300 State Street, Suite 502
Rochester, New York 14614
585.434.0790 *phone*
585.563.7432 *fax*
www.zoglaw.com

VIA http://ores.ny.commentinput.com/

December 7, 2020

Houtan Moaveni
Executive Deputy Director
Office of Renewable Energy Siting
99 Washington Avenue
Albany, New York 12231-0001

RE: COMMENTS ON THE DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 – 900-5; 900-7 – 900-15)

Dear Deputy Director Moaveni:

The Zoghlin Group, PLLC represents the Concerned Citizens for Rural Preservation (“CCRP”). We write today to submit written comments on the draft Office Renewable Energy Siting (“ORES”) regulations, Chapter XVIII Title 19, Subparts 900-1 – 900-5; 900-7 –900-15) (the “Draft Regulations”), on behalf of our client. This commentary is distinct from the filing letter and appendices separately filed today in the rulemaking proceeding for Subpart 900-6 of the proposed regulations.

Enclosed please find three appendices containing CCRP’s and/or its members’ commentary:

- **Appendix 1** is CCRP’s Comprehensive Public Comment, drafted by this office on behalf of CCRP, which provides general and specific commentary on the Draft Regulations.

- **Appendix 2** is a Joint Comment Joint Comment document raising general concerns about the proposed Draft Regulations. The comment is signed by, and submitted at the direction of, more than 40 municipalities, public officials and interest groups. The comment contains two parts, each with unique signature pages.

- **Appendix 3** includes additional commentary on the Draft Regulations provided by specific members of CCRP.

In addition to the enclosed commentary, CCRP notes that, in drafting these rules, it appears ORES failed to consult with intervenor attorneys or municipal advocates. ORES appears to have instead relied solely upon input from NYSERDA, renewable energy developers, and professional advocacy organizations. The lack of input from attorneys with intervenor and/or municipal experience in Article 10 proceedings is evident in the proposed rules, as the rules generally advance applicant economic interests to the detriment of local siting considerations. The principal purpose of the proposed rules appears to be to incentivize utility scale development through maximization of project profitability. The rules can only be viewed as the result of agency capture by the renewable energy industry and their advocates. The rules fail to account for all pertinent social, economic and environmental factors in the proposed siting process, as required by Article 94-c.

The rules also fail to recognize or address the enormous damage that renewable energy siting proceedings can do to local communities. This damage goes far beyond the environmental impacts of projects, but cuts to the core of communities by turning neighbor against neighbor, and poisoning local politics and discourse for years to come. By framing all concern over renewable energy as "NIMBY" (i.e., selfish) opposition that should be minimized and ignored, ORES, industry and certain environmental lobbyists seek to shield themselves from the reality that the harm to local communities is real. ORES could do far more to address the local conflict it will create, while also appropriately prioritizing corporate interests and the state’s renewable energy goals. But under the proposed rules, the public is effectively excluded from the siting process, and meaningful municipal participation in the siting process is inhibited. Without substantial modification, ORES's proposal will only further sow the seeds of discord and rural intolerance to large scale renewables.

To meet the legislative intent stated in Article 94-c (1), and to help promote civil discourse in communities subject to siting proceedings, a more open, transparent, inclusive, and fair siting process is required. One such process already exists in Article 10 of the public service law, which although imperfect, is a model of fairness and justice ORES should embrace. ORES can do so without compromising its main mission, to expedite appropriate siting, by adopting the revisions proposed in this document. A complete rethink of the proposed ORES rules is essential to providing any hope that bridges of understanding and tolerance can be built between warring factions in local communities. CCRP therefore implores ORES to reverse course and restart its drafting process, this time allowing for input from outside the Albany bubble inhabited by NYSERDA, and renewable energy developers and their advocates. A fair rulemaking process requires nothing less.

In addition to the comments contained in this document, and the attached three appendices, CCRP adopts the all comments submitted by, or on behalf of, Save Ontario Shores, Inc.

Sincerely,

/s *Benjamin E. Wisniewski*

Benjamin E. Wisniewski, Esq.
Benjamin@zoglaw.com

cc: Concerned Citizens for Rural Preservation

CONCERNED CITIZENS FOR RURAL PRESERVATION'S COMPREHENSIVE PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 – 900-5; 900-7 – 900-14)

Document prepared by:

Benjamin E. Wisniewski, Esq..
The Zoghlin Group, PLLC
Attorneys for the Concerned Citizens
For Rural Preservation
300 State Street, Suite 502
Rochester, New York 14614
(585) 434-0790
Benjamin@ZogLaw.com

Dated: December 7, 2020
Rochester, New York

I. **Introduction**

This Comprehensive Public Comment provides comments on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law on behalf of the Concerned Citizens for Rural Preservation ("CCRP"). The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-14) (the "Draft Regulations"). The comments are submitted to the Office of Renewable Energy Siting on behalf of the Concerned Citizens for Rural Preservation. The comments are intended to supplement the separately filed JOINT COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 – 900-5; 900-7 – 900-14), which CCRP separately filed on behalf of more than 40 signatories.

The following commentary is broken into two parts. The first part, General Comments on Proposed Regulations, elaborates on the four comments contained in the separately filed Joint Comments, raises additional general concerns about the regulations, and suggests changes to the proposed regulations intended to address the general concerns.

The second part, Comments on Specific Proposed Regulations, provides specific commentary by section of the proposed regulations, and is organized by section number.

All comments in this document were drafted by legal counsel with extensive experience in renewable energy siting proceedings conducted pursuant to Article 10 of the public service. Legal counsel has participated, or is participating in, the following twenty-two (22) large-scale wind or solar energy siting proceedings:

1. Application of Lighthouse Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a 201 MW Wind Energy Facility;
2. Horse Creek Wind Farm, LLC, Petition for a Certificate of Environmental Compatibility and Public Need Pursuant to PSL Article 10 for a Major Energy Generating Facility;
3. Application of Atlantic Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of the Deer River Wind Energy Project in Lewis and Jefferson Counties;
4. Application of Canisteo Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of a Wind Energy Project in Steuben County;
5. Application of Eight Point Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project;
6. Application of Baron Winds, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Facility;
7. Application of Number Three Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of a Wind Project Located in Lewis County; and
8. Application of Franklin Solar, 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 Malone, Franklin County.

