed further in Section 2, below).

2. Stipulation 11(e) requires “[a] lighting plan detailing the type, number, height, standards and location of exterior lighting fixtures and indicating measures to be taken to prevent or mitigate, as reasonable, unnecessary light trespass beyond the Project property line. The plan will also specify use of full cut-off fixtures, no drop-down optics, and use of task lighting wherever feasible. The Application will also include typical manufacturer’s cut sheets or similar information for proposed light fixtures.” Exhibit 11 of the Application does not include lighting fixture manufacturer’s cut sheets or similar information. Please provide cut sheets or similar information for proposed light fixtures of the Project per Stipulation 11(e).

Response: The information requested in Stipulation 11(e) is included on the updated Lighting Plan (Sheets S-005 and S-013) attached herein as Attachment E.

Exhibit 15: Public Health and Safety

1. 16 NYCRR §1001.15(a) and Stipulation 15(a) require “consideration of wood waste generated during site clearing, including stumps and slash, and proposed methods to manage these materials.” Exhibit 15 does not address stumps generated from site clearing. Please provide a revised statement that specifically addresses disposal of stumps.

Response: Trees otherwise not claimed by the affected landowner will be cut, logged, and removed to local timber/firewood buyers. To reduce impacts to existing land uses, branch and brush debris and tree stumps will be chipped in place and spread to a maximum depth of 3 inches in upland areas (safely away from water resources) onsite so as not to interfere with existing land use practices. Any wood that is chipped will be used as stabilization in accordance with the Project’s Stormwater Pollution Prevention Plan (SWPPP) and any other regulatory requirements attached to this Project.

2. Stipulation 15(m)(1) requires “[i]f herbicide application is planned for the Project, the Applicant will address its potential impacts to soil, groundwater, livestock, food crops, and identified water supply wells.” The Application mentions the potential use of herbicide, but does not provide the potential impacts to soil, groundwater, livestock, food crops, and identified water supply wells. Please provide this information.

Response: Herbicides are typically used as a foliar spray and are specific to the target species onsite. The amount of herbicide to be used is specified on the product label and is regulated by the New York State Department of Environmental Conservation (NYSDEC). Spot treatments are expected to be used as the only spraying application. The expected, regulated herbicides to be used are known to break down rapidly in the soil and exposure to the sun will also result in an increase in degradation. The label on each herbicide also specifies the amount of time needed until cattle can safely graze in the area after a spraying application. Also, the NYSDEC has certified “aquatic safe” herbicides that are applied in or near wetlands and other waterbodies.

As the Applicant will use EPA and NYSDEC registered and approved herbicides and its application will be performed by a NYSDEC-licensed Commercial Pesticide Use

Applicator, there will be no unacceptable impacts to soil, groundwater, livestock, food crops and identified water supply wells.

Exhibit 19: Noise and Vibration

1. Stipulation 19 (c) states, "This section will include a discussion of time-frames for construction activities indicating seasons of the year, days of the week, hours of the day, and whether construction activities will be performed during the evening time (6:00 p.m. to 10 p.m.), nighttime (after 10:00 p.m. or before 7:00 a.m.), weekends or national holidays." While Exhibit 19 states that blasting, if required, and post installation and horizontal direction drilling will be limited to daytime hours, Exhibit 19 does not mention time frames for seasons or days of the week. Please provide the required information.

Response: On-site construction activity is anticipated to last approximately nine months in total and will generally occur within the hours of 7:00 am and 8:00 pm, Monday through Saturday, assuming favorable weather. Should work be required outside these days/hours, the Applicant will notify the Town and DPS Staff.

Exhibit 22: Terrestrial Ecology and Wetlands

1. Stipulation 22(a) requires "maps and shapefiles depicting plant communities identified within the Project Area, electric interconnection lines, and adjacent properties (based upon roadside surveys)." The Applicant did not provide these shapefiles. Please provide the required GIS shapefiles.

Response: The shapefiles pursuant to the referenced stipulation are being provided to the NYSDPS and the NYSDEC under separate cover.

