

**THE NEW YORK STATE BOARD ON  
ELECTRIC GENERATION SITING AND THE ENVIRONMENT**

In the Matter of

Application of North Side 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 Towns  
of Massena, Brasher, and Norfolk, St.  
Lawrence County.

Case No. 17-F-0598

**INITIAL BRIEF OF THE NEW YORK STATE  
DEPARTMENT OF AGRICULTURE AND MARKETS**

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NORTH SIDE ENERGY CENTER PROJECT  
Case No. 17-F-0598

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## **I. INTRODUCTION**

The New York State Department of Agriculture and Markets (herein after AGM) submits this initial closing brief pursuant to Article 10 of the New York State Public Service Law in the Matter of Application of North Side Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to construct a solar electric generating facility.

North Side Energy Center, LLC (hereinafter the Applicant or North Side Solar) filed an application seeking authority to construct a major solar electric facility with a generating capacity of 180 MW located on land leased and/or purchased from owners of private property in the Towns of Massena, Brasher, and Norfolk in St. Lawrence County, New York. The proposed Project's components will include commercial-scale solar arrays, access roads, buried electric collection lines, a Project collection substation, and electrical interconnection facilities.

It is the duty and responsibility of AGM to encourage the development and improvement of agricultural lands for the production of food and other agricultural products in accordance with Article XIV section 4 of the New York State Constitution and New York State Department of Agriculture and Markets Law Article 25-AA, Section 300, which directs that the policy of the State shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The New York State Department of Agriculture and Markets is a statutory party to the

proceedings pursuant to Public Service Law Section 166(e) and participated in all phases of the case.

## **II. BACKGROUND**

### **A. Facility Description**

The North Side Energy Center (hereinafter ‘the Project’) will have a generating capacity of 180 MW and will be located on land leased and/or purchased from owners of private property in the Towns of Massena, Brasher, and Norfolk in St. Lawrence County, New York. The Proposed Project Components will include commercial-scale solar arrays, access roads, buried electric collection lines, a Project collection substation, and electrical interconnection facilities. The Project Area totals 2,241 acres. The Project Limit of Disturbance (LOD) is approximately 1,100 acres, and the total fenced area for the Project is approximately 981 acres. (Hearing Exhibit 31)

The proposed interconnection facilities will include a 230-kV switchyard and two aboveground 230-kV interconnection lines, approximately 151 feet and 122 feet in length, respectively, that will be transferred to NYPA to own and operate. (Hearing Exhibit 31)

The Project Components have been sited to focus development on previously cleared and disturbed land that has historically been utilized for logging and agricultural purposes. Of the overall 2,241-acre Project Area assessed. The Applicant states that approximately 35 percent (781.5 acres) will be used for Project Components within a fenced area of 980.7 acres to generate 180 MW of renewable energy. The Applicant also states that the remaining land outside of the Project’s fenced area will remain

under its existing uses. The Project is sited within mapped Agricultural Districts. One hundred twenty-one (121) acres of soil within the Project Area are classified in mineral soil groups 1-4. Similarly, 82 acres of the lands classified as Prime Farmland are proposed to be impacted withing the 1,100-acre Limits of Disturbance. (Hearing Exhibit 33)

## **B. Procedural History**

On or about February 19, 2021, the Applicant, North Side Energy Center, LLC, submitted an application seeking authorization to construct a commercial-scale electric generating facility in the Towns of Brasher, Massena and Norfolk in St. Lawrence County, New York (the Project). Additional application supplements were filed on May 27, 2021, and July 2, 2021. On July 9, 2021, the Chair of the Siting Board deemed the Application to be compliant with all relevant regulations. (Hearing Exhibit 214) On July 23, 2021, the Applicant filed a Notice of Impending Negotiations. (Hearing Exhibit 216) A Procedural Conference was held virtually on August 19, 2021. Following the Procedural Conference, a Ruling Establishing a Procedural Schedule was issued by the Hearing Examiners on September 3, 2021, setting forth dates for events through evidentiary hearing.

Thereafter, multiple settlement meetings were held via such means as teleconferences and web-ex, as well as other communications among the Parties. On November 18, 2021, the Applicant filed a Settlement Proposal, which included proposed Certificate Conditions and proposed Site Engineering and Environmental Plan Guide (SEEP), a proposed Noise Compliant Resolution Protocol. (Hearing Exhibits 220-222)

Thereafter, certain parties executed signature pages to the Settlement Proposal, including the Department of Public Service (DPS) with exceptions, Department of Agriculture and Markets (AGM) and Town of Brasher without exception. (Hearing Exhibits 223-225) On December 21, 2021, the Towns of Massena and Norfolk executed the Settlement Proposal, and on January 5, 2022, St. Lawrence County executed the Settlement Proposal without exception. (Hearing Exhibits 66 and 63)

On November 19, 2021, the parties submitted pre-filed direct testimony. However, AGM did not file any pre-filed direct testimony in this case. The Applicant filed rebuttal testimony on December 17, 2021. On January 27, 2022, the Examiners issued a Ruling acknowledging a waiver by the parties of an evidentiary hearing and issued a revised briefing schedule. This initial brief is being submitted in accordance with the Hearing Examiners rulings.

### **C. Public Involvement and Comments**

Article 10 regulations dictate that the Applicant must actively engage in public involvement throughout the PSL Article 10 process. The Applicant in this case has complied with the mandates set forth in PSL Article 10.

### **D. Settlement Proposal**

The Department finds the proposed settlement layout acceptable as it still adheres to the Department's siting policy.