9. Application of Horseshoe Solar Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of Horseshoe Solar Farm, a 180 MW Solar Electric Generating Facility Located in the Town of Caledonia, Livingston County and the Town of Rush, Monroe County.
10. Application of High Bridge Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct an Approximately 100 MW Wind Powered Electric Generating Facility Located in the Town of Guilford, Chenango County.
11. Application of Bluestone Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of the Bluestone Wind Farm Project Located in the Towns of Windsor and Sanford, Broome County.
12. Application of Bear Ridge Solar, 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 in the Towns of Cambria and Pendleton, Niagara County.
13. Application of Excelsior 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 in the Town of Byron, Genesee County.

14. Application of Bull Run Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project.
15. Application of Boralex, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct the Approximately 120-Megawatt Greens Corners Solar Facility Proposed in the Towns of Hounsfield and Watertown, Jefferson County.
16. Application of EDF Renewables for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction the Genesee Road Solar Energy Center in the Towns of Sardinia and Concord, Erie County.
17. Application of ConnectGen LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct the South Ripley Solar Project of 270-MW Solar Powered Electric Generating Facility, Located in the Town of Ripley, Chautauqua County.
18. Application of Hecate Energy Columbia County 1, 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 Copake, Columbia County.
19. Application of Garnet Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct and Operate a Solar Generating Facility and Energy Storage System in the Town of Conquest, Cayuga County.

20. Application of Alle-Catt Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for a Proposed Wind Energy Project, Located in Allegany, Cattaraugus, and Wyoming Counties, New York, in the Towns of Arcade, Centerville, Farmersville, Freedom, and Rushford.
21. Application of Atlantic Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for the Mad River Wind Farm Project in the Towns of Redfield and Worth in Oswego and Jefferson Counties.
22. Application of Heritage Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for a Wind Energy Generating Facility in the Town of Barre, Orleans County, NY.

In addition to the comments contained in this document, and all other comments filed by the CCRP, the group adopts all comments submitted on behalf of Save Ontario Shores, Inc.

II. **Preliminary Statement**

In drafting these rules, ORES failed to consult with intervenor attorneys, and appears instead to have relied solely upon input from NYSERDA, renewable energy developers, and professional advocacy organizations. The lack of input from attorneys with intervenor and/or municipal experience in Article 10 proceedings is evident in the proposed rules, as the rules generally advance applicant economic interests to the detriment of local siting considerations. The principal purpose of the proposed rules appears to be to incentivize utility scale development through maximization of project profitability. The rules can only be viewed as the result of agency

capture by the renewable energy industry and their advocates. The rules fail to account for all pertinent social, economic and environmental factors in the proposed siting process, as required by Article 94-c.

The rules also fail to recognize or address the enormous damage that renewable energy siting proceedings can do to local communities. This damage goes far beyond the environmental impacts of projects, but cuts to the core of communities by turning neighbor against neighbor and poisoning local politics and discourse for years to come. By framing all concern over renewable energy as "NIMBY" (*i.e.*, selfish) opposition that should be minimized and ignored, ORES, industry and certain environmental lobbyists seek to shield themselves from the reality that the harm to local communities is real. ORES could do far more to address the local conflict it will create, while also appropriately prioritizing corporate interests and the state's renewable energy goals. But under the proposed rules, the public is effectively excluded from the siting process, and meaningful municipal participation in the siting process is inhibited. Without substantial modification, ORES's proposal will only further sow the seeds of discord and rural intolerance to large scale renewables.

To meet the legislative intent stated in Article 94-c (1), and to help promote civil discourse in communities subject to siting proceedings, a more open, transparent, inclusive, and fair siting process is required. One such process already exists in Article 10 of the public service law, which although imperfect, is a model of fairness and justice ORES should embrace. ORES can do so without compromising its main mission, to expedite appropriate siting, by adopting the revisions proposed in this document. A complete rethink of the proposed ORES rules is essential to providing any hope that bridges of understanding and tolerance can be built between warring factions in local communities. CCRP therefore implores ORES to reverse course and restart its

drafting process, this time allowing for input from outside the Albany bubble inhabited by NYSERDA, and renewable energy developers and their advocates. A fair rulemaking process requires nothing less.

The remainder of this document provides general and specific commentary on the rules.

III. General Comments on Proposed Regulations

a. General Comment 1: Inadequate Review of Environmental Impacts

The Draft Regulations do not allow for meaningful identification, assessment, or mitigation of the negative environmental impacts of individual renewable energy projects. The Rules do not required ORES to make any findings and determinations related to environmental impacts prior to issuing a permit. ORES should adopt the required findings and determinations made by the Siting Board pursuant to NY PSL 168, including but not limited to impacts on the following:

a) ecology, air, ground and surface water, wildlife, and habitat;

(b) public health and safety;

(c) cultural, historic, and recreational resources, including aesthetics and scenic values; and

(d) transportation, communication, utilities and other infrastructure.

Such findings should include the cumulative impacts on the local Community including whether the construction and operation of the facility results in a significant and adverse disproportionate environmental impact.

ORES should also be required to make the following specific determinations prior to issuing a permit:

(a) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; and

(b) if the office 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 permit is issued to the maximum extent practicable using verifiable measures; and

(c) 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 office may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome as defined by Article 94-c and the ORES regulations.

These findings and determinations must be based on evidence in the record. In the alternative, ORES should adopt a rule expressly requiring ORES to find the uniform conditions and standards are sufficient to address environmental impacts to the maximum extent practicable. This holding will require a review of local environmental impacts in tandem with local municipal and intervenor parties.

b. General Comment 2: Improper Reliance on Secrecy to Avoid Public Scrutiny

The Draft Regulations do not allow for meaningful public participation in the renewable energy siting process, and fail to provide open and transparent access to project details, applications, case documents, or docket lists. As further explained below, the rules do not allow for appropriate notice to the public, and do not allow public access to the application, hearing documents, or the administrative record online. The rules would also exclude unincorporated associations or groups of residents from obtaining party status or local agency funds, thus inhibiting their ability to obtain copies of studies and documents or litigate issues in the administrative hearing. Public comments cannot be made online, will not be available online, and will never be publicly published absent a FOIL request. Critical timelines for requesting party

status and funding are short, and as a practical matter may be impossible for intervenors to meet. A single pre-application mailing, followed by a meeting, as proposed by ORES, is grossly inadequate to fully inform the public about the project, the process, and the ability to participate. Required pre-application meetings with municipalities can be conducted behind closed doors. The only way the public would be notified is at the discretion of a single municipal official, since the proposal only requires an applicant to notify the town supervisor, county executive, or mayor, and does not required meetings to be public. Without major modification to the rules requiring adoption of a robust public information program, and an online case management system similar to the DMM system used by the Siting Board, ORES will operate in darkness and the public will remain unware of application documents, study, results, litigated issues, or rulings, among other things. This is hardly a prescription for improving public support of renewable energy projects. Nor is there any reasonable basis for so restricting public information, since there is no time limit on pre-application project development. ORES should require robust public outreach by applicants during the pre-application period.