2. Stipulation 22(f)(8) states, "The Application will include a summary impact table that clearly quantifies anticipated temporary and permanent impacts associated with all Project components in relation to wildlife habitats, identified concentration areas or travel corridors, and vegetation cover types, particularly grasslands, interior forests and young successional forests, if affected." Exhibit 22 on page 57 states, "Proper siting of fencing will minimize the impact to travel corridors." This is the only reference to travel corridors

in the Exhibit. Please specify which corridors are referenced and describe how impacts will be minimized.

Response: Table 22-10 in the Application summarizes the impacts to wildlife habitat. No identified wildlife concentration areas or travel corridors are present within the Project Area. Impacts to vegetation cover types are summarized in Tables 22-3 and 22-4 in the Application.

Fencing will be erected around individual solar arrays with sufficient spacing to allow for uninhibited travel between arrays. Specifically, primarily forested corridors connecting non-contiguous forest patches which criss cross the Project from east to west are preserved, and an additional corridor will provide access from the center of the site to agricultural fields located north and northeast of the Project. Fencing here was sited to maintain livestock and/or equipment access to fields, as required, per landowner request. No identified wildlife concentration areas or travel corridors are present within the Project Area. However, by providing livestock access, wildlife, such as deer, are also provided travel corridors to traverse the Project Area.

3. Stipulation 10001.22(o)(2) requires that the Application address the potential take of threatened and endangered (T&E) species resulting from habitat modification. Exhibit 22 does not address this. In addition, Table 22-12 is missing several data columns required by Stipulation 22(o)(3), specifically data columns required per Stipulation 22(o)(3)(vi), (ix), (x), and (xi) regarding identification of maps that include habitat for each species, estimated take of listed species, evaluation of impact avoidance measures considered, and if full avoidance isn't feasible, a discussion as to why such actions are not practicable. Further, it is noted that Table 22-12 misidentifies the conservation/SGCN status of several species (Bald Eagle, Short-eared Owl, Red-headed Woodpecker, Sedge Wren, Vesper Sparrow) and Henslow's Sparrow is absent. Please provide an evaluation of habitat modification on T&E species: avoidance, minimization, and mitigation plan, and informational requirements of an Incidental Take Permit. Please also provide a revised Table 22-12 that indicates the correct conservation status on Table 22-12, that adds missing species, and includes data required in Stipulation 22(o)(3).

Response: A revised Table 22-12 is included in Attachment F. In regard to the misidentification of SGCN status, there are two published lists available on the DEC website, each of which has a different set of species listed as High Priority.

The changes to NYS Status in Table 22-12 reflect the List of Endangered, Threatened and Special Concern Fish & Wildlife Species of New York State published here:

<https://www.dec.ny.gov/animals/7494.html>

The original table was sourced from the New York State Species of Greatest Conservation Need list published here:

https://www.dec.ny.gov/docs/wildlife_pdf/sgnc2015list.pdf. The revised Table 22-12 utilized this list to obtain the SGCN listing for species not found on the NYS Status list above.

To address the comment regarding incomplete evaluation of the impacts of habitat modification, the Applicant supplements Section 22(o)(2) as follows:

Habitat modification is not expected to result in take of listed T&E species (see Section 22(f)(10)). There will be no measurable impact to listed T&E species through loss or degradation of habitat. No take of listed species will occur as a result of Project operations. To the maximum extent practicable, siting of Project Components has been designed to avoid habitat for sensitive species. The preliminary design of the Project presented in this Application includes avoidance of unnecessary impacts to grasslands, interior forests, wetlands, shrublands, and young successional forests. As a result, impacts to these landscape features (and vegetation communities) will be marginal. Project Components were sited in order to limit disturbances. Linear Project Components such as access roads and collector lines have been co-located to avoid and minimize impacts to plant communities. Solar panels have been proposed in areas already disturbed by agriculture to the maximum extent practicable and work areas have been sited to utilize open fields wherever possible. Work areas have been located within open fields wherever possible. Impacts to wildlife habitat are summarized in Table 22-10.