While the Department discourages the conversion of farmland to a non-agricultural use, the Department also recognizes New York State's 2019 Climate

Leadership and Community Protection Act (CLCPA) and the State's initiative with respect to the development of utility scale solar facilities and has developed siting policy supportive of solar energy development efforts on agricultural lands, provided that the projects are sited on lands other than the state's most productive farmland. The Department's goal is for a project to limit converting agricultural areas to no more than 10% of mineral soil groups 1-4 classified by the Department's NYS Agriculture Land Classification, which the Department has identified as New York State's most productive farmland. Soils classified with the soil groups 5-10 are identified as having soil limitations. Therefore, the only responsible balance between the two State policies is to preserve the agricultural areas involving the most productive soils, classified as soil groups 1-4, for the production for food and fiber, as well as not objecting to proposed development on lesser productive soils (i.e. agriculture lands comprised of mineral soil groups classified as 5-10). It is also required that the Applicant adhere to the AGM Solar Guidelines in the planning and implementation of the constructing of such facilities in agricultural lands proposed to be returned to agricultural production, post construction and/or upon decommissioning of the facility. In this case, the Applicant has met the Departments' siting policy in that the settlement layout and does not propose to impact more than 10% of agricultural lands comprised of Mineral Soil Groups 1-4, as described by the NYS Agricultural Land Classification.

#### **E. Supplemental Settlement Proposal**

In an effort to limit the number of outstanding issues among the parties, the Parties engaged in multiple supplemental settlement discussions. The settlement

discussions resulted in the Applicant filing a Final Settlement Package on February 4, 2022, which included the proposed Certificate Conditions and proposed Guidance for the Development of Siting Engineering and Environmental Plan for the Construction of the North Side Energy Project (SEEP), and the Noise Complaint Resolution Protocol. (Hearing Exhibit 293) Certain parties executed the Settlement Proposals, including DPS with exception, DEC with exception, AGM with exception, the Towns of Norfolk, Massena and Brasher without exception, and St. Lawrence County without exception. (Exhibit 293). AGM executed the Final Settlement Package with exception as it was agreed subsequent to the completion of the Final Settlement Package that AGM would be consulted during the development of the NCBP. It was stated during a procedural conference that no additional agricultural land would be impacted as a result of the mitigation. Based on said assertion by the Applicant during the procedural conference, AGM executed the settlement documents, but wishes to be included and consulted during the development of the NCBP to ensure that additional agriculture lands are not impacted.

### **III. FINDINGS AND DETERMINATIONS UNDER PSL §168**

#### **a. Article 10 Standards**

##### **i. Burden of Proof**

The Applicant seeking the Certificate in this case has the burden of proof to demonstrate to the Siting Board that they have met all the requirements necessary for the granting of the Certificate.

## **ii. Balancing Required under PSL §168**

In rendering a decision on an application submitted pursuant to Article 10 of the Public Service Law, the Siting Board must consider the directives set forth in Public Officers Law Section 168. Public Service Law Section 168 (2) dictates that the Board shall not grant a certificate or amendment thereof for the construction or operation of a facility, either as proposed or as modified by the board, without making explicit findings regarding the nature of the probable environmental impacts of the construction and operation of the facility. Public Service Law Section 168(3) further dictates that the Board may not grant a certificate for the construction or operation of a major electric generating facility, either as proposed or as modified by the Board, unless the Board determines that: (a) the facility is a beneficial addition to or substitution for the electric generation capacity of the state; (b) the construction and operation of the facility will serve the public interest; (c) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; (d) if the Board finds that the facility results in or contributes to a significant and adverse disproportionate environmental impact in the community in which the facility would be located, the applicant will avoid, offset or minimize the impacts caused by the facility upon the local community for the duration that the certificate is issued to the maximum extent practicable using verifiable measures; and (e) the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the board may elect not to apply, in whole or in part.

#### **IV. ISSUES IN DISPUTE**

##### **a. Nature of Probable Environmental Impacts – PSL §168(2) and (3)(c)**

###### **i. Ecology**

###### **A. Freshwater Wetlands**

AGM did not offer testimony or exhibits regarding this topic.

###### **B. Threatened and Endangered Species**

AGM did not offer testimony or exhibits regarding this topic.

#### **V. OTHER ISSUES NOT IN DISPUTE**

##### **a. Land Use**

##### **b. Public Health, Safety and Security**

###### **i. Air Emissions**

###### **ii. Safety, Security and Emergency Response**

###### **iii. Noise and Vibration**

##### **c. Cultural, Historic and Recreational Resources**

###### **i. Archeological**

###### **ii. Cultural and Historic**

###### **iii. Visual Impacts**

##### **d. Infrastructure Impacts**

###### **i. Transportation, Communications and Utilities**

##### **e. Geology, Seismology and Soils**

f. Decommissioning, Site Restoration, and Financial Security

**VI. STATE AND LOCAL LAWS AND REGULATIONS – PSL §168(3)(E)**

AGM did not offer testimony or exhibits regarding this topic.

**VII. THE FACILITY IS A BENEFICIAL ADDITION TO THE ELECTRIC  
GENERATION CAPACITY OF THE STATE AND WILL SERVE THE  
PUBLIC INTEREST – PSL §168(3)(A) & (B)**

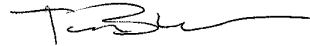
AGM did not offer testimony or exhibits regarding this topic.

**VIII. CONCLUSION**

Based on the foregoing, and the record, as it stands, AGM respectfully requests that the Siting Board defer to its expertise on the issues raised and urges the Siting Board to certify the proposed project pursuant to the agreed upon party settlement.

Dated: February 17, 2022  
Albany, NY

Respectfully submitted,



Tara B. Wells