c. General Comment 3: Violation of Home Rule Principles

The Draft Regulations violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers. The Rules fail to precisely state under what circumstances ORES can execute its waiver power. Although Article 94-c identifies inconsistency with state energy policy as the basis for waiving local laws, the regulations to not elaborate on how inconsistency can be shown. Instead, the regulations rely on the technical standard required under Siting Board Regulations, which relate to whether a project is unduly burdensome in light of existing technology or the needs of the rate payers. It is unclear what findings and determinations ORES is required to make as prerequisite to waiver. Without a clear

standard for waiver or any internal limitations on the waiver power, ORES will be tempted to waive local laws indiscriminately and in a way wholly inconsistent with local powers granted directly by the state constitution. Neither ORES, nor the legislature for that matter, has the power to preempt local laws on a case by case basis.

d. General Comment 4: Elevation of Private Corporate Interest over Public Interest

The Draft Regulations improperly elevate project economics and profitability over local siting concerns. The draft regulations overemphasize the state's energy goals and fail to account for the legislature's express requirement that ORES consider all pertinent social, economic and environmental factors prior to awarding a permit. The rules should be redrafted, in consultation with municipal and intervenor attorneys with experience in Article 10 proceedings, to ensure local siting considerations are placed on an equal footing with corporate interests.

e. General Comment 5: The regulations Exceed ORES's Authority

Section 94-C of the Executive Law states, "the purpose of this section to consolidate the environmental review and permitting of major renewable energy facilities in this state . . . **while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to permit such facilities** as more specifically provided in this section." NY Exec Law 94-c, §1. The Draft Regulations improperly elevate the state's renewable energy policy goals over the "pertinent" considerations identified by the Legislature. The CCRP encourages ORES to redraft its proposed procedural regulation in a

manner that allows for a robust, open, and meaningful review of the myriad impacts caused by large scale renewable energy development.

f. General Comment 6: the Rules fail to require ORES to make any requisite findings and determinations concerning project impacts prior to award of a permit.

Under analogous PSL Article 10 proceedings, the State Siting Board is required to make a variety of findings and determinations related to project impacts prior to awarding a permit. ORES should adopt the following regulations to ensure the following findings and determinations are made prior to the award of any ORES Permit:

> (1) ORES shall not issue an permit without making explicit findings regarding the nature of the probable environmental impacts of the construction and operation of the facility, including the cumulative environmental impacts of the construction and operation of related facilities such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines, including impacts on:
>
> (a) ecology, air, ground and surface water, wildlife, and habitat;
>
> (b) public health and safety;
>
> (c) cultural, historic, and recreational resources, including aesthetics and scenic values; and
>
> (d) transportation, communication, utilities and other infrastructure.
>
> Such findings shall include the cumulative impact on the local Community including whether the construction and operation of the facility results in a significant and adverse disproportionate environmental impact.

(2). The Office may not grant a permit for the construction or operation of a major electric generating facility, either as proposed or as modified by the office, unless the office determines that:

(a) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; and

(b) if the office 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

(c) 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 office may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. The office shall provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation or other local action issued thereunder.

(3). In making the determinations required in subdivision 2 of this section, the Office shall consider:

(a) the state of available technology;

(b) the nature and economics of reasonable alternatives;

(c) environmental impacts found pursuant to subdivision two of this section;
(d) the impact of construction and operation of related facilities, such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities,

> communications and relay facilities, access roads, rail facilities, or steam lines;
>
> (e) the consistency of the construction and operation of the facility with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan;
>
> (f) the impact on community character and whether the facility would affect communities that are disproportionately impacted by cumulative levels of pollutants; and
>
> (g) such additional social, economic, visual or other aesthetic, environmental and other considerations deemed pertinent by the Office.

ORES should make findings quantifying local impacts regardless of whether it determines uniform standards and conditions are applicable. Prior to issuing a permit ORES should compile an evidentiary record sufficient to demonstrate that any uniform standards and conditions applicable to the project are sufficient to avoid or mitigate impacts to the maximum extent practicable.

g. General Comment 9: The Rules fail to account for review of the environmental impacts of any project pursuant to Article VIII of the Environmental Conservation Law.

Unlike Article 10 proceedings, ORES proceedings are not exempted from environmental review pursuant to SEQRA. The ORES regulations must be modified to incorporate SEQRA review, or in the alternative the Office could replace SEQRA review with the required findings and determinations set forth in PSL §168, as modified above. The state legislature did not authorize ORES to issue permits without review of environmental impacts, including impacts on community character, cumulative impacts, and aesthetic impacts.

h. General Comment 10: The Rules should require an ALJ be assigned to every application proceeding to review all evidence and make recommended findings and determinations similar to those required by PSL 168.

As drafted the rules do not clearly state whether the office of hearings and an ALJ will be assigned to administer every case, or whether a representative of the office will handle cases in a ministerial capacity unless and until an adjudicative hearing is required. Given the inherently adversarial and fact intensive nature of siting proceedings, ORES should require an ALJ to be assigned to all cases as soon as an application is filed. This ALJ would handle all party status and local agency find requests, determinations of significance, hearings, and public comment or hearing reports.

i. General Comment 12: Quasi-adjudicative Hearings should be conducted as of right.