Conversion of habitat due to siting of Project Components will impact 25.9 acres of forestland (12% of forestland within the Project Area), 4.2 acres of successional shrubland

(10% of shrubland in Project Area), and 0.02 acres of successional old field (0.2% of old field in Project Area). Remaining Project components, including access roads, solar arrays, and collection lines have been located within agricultural lands to minimize disturbance and loss of wildlife habitat within the Project Area. An erosion and sediment control plan has been developed and will be implemented during construction to reduce impacts where construction activities occur adjacent to aquatic habitats. Additionally, the applicant will employ an environmental monitor during construction to ensure BMPs are being utilized and limiting work in areas which constitute habitat for T&E listed species or are particularly sensitive to disturbance. Temporarily disturbed areas will be restored in efforts to mitigate impacts associated with construction. Impacts to habitat for T&E listed species resulting from Project construction and operation are expected to be minimal, representing only a small percentage of available habitat within the Project Area (14% of forested land, 10% of shrubland, and 0.2% of successional old field). Impacts to available habitat are a small percentage of the available habitat within the Study Area (0.4% of forested land, 0.6% of shrubland, and 0.005% of successional old field).

The loss of this relatively minimal amount of habitat is unlikely to result in measurable impact to local or regional populations of the T&E listed species with the potential to occur in the Project Area. Habitat within the Project Area is marginal for the majority of species listed in Table 22-12. Although temporary disruptions to local movements or behavior may result from construction, it is anticipated that species residing in the Project Area will temporarily relocate to adjacent habitat within and surrounding the Project Area and may return to the Project Area following post-construction restoration. For some species, impacts to habitat may result in increased quality of habitat available as areas previously maintained in active agriculture will be revegetated and converted to successional old field. This practice has been shown to result in increases in use by grassland birds (see Section 22(f)(7)). Impacts to each listed species, as well as avoidance, minimization, and mitigation measures are discussed in Table 22-12, included in Attachment F.

4. Stipulation 22(p)(2) requires “[f]or areas of high invasive species density and as useful for management of individual invasive species, identification of an area and concentration threshold that requires mapping and an individual management plan. GIS files of such concentration areas will be provided to NYSDEC.” The GIS files have not been provided to NYSDEC or DPS. Please provide the required GIS shapefiles to NYSDEC and DPS.

Response: The shapefiles pursuant to the referenced stipulation are being provided to the NYSDPS and the NYSDEC under separate cover.

Exhibit 24: Visual Impacts

1. 16 NYCRR § 1001.24(b)(5) and (6)d and Stipulation 24(b)(6) and (7) require additional photographic simulations of the “post-construction appearance of the Project” demonstrating effects of screening vegetation and mitigation measures, where proposed. Simulations for Viewpoints 12, 26, 27, 28, and 30 all indicate that “[p]roposed mitigation not shown for clarity purposes.” Please provide additional photographic simulations indicating the screening effects of proposed mitigation.

Response: Additional photographic simulations indicating screening effects of proposed mitigation for Viewpoints 12, 26, 27, 28, and 30 have been included herein as Attachment G.

Exhibit 25: Effects on Transportation

1. Stipulation 25(b)(3) and 16 NYCRR §1001.25(b)(3) require “an identification of potential approach and departure routes to and from the facility site for police, fire, ambulance, and other emergency vehicles.” The Application indicates that several attempts have been made to obtain information from emergency services, but no responses have been received, and it is noted that services will likely take the most direct routes. However, a map showing these potential “most direct” routes is not included in the Application. Please provide a map showing these potential “most direct” routes for emergency service vehicles to the facility site.

Response: Directions and mapping for the “most direct” routes for emergency service vehicles pursuant to the referenced stipulation are included herein as Attachment H.

Exhibit 29: Decommissioning

1. Stipulation 29(b)(1) requires “[a] detailed cost estimate for site restoration activities and decommissioning of the Project. In addition, the Application will include the proposed type

of, and justification for, the financial assurance that will be provided for decommissioning and restoration activities.” Exhibit 29 and Appendix 29-1 include several options regarding proposed financial assurance for decommissioning of the Project. However, justification of each type is not provided. Please update Exhibit 29 and Appendix 29-1 to include justification of each potential type of financial assurance listed as options for decommissioning and site restoration activities.

Response:

Surety Bond: A Surety Bond is a form of collateral/credit support backed by a three-party agreement whereby a surety company assures the obligee (recipient of an obligation) that the principal (in this case, the Applicant) will perform a contract obligation or responsibility. Surety Bonds are typically used when a customer requires support for decommissioning and restoration, performance of a task to a certain requirement, and other requirements.

Performance Bond: A Performance Bond is a type of Surety Bond, where the obligee requires security that a task is completed in a satisfactory manner, typically applying to construction activities. A Performance Bond could also apply to a decommissioning obligation of the Applicant’s contractor; however, a Decommissioning Bond is more applicable for the purposes of this section of the Application. A Decommissioning Bond is another type of Surety Bond. It is a financial guarantee that ensures proper removal of equipment and restoration of the environment to its pre-existing state. A decommission bond relieves the burden from landowners and taxpayers and puts the responsibility of proper decommission on the project owner.

Letter of Credit: A standby Letter of Credit (LC) is a form of collateral/credit support issued by a bank (issuer) to guaranty timely payment to a creditor (LC beneficiary) on behalf of an obligor (LC applicant). The LC is evidenced by a letter provided by the issuer and has a maximum dollar value. In the event the obligor becomes unable to satisfy its obligation or perform under a contract the creditor has the right to present the letter to the bank which will satisfy the obligation up to an amount that does not exceed the maximum dollar value. The applicant then becomes obligated to pay the bank for the amount of the draw. LCs are used when payment can satisfy decommissioning and restoration obligations.

2. 16 NYCRR §1001.29(c) requires “[f]or wind-powered generation facilities and other facilities to be located on lands owned by another, a description of all site restoration, decommissioning and guaranty/security agreements between the applicant and landowner, municipality, or other entity, including provisions for turbines, foundations, and electrical collection, transmission, and interconnection facilities.” It is noted on page 5 of Exhibit 29 of the Application that “[t]here are no wind power facilities proposed as part of the Project. Therefore, this section of the Exhibit 29 regulation is not applicable.” However, the Application indicates that the Facility will be located on lands owned by another. Thus, this regulation applies to the Project. Please provide the required information regarding decommissioning plans on lands not owned by the Applicant.

Response: As noted in the comment above, the Project will be located on lands owned by another in accordance with Stipulation 29(c). To clarify, the Application included a Decommissioning Plan which applies to lands owned by others, the Project Area, and which describes restoration and decommissioning of the Project. This plan is provided in Appendix 29-1 of the Application.

The Applicant agrees to work with NYSDPS Staff and the Town of Florida on an acceptable form of letter of credit. The letter of credit will remain active for the life of the Facility, until it is decommissioned. The Town or NYSDPS could hold the letter of credit and the Applicant would execute a decommissioning agreement with the Town/NYSDPS establishing a right for them to draw on the letter of credit.

Exhibit 31: Local Laws and Ordinances

1. 16 NYCRR § 1001.31 requires the Applicant to “consult with the municipalities or other local agencies whose requirements are the subject of the exhibit to determine whether the Applicant has correctly identified all such requirements and to determine whether any potential request by the Applicant that the Board elect to not apply any such local requirement could be obviated by design changes to the proposed facility, or otherwise.” Stipulation 31 states that the Applicant would continue its consultations with the Town of Florida and Montgomery County. The Application does not indicate, however, that consultation with Montgomery County Department of Public Works was done. Further, permitting and design standards for installation of Facility Site access driveways, electric

collection line road crossings, use and occupancy of public right-of-way for the several County highways within the Project Area are not identified in subsequent portions of Exhibit 31. Please consult with Public Works officials and report the results of the consultation(s) in a Supplement to the Application, and please identify applicable County Public Works Department permits and standards.

Response: Design briefings were held with the Department of Public Works on various occasions (initial meeting was on June 6, 2019) to show the overall array layout and crossing locations, among providing other project-related updates. Horizontal Directional Drilling was proposed by the Applicant during the first meeting, and no further follow-up was requested regarding design, however, further consultations with the Department of Public Works are welcomed if needed, to prepare for Compliance Filings.