It is not in the public interest to conduct siting proceedings as a ministerial action akin to a processing of building permits at the local level. Even in cases where no substantive and significant issues are identified for adjudication, siting proceedings should be conducted as an adjudicative hearing, resulting in a recommended decision by an ALJ describing the potential impacts of the facility, determining whether all substantive requirements have been satisfied, and making recommendations on all findings and determinations necessary to the award of a permit. ORES is not authorized to award a general permit for the construction of all potential renewable energy projects.[1] By definition, general conditions are incapable of addressing local siting

[1] Although Article 94-c clearly contemplates a set of uniform standards and conditions as a starting point for addressing potential project impacts, ORES has exceeded its mandate by drafting regulations amounting to a general state-wide permit obviating the need for adjudicative review of individual projects.

concerns on a case by case basis. Hearings are necessary to create a record sufficient to identify and address all relevant local siting issues.

IV. Comments on Specific Proposed Regulations

a. §900-1.1 Purpose and Applicability

i. Proposed Rule **§900-1.1(a)**

ii. Comment: The purpose of this Part cannot be to establish substantive requirements of major renewable energy facilities unless these rules are subject to the 4 public hearings required by Article 94-c.

iii. Proposed revision: remove all substantive standards from Subparts 900-1 – 900-5; 900-7 – 900-14.

b. §900-1.2 Definitions

i. Propose Rule **§900-1.2(ab),** Local agency

ii. Comment: This definition is overly broad and would allow industrial development agencies to participate in siting proceedings. The interest of an IDA is narrow, limited to creation of jobs and award of tax breaks, and does not extend to the siting considerations reviewed by ORES. The State Siting Board specifically held that IDA's are not eligible for intervenor funds, which are analogous to local agency funds. *See* Ruling on Intervenor Funds, Application of Eight Point Wind, Case No. 16-F-0062 (available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7DE38E2B-D798-42BE-8DAD-EFC4CFA5A7DE})

iii. Proposed revision: expressly exclude industrial development agencies from the definition of "Local Agency", and/or expressly disqualify industrial

development agencies from receiving funds from the local agency account. Award of funds to an IDA would only dilute the scarce intervenor funding available and inhibit the ability of host municipalities and the public to participate in the siting proceedings.

c. **<u>§900-1.2 Definitions</u>**

i. Propose Rule **§900-1.2(be),** Person

ii. Comment: the definition of "person" fails to include "unincorporated association or group". This is important because "Party" is previously defined as a "person" by definition (bc). Similarly, the definition of "Potential community intervenor" is defined as a "person" by definition (bg). The proposed definition of Person, which differs from the normal definition under the law, would therefore exclude the most common class of potential intervenor parties form the proceeding and prohibit groups or unincorporated associations from receiving local agency account funds. If this rule is not modified, concerned residents who may wish to participate in the proceeding as group would need to form a legal entity in order to request party status. This requirement is unduly burdensome for local intervenors, likely impossible given the time constraints for party status and intervenor fund requests, and inconsistent with Article 10 precedent. The proposed rule would also likely result in a more disorderly proceeding as individuals who might otherwise have formed an unincorporated association or group will be forced to seek individual party status, thus dramatically increasing the number of potential parties.

iii. Proposed revision: add "unincorporated associations and groups" to the definition of "Person".

d. **§900-1.2 Definitions**

i. Propose Rule **§900-1.2(bh),** Potential Party

ii. Comment: the definition of "Potential Party" should expressly include any person or agency with an interest in a participating property as defined by (ba). Otherwise, an Applicant may encourage participating landowners to seek individual or group party status in an attempt to bolster the applicant's position. This is particularly concerning if, as has been common practice, landowner and/or HCA agreements require support for the project in any permitting proceeding. The legal agents of an applicant should be eligible for local agency funds.

iii. Proposed Revision: exclude "any person with an interest in a participating property" from the definition of Potential Party.

e. **§900-1.2 Definitions**

i. Propose Rule **§900-1.2(bq),** Service

ii. Comment: this definition fails to expressly allow service by email or other electronic means, as is standard procedure in Siting Board and Public Service Commission proceedings. Lack of electronic document management and service will lead to unwieldy administrative delays and serve to increase administrative and service costs for all parties and the Office.

iii. Proposed revision: add "including service by electronic mail or other authorized means". ORES should also maintain a web-based active and prospective party list publicly displaying the service information for all parties upon which service is required. The Public Service Commission's DMM system accomplishes this, and ORES must adopt something similar, or preferably identical.

f. <u>§900-1.2 Definitions</u>

i. Propose Rule **§900-1.2(bv),** study area

ii. Comment: this definition unnecessarily and improperly restricts the impact study area. For example, when visual impacts are considered, the study area may need to extend beyond 20 miles. This definition as drafted will lead to an incomplete record and prevent ORES from considering all pertinent social, economic and environmental factors in its decision.

iii. Proposed Revision: add the following to the end of the definition: "Study area may extend beyond 5 miles from all generating facility components if a larger study area is required for consideration of all pertinent social, economic and environmental factors in the decision to permit a facility."

g. <u>§900-1.3 Pre-application procedures</u>

i. Proposed Rule **§900-1.3(a),** consultation with local agencies.

ii. Comment: this rule overemphasizes notification of the project to town supervisors, county executives, and mayors, while not requiring any notification whatsoever to municipal governments in general. The rule as drafted could be satisfied by a closed-door meeting between a single

municipal official and an applicant. If implemented, in many cases (*e.g.*, those where the notified municipal official would personally benefits from a project or is otherwise personally predisposed to support a project), this rule will shield the public from essential dialogue between municipal officials and an applicant, and will likely lead residents to assume the worst is happening behind closed doors, thus eroding public trust in ORES and local government.

iii. Proposed Revision: the rule should be modified to require all meetings between the applicant and local agencies to be conducted in front of a quorum of the governing board, and all such meetings should be open to the public pursuant to the Open Meetings Law.

h. §900-1.3 Pre-application procedures

i. Proposed Rule **§900-1.3(b),** meeting with community members

ii. Comment: the rule as drafted replaces the 6 month long pre-application public information program plan required under Article 10 with a single public meeting. This is incomprehensible given the well-documented history of Article 10 applicants failure to provide adequate and meaningful public notice under the much more robust Siting Board PIP regulations. If ORES' goal is to ensure the public remains unaware of a project, then this rule will certainly have its intended effect. CCRP does not believe the Legislature intended for ORES proceedings to remain secret.

iii. Proposed Revision: the entire rule should be stricken and redrafted in consultation with the Siting Board's public information coordinator, as well

as representatives of public interest groups who have raised serious concerns over inadequate public outreach in Article 10 proceedings. Such groups include the Tug Hill Rural Preservation Alliance, Citizens for Maintaining Our Rural Environment, Broome County Concerned Residents, and Save Ontario Shores. Again, a single meeting, after a single mailing based on an unverified mailing list, is unlikely to result in meaningful public education about a project, and does not comport with the requirements of Article 94-c or the intent of the legislature.

i. §900-1.3 Pre-application procedures

- **i.** Proposed Rule **§900-1.3(d)**
- **ii.** Comment: the notice required by this rule is inadequate to inform the public about the scope of the project, the Article 94-c process, or the availability of local agency funding. As drafted, this rule implies funding requests may only be made by regular mail, an inconvenient and outdated means of conducting and participating in siting proceedings. Article 10 proceedings, in contrast, are conducted online, with paper copies only required for certain specific filings.
- **iii.** Proposed revision: The notice should also require website addresses for the Office of Renewable Energy Siting, the rules and regulations governing the proceeding, necessary forms for party status and agency funding requests, and directions for **electronic submission** of proceeding documents such as party status and funding requests.

j. §900-1.3 Pre-application procedures

i. Proposed Rule **§900-1.3(e), (f), (g), (h),** relating to pre-application wetland delineation, water resources and aquatic ecology, NYS threatened or endangered species, and archaeological resources consultation

ii. Comment: these rules provide for pre-application study of certain environmental impacts by in applicant in consultation with the DEC, the Office, and OPRHP. However, **none** of this pre-application work is required to be carried out in consultation with local experts, groups, or municipalities. ORES cannot engage in review of local siting impacts while excluding all local involvement.

iii. Proposed revision: At a minimum, all of these rules should require consultation with, and involvement of, host municipalities, local environmental groups, and local historical societies or groups.

k. <u>§900-1.4 General requirements for applications</u>

i. Proposed Rule **§900-1.4(a)(1)**

ii. Comment: the rule fails to explain provide any details about the ORES application form.

iii. Proposed revision: the Rules shall include a copy of the proposed form for public comment.

l. <u>§900-1.4 General requirements for applications</u>

i. Proposed Rule **§900-1.4(a)(3)**

ii. Comment: the rule improperly shifts the burden of proof by implying an applicant must not demonstrate why uniform standard conditions should apply.

iii. Proposed revision: the entire application should be framed as a request by an applicant, based on facts and analysis, for application of the uniform standard conditions.

m. §900-1.4 General requirements for applications

i. Proposed Rule **§900-1.4(a)(4)**

ii. Comment: this rule allows an applicant, not the state, to control all public information about the project and implies the applicant will control the only online resource for information about the project. ORES cannot outsource its responsibilities under the Open Meetings Law to make the entire administrative record available to the public in an online format, with the exception of any specific information for which and applicant seeks an exemption from public disclosure.

iii. Proposed revision: In addition to a requirement the applicant host an informative website about the project, ORES must host a website such as the DMM system used by the Siting Board and the Public Service Commission to ensure the public has meaningful access to the entire administrative record.

n. §900-1.4 General requirements for applications

i. Proposed Rule **§900-1.5, ORES Siting Review Fee**

ii. Comment: the fee is excessive and the rule fails to provide any basis for the fee, or how the money will be spent by ORES.

iii. Proposed revision: ORES should be required to provide a regular accounting of how the fee is used to offset the cost of application review.

Any portion of the ORES fee not used for permissible purposes should be refunded to an applicant at an appropriate time.

o. <u>§900-1.6 General requirements for applications</u>

i. Proposed Rule **§900-1.6, Service and Publication of the Application**

ii. Comment: The rule fails to require service of paper and electronic versions of the application on potential parties; fails to require public posting of all application documents online; and fails to require publishing or service of application amendments. Limiting service to a single library, if one exists, does not provide sufficient public access to complex project details. This rule appears to be designed to provide convenient application access to ORES and state agencies, while generally inhibiting the public's ability to easily access the application. The rule does not require applicants to consult with municipalities to obtain a mailing list sufficient to reach all residents, and fails to require the applicant to consult with municipalities concerning the content of the notice. Under these rules the notice is likely to be impenetrably dense to inhibit public understanding, or in the alterative may be a post card resembling yet another ESCO solicitation that will likely be discarded without review by residents. ORES should redraft this rule in tandem with attorneys and advocacy groups with experience in Article 10 proceedings, to design notice requirements with a chanced of actually providing public notice. Although efforts have been improving within the past year, the renewable energy industry has a long track record in Article

10 proceedings that shows it is incapable, or unwilling, of engaging in good faith public outreach.

iii. Proposed revision: Applicants should be required to upload the entire application to case management system maintained by ORES. All application materials should be available for public review online. ORES should redraft this rule in tandem with attorneys and advocacy groups with experience in Article 10 proceedings, to design notice requirements with a chanced of actually providing public notice.

p. <u>§900-2.6 Exhibit 5: Design Drawings</u>

i. Proposed Rule **§900-2.6(b) and (d)**

ii. Comment: These rules improperly sets a highly contested substantive standard for wind turbine tower and solar panel facility setbacks. The rule fails to provide any basis for the proposed setbacks, with differ substantially for setbacks enacted by local governments around New York State

iii. Proposed revision: The setback tables must be deleted, or four public hearings addressing the proposed uniform standard condition must be held in four locations around the state.

q. <u>§900-2.6 Exhibit 5: Design Drawings</u>

i. Proposed Rule **§900-2.6(e)**

ii. Comment: This rule improperly sets a substantive standard limit on solar panel height.

iii. Proposed revision: This uniform standard condition must be deleted, or four public hearings addressing the proposed uniform standard condition must be held in four locations around the state.

r. <u>§900-2.9 Exhibit 8: Visual Impacts</u>

i. Proposed Rule **§900-2.9 Exhibit 8: Visual Impacts,** in its entirety

ii. Comment: This rule doubles down on many of the mistakes made in the equivalent Siting Board regulation, and will result in a visual impact analysis that will fail to provide a meaningful assessment of visual impact to host communities. The rules appear to have not been drafted with the assistance of a visual impact expert such as Dr. James Palmer[2]. A copy of testimony by Dr. Palmer in an Article 10 proceeding is attaches as Exhibit 1 to this comment. The testimony provides criticism on how visual impact analysis is conducted by applicants in the Article 10 process, and the criticism is equally applicable to the rules and process proposed by ORES.

iii. Proposed revision: ORES should strike this rule in its entirety and collaborate with an export such as Dr. James Palmer in producing

[2] Dr. Palmer is a professor of landscape architecture for the SUNY College of Environmental Science and Forestry for more than 25 years. Dr. Palmer has researched and written extensively on the topic of visual assessment. He has been honored as a Fellow of the American Society of Landscape Architecture and named to the first class of Fellows of the Council of Educators in Landscape Architecture. Dr. Palmer earned his MLA in Landscape Architecture and PhD in Forestry/Natural Resource Planning from the University of Massachusetts, Amherst. More information about Dr. Palmer: https://www.linkedin.com/in/james-palmer-0b5a0126 .