The following applicable County Public Works Department permits and standards are included in Attachment I: Montgomery County Department of Public Works Policy & Standards for Entrances/Exits, Montgomery County Department of Public Works Application for Permit for Electric Light Line – Electric Power Line, and Montgomery County Department of Public Works Application for Permit for Telephone – Fiber Optics.

2. Stipulation 31(k) states, “SEQRA documentation of local code revisions adoption actions will be included in the Application as an appendix to the extent it is finalized and publicly accessible.” The Application does not include SEQRA documentation of local code revisions adoption. Please provide the documentation or provide a statement as to whether such documentation is publicly available.

Response: The SEQRA documentation of local code revisions adoptions is included herein as Attachment J.

Exhibit 33: Other Applications and Filings

1. Stipulation 33(b) and 16 NYCRR § 1001.33(b) require the Application to “identify any Federal permit, consent, approval or license that will be required for the construction or operation of the facility. The application shall specify the date on which an application for any such approval was made or the estimated date on which it will be made.” The

Application does not specify or estimate dates on which applications for identified federal permits will be made. Please provide the required information.

Response: The Applicant anticipates submitting an application for a Nationwide Permit for Placement of Fill in Federal Jurisdictional Wetlands in Quarter 2 of 2020.

Section 2. Updated Proposed Layout

Updates to the Proposed Layout provided in the Application incorporate the alternate arrangement in Area 5 as shown in Exhibit 9, section 9(c)(1)(i). The updates include relocation of nine inverters and updates to 2,345 feet of access roads. Further changes include minor shifts in panel locations to allow for easier access and to avoid areas of steeper slopes. Relocations were made to further reduce views of solar panels from Pattersonville Road and the New York State Thruway. Relocations were also made to allow for continued agricultural activity towards the southern portion of the array, as described in section 9(c)(1)(i) of Exhibit 9. A site plan and civil plan set showing the revisions are included herein as Attachment D.

The total acres of panels, access roads, and limits of disturbance (LOD) have changed slightly and are outlined herein as Attachment K. Additional calculations such as land use acreages, tree clearing, and sensitive resource impact calculations are also included in Attachment K.

An Addendum to the Pre-Construction Noise Impact Assessment (included as Appendix 19-1 in the Application), is included herein as Attachment L. The Addendum addresses the noise impacts that differ from the Application as a result of inverter location adjustments. The locations of nine inverters have been updated, however, the total quantity and type of inverters has not changed. The Updated Proposed layout removes the sound barriers that were required at two of the previous inverter locations to meet the design goals in the October 2019 analysis. As a result of the relocation of inverters, the worst-case 1-hour Leq sound levels for the Updated Proposed Layout are at or below the design goals of 42 dBA for non-participating receptors and 52 dBA for participating receptors at all modeled locations without the use of sound barriers.

Section 3. Alternative Layout

Following the submission of the Application, the Applicant was able to acquire a lease agreement for additional land adjacent to the Project Area. The additional property is located on parcel 88.-1-11, an approximately 200-acre parcel, adjacent to Area 2, east of Thayer Road and north of

Bullshead Road (Attachment M). The proposed Alternative Layout includes approximately 83.5 acres of solar panels within the additional parcel.

By adding modules on this parcel, some modules on steeper slopes in Area 2 and the modules in Area 6 (between Pattersonville Road and Interstate 90) are no longer proposed. The proposed Alternative Layout will reduce impacts to steep slopes and reduce visibility of the Project from the New York State Thruway.

To assess other potential impacts associated with the Alternative Layout, the following studies, as applicable, are anticipated to be conducted when seasonally appropriate:

- Glare study
- Geotechnical evaluation
- Wetlands and vernal pool delineations
- Invasive species surveys
- Breeding bird survey
- Winter raptor survey
- Noise study
- Visual impact analysis
- Phase IB archaeological testing
- Land use assessment

The results of these studies are expected to be submitted in May-June of 2020. In addition, any updates required for Exhibit 25 (Transportation) will be presented then as well. A site plan showing the Alternative Layout is included herein as Attachment M. Calculations such as land use acreages, tree clearing, and sensitive resource impact calculations are also included in Attachment N.