As sample of Dr. Palmer's testimony in an Article 10 proceeding is available here: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C1E93571-922C-4F8B-A6DA-CC584BCEBD9D} .

The testimony explains the key components of a meaningful visual impact review.

regulations that will result in meaningful visual impact assessment resulting in actionable mitigation plans.

s. **<u>§900-2.9 Exhibit 8: Visual Impacts</u>**

i. Proposed Rule **§900-2.9(b)(2)**

ii. Comment: This rule is vague and ambiguous and fails to require an approved methodology for visual impact assessment.

iii. Proposed revision: ORES should strike this rule in its entirety and collaborate with an export such as Dr. James Palmer in requiring a coherent and effective methodology, based on science, for quantifying and mitigating visual impacts.

t. **<u>§900-2.9 Exhibit 8: Visual Impacts</u>**

i. Proposed Rule **§900-2.9(b)(3), (4)**

ii. Comment: These rules require review of visual impacts from specific viewpoint and discuss the elements that factor into selection of viewpoints. The rules do not require public input in in the selectin of viewpoints, and afford an applicant too much discretion in selecting which viewpoints are truly sensitive or representative. This will result in selectin of viewpoints by an applicant that will downplay and/or misrepresent the visual impact of facilities, as has been demonstrated in multiple Article 10 proceedings.

iii. Proposed revision: Host municipalities, public interest groups, and residents living the project study area should be allowed to select 50% of the viewpoints chosen for additional study and simulation. Viewpoints should not be limited to particularly sensitive public spaces, but should include

views from residences on non-participating properties as a means of demonstrating the visual impact to local residents, while also proposing effective mitigation measures. At least one public open house should be conducted prior to visual impact analysis to solicit input from the public on areas and/or residences of highest concern.

u. <u>§900-2.13 Exhibit 13: Water Resources and Aquatic Ecology</u>

i. Proposed Rule **§900-2.14**

ii. Comment: This rule improperly sets numerous uniform standards and conditions.

iii. Proposed revision: This uniform standard conditions must be deleted, or four public hearings addressing the proposed uniform standard condition must be held in four locations around the state.

v. <u>§900-2.15 Exhibit 14: Wetlands</u>

i. Proposed Rule **§900-2.15**

ii. Comment: This rule improperly sets numerous uniform standards and conditions.

iii. Proposed revision: This uniform standard conditions must be deleted, or four public hearings addressing the proposed uniform standard condition must be held in four locations around the state.

w. <u>§900-2.16 Exhibit 15: Agricultural Resources</u>

i. Proposed Rule **§900-2.15,** in its entirety

ii. Comment: This rule fails to require a demonstration of whether a facility can comply with local or county Farmland Protection Plans, or whether the

facility is consistent with farmland preservation requirements in the state constitution.

iii. Proposed revision: The rule should be redrafted to require consultation with host municipalities prior to filing of an application, and to allow for any specific studies necessary to determine compliance with local and state farmland preservation policies. The Rule should also include a review of economic impacts on the local farming/agricultural economy resulting in loss of farming or farmland.

x. <u>§900-2.18 Exhibit 17: Consistency With Energy Planning Objectives</u>

i. Proposed Rule **§900-2.18,** in its entirety

ii. Comment: This Rule fails to require essential information for ORES review by failing to ask for a precise study and quantification of any specific project' impact on decarbonation of the state's energy sector. It cannot be assumed that each new megawatt of renewable energy replaces an equal amount of energy generated by a process emitting carbon.

iii. Proposed Revision: given that subsection (g) of this rule already requires, "(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", an applicant must show precisely how much carbon emissions will be reduced by the facility, any predicted change in modeled global climate change, and any follow-on benefit attributable specifically to the proposed facility. This section should also explain why

distributed energy resources, if deployed throughout the state, are inadequate to meet the state's energy goals.

y. **<u>§900-2.19 Exhibit 18: Socioeconomic Effects</u>**

   i. Proposed Rule **§900-2.18,** in its entirety

   ii. Comment: This Rule exceeds ORES mandate by failing to quantify potential economic costs associated with a facility, including but not limited to losses in adjacent property value based on visual stigma; lower tax assessments and tax revenue resulting from loss of property value; loss of population; loss of other economic opportunities; impacts on tourism; conversion of farmland; and impacts on the agricultural economy, including farm services. The rule appears to be drafted to allow an applicant to provide evidence of supposed economic benefits without any meaningful analysis of potentially offsetting costs. This violates Article 94-c.

   iii. Proposed Revision: the rule should be stricken in its entirety and redrafted to require a comprehensive cost benefit analysis designed to quantify likely impacts on the local economy. A robust review of potential direct and indirect **costs** must be included.

z. **<u>§900-2.24 Exhibit 23: Site Restoration and Decommissioning</u>**

   i. Proposed Rule **§900-2.24(c)**

   ii. Comment: This rule permits an applicant to reduce the decommissioning and site restoration costs by subtracting potential salvage value, thus reducing the value of any associated letter of credit.

iii. Proposed revision: This is a substantive uniform standard that should not be in this set of regulations. In addition, the standard itself represents a marked deviation from Article 10 precedent, where the Siting Board has routinely refused to subtract salvage value from decommissioning security.

aa. <u>§900-2.25 Exhibit 24: Local Laws and Ordinances</u>

i. Proposed Rule **§900-2.25,** in its entirety

ii. Comment: The Draft Regulations violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers. The Rules fail to precisely state under what circumstances ORES can execute its waiver power. Although Article 94-c identifies inconsistency with state energy policy as the basis for waiving local laws, the regulations to not elaborate on how inconsistency can be shown. Instead, the regulations rely on the technical standard required under Siting Board Regulations, which relate to whether a project is unduly burdensome in light of existing technology or the needs of the rate payers. It is unclear what findings and determinations ORES is required to make as prerequisite to waiver. Without a clear standard for waiver or any internal limitations on the waiver power, ORES will be tempted to waive local laws indiscriminately and in a way wholly inconsistent with local powers granted directly by the state constitution. Neither ORES, nor the legislature for that matter, has the power to preempt local laws on a case by case basis.

iii. Proposed revision: this regulation should be stricken and all substantive local laws should be applied to any given project.

bb. <u>§900-2.25 Exhibit 24: Local Laws and Ordinances</u>

i. Proposed Rule **§900-2.25,** in its entirety

ii. Comment: The regulation is vague because it fails to address the timing issue encountered in Article 10 proceedings. Specifically, ORES does not provide guidance on how late in a proceeding a local laws can be duly adopted by a local government, and still be considered by ORES.

iii. Proposed revision: this regulation should be modified to clearly state ORES shall apply any local law in force and effect at the time it renders a final decision on a permit application, or in the alternative waive such local law in accordance with Article 94-c and implementing regulations.

cc. <u>§900-5.1 Local Agency Account</u>

i. Proposed Rule **§900-2.25(a)**

ii. Comment: Experience in Article 10 proceeding indicates 30 days is not sufficient time for my community intervenors to become familiar with an application, identify and retain counsel, identify and retain experts, and submit a complete funding request.

iii. Proposed revision: Requests for local agency funds should not be due until forty-five (45) days after the date on which a siting permit application has been filed.

dd. <u>§900-5.1 Local Agency Account</u>

i. Proposed Rule **§900-2.25(b)**

ii. Comment: This rule would prevent community intervenors from using agency funds to ensure compliance with applicable local laws and

regulations. There is no reasonable basis for depriving community intervenors of the opportunity to use agency funds to contribute to the record on the issue of local law compliance, as well as potential waiver. The interests of community members and local governments frequently diverge. Furthermore, evidence has been submitted in numerous Article 10 proceedings indicating the local government officials sometimes have institutional or personal pecuniary interests in energy projects, and thereby have an incentive to not seek compliance with potentially incompatible local laws.

iii. Proposed revision: This section should be modified to remove the phrase "for local agencies" as indicated below:

> "(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."

ee. §900-5.1 Local Agency Account

i. Proposed Rule **§900-2.25(c)**

ii. Comment: Although other language in rule 5.1 indicates agency funds can be used to pay legal counsel, this rule may cause ambiguity on that point by only stating funds can be used to defray expenses for experts.

iii. Proposed revision: This section should be revised to state the local agency account may be used to defray the fees, costs, and expenses of attorneys and experts, and expert witnesses.

ff. <u>§900-5.1 Local Agency Account</u>

i. Proposed Rule **§900-2.25(c)**

ii. Comment: Although other language in rule 5.1 indicates agency funds can be used to pay legal counsel, this rule may cause ambiguity on that point by only stating funds can be used to defray expenses for experts.

iii. Proposed revision: This section should be revised to state the local agency account may be used to defray the fees, costs, and expenses of attorneys and experts, and expert witnesses.

gg. <u>§900-5.1 Local Agency Account</u>

i. Proposed Rule **§900-2.25(f)**

ii. Comment: This rule replaces the requirement for quarterly intervenor fund reports in Article 10 proceedings with a requirement that such reports be submitted with every voucher request for payment. This is an inefficient, time-consuming requirement, and it will result in the waste of intervenor funds on an administrative task. Given that voucher payment requests

require submission of detailed invoices, the request for contemporaneous reporting on how the funds have been spent is duplicative and unnecessary.

iii. Proposed revision: This rule should be modified to only require (1) an accounting of the monies that have been spent; and (2) detailed invoices for all work performed.

hh. <u>§900-5.1 Local Agency Account</u>

i. Proposed Rule **§900-2.25(g)**

ii. Comment: This rule does not set a time limit for payment after a satisfactory voucher request is received. In Article 10 proceedings delays between request and payment have lasted up to a year, which places a heavy financial burden on both municipal and intervenor attorneys and experts.

iii. Proposed revision: This rule should be modified to require all payments be made by NYSERDA to community and municipal parties within 60 days of the date a voucher is requested is submitted.

ii. <u>900-5.1 Local Agency Account</u>

i. Proposed Rule **§900-2.25(g)(2)**

ii. Comment: this rule arbitrarily, and without rational basis, reserves 75% of the local agency fund for municipal parties. This reservation is excessive, exceeds to 50% rule under Article 10, and will inhibit community intervenors' ability to participate in proceedings, thus depriving the record of an essential perspective and evidence necessary to award a permit. In Article 10 proceedings even the 50% reservation has frequently resulted in municipalities predisposed to supporting a project to squander fees while

underfunded intervenor groups are left with multiple substantive issues to litigate, but no funds with which to litigate them. At a minimum, ORES should adopt the same 50% reservation used under Article 10 cases. **This rule is a blatant attempt to deprive community intervenors of the funding necessary to participate in ORES siting proceedings**. ALJ's must have the discretion to award agency funds on an equitable basis, and should not be required to reserve so much money even for municipalities that have no intention of actually using the funds to develop issues on the record.

iii. Proposed revision: This rule should be modified to reserve at least fifty (50) percent of the local agency account funds for each project to local agencies. ALJ's should be empowered to award funds on an equitable basis, taking into account numerous factors including the positions of the parties, the issues sought to be litigated, and the proposed uses of funds.

jj. <u>§900-7.1 Amendment of Application</u>

i. Proposed Rule **§900-7.1 Amendment of Application**

ii. Comment: This rule does not require an additional local agency fund payment in the event of a Major Amendment. In accordance with Article 10 precedent, majority changes to the application should be accompanied by additional funds for the agency account. Such funds are necessary for community intervenor and municipal parties to review the impact of the changes.

iii. Proposed revision: This rule should be modified to require an additional local agency fund payment, on a dollar per megawatt basis, whenever a Major Amendment to an Application is filed.

kk. <u>§900-8.3 Public comment hearing and issues determination.</u>

i. Proposed Rule **§900-8.3,** in its entirety

ii. Comment: This rule does not appear to allow for adjudication of issues relevant to the findings and determination ORES must make before issuing a permit. It also limits substantive and significant issues to those that could result in major changes to a facility or denial of a permit. CCRP believes man other issues can and should be addressed during ORES adjudicative proceedings, and without the ability of intervenors and municipalities to raise those issues, project impacts will not be minimized.

iii. Proposed revision: Adjudicative hearings should be required as of right, and all issues should be deemed substantive and significant if they are related to any finding or determination required to be made by ORES before issuing a permit.

ll. <u>§900-8.4 Hearing participation</u>

i. Proposed Rule **§900-84(c)**

ii. Comment: this rule raises significant and unnecessary barriers to party status, and will inhibit or prevent both municipal and public participation in administrative hearings. For example, there is no rational basis for requiring parties to make an offer of proof prior to being award party status. The very notion of requiring a party to prove its case before being offered party status

turns notions of due process on its head, shifts the burden of proof from the applicant to intervenors, and represents far more stringent standing requirement than is even required in a court of law. Again, these ORES regulations will have the effect of blocking public participation in the siting process, and will lead to an inadequate record. It is highly likely that very few parties will find legal counsel with the requisite experience to file the required "petition" for party status, and any attempt to do so pro se is doomed to failure.

iii. Proposed revision: party status should be awarded to any person meeting the definition of a potential community intervenor as defined by definition (bg) in this part.

mm. **§900-8.6 Disclosure**

i. Proposed Rule **§900-8.6,** in its entirety

ii. Comment: improperly limits the scope of discovery by limiting both the subject and timing of available discovery. By preventing full discovery until after issues have already been identified, ORES will make it impossible for parties to develop evidence necessary to either seek party status or raise substantive and significant issues.

iii. Proposed: the rule should be modified to permit any document requests and/or interrogatories seeking relevant information or information that may lead to relevant information.

nn. **§900-8.7 Conduct of the Adjudicatory Hearing**

i. Proposed Rule **§900-8.7,** in its entirety

ii. Comment: the proposed hearing rules violate SAPA and due process.

iii. Proposed revision. The Rules should be redrafted with the assistance of counsel experienced in litigated Article 10 proceedings.

oo. <u>§900-8.8 Evidence, burden of proof and standard of proof</u>

i. Proposed Rule **§900-8.8(a)**, in its entirety.

ii. Comment: This rule is overly restrictive for administrative proceedings, fails to comply with SAPA, and deviates from the evidentiary rules applied by the Siting Board in analogous PSL Article 10 Siting Proceedings. Given the purpose of ORES is to, "ensur[e] the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to permit such facilities as more specifically provided in this section," ORES regulations should be drafted in a manner that welcomes all potentially relevant evidence, even if such evidence would not normally be permissible in proceedings before a court.

iii. Proposed Revision: **§900-8.8(a)** should be deleted in its entirety, and replaced with the analogous Siting Board regulation 16 NYCRR 1001.12(a), modified slightly to reflect use by ORES as follows:

<u>(a) Evidence</u>

<u>(1) Issues and evidence are relevant if they assist the Office in making any required findings pursuant to Article 94-c of the Executive Law.</u>

(2) All evidence submitted must be relevant and material. Evidence is material if it has the reasonable potential to affect the outcome of the Office's findings or determinations under Article 94-c of the Executive Law.

(3) 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, or it is needlessly repetitious or duplicative. The ALJ's may also preclude irrelevant, repetitive, redundant or immaterial evidence and irrelevant or unduly repetitious cross-examination.

(4) All rules of privilege will be observed.

(5) Other rules of evidence need not be strictly applied. Hearsay evidence may be admitted if a reasonable degree of reliability is shown.

(6) Where a part of a document is offered as evidence by one party, any party may offer the entire document as evidence or the presiding examiner may require the entire document to be submitted as evidence.

(7) Any party may move that evidence, including records and documents, in the possession of the Office, or other public records, be received in evidence in the form of copies or excerpts or by incorporation by reference.

(8) Records or documents incorporated by reference will be available for examination by the parties before being received in evidence.

(9) Briefs and other documents that attempt to persuade through argument are not evidence and may not be entered into the evidentiary record of a proceeding.

(10) Any party may move that official notice be taken of:

(i) facts of which judicial notice could be taken pursuant to Rule 4511 of the Civil Practice Law and Rules; and

(ii) other facts within the specialized knowledge of the Office.

(11) When official notice is taken of a material fact of which judicial notice could not be taken and that does not appear in the evidence in the record, every party will be given notice thereof and will, on timely request, be afforded an opportunity to dispute such fact or its materiality prior to a decision granting or denying a certificate.

pp. §900-8.8 Evidence, burden of proof and standard of proof

i. Proposed Rule **§900-8.8(b)**, Burden of Proof, in its entirety.

ii. Comment: This rule violates SAPA[3] and attempts to improperly limit the introduction of hearsay evidence in administrative proceedings by applying

[3] Hearsay evidence is admissible in SAPA hearings (such as ORES proceedings) and can be the basis of an administrative enforcement determination (see SAPA § 306[1](a)(agencies need not observe the rules of evidence observed by courts, but shall give effect to the rules of privilege recognized by law); Matter of Gray v Adduci, 73 NY2d 741, 742 [1988] ("Hearsay evidence can be the basis of an administrative determination"); Gray v. Adduci, 73 N.Y.2d 741, 742, 532 N.E.2d 1268 (1988); People ex rel. Vega v Smith, 66 NY2d 130, 139 [1985]; Matter of

more stringent rules of evidence normally only applicable to court proceedings.

As stated by the Court of Appeals in *Matter of Gray v Adduci*, 73 NY2d 741, 742 1988, "Hearsay evidence can be the basis of an administrative determination." In Article 10 proceedings, for example, hearsay evidence is routinely admitted and considered by the Siting Board.

It appears the only purpose of this proposed rule is to restrict the kind of evidence that municipalities and public intervenors may submit in either showing a substantive and significant issue, or during adjudicative hearings. Given the already onerous timing restrictions on any proposed party intending to show a substantive and significant issue, the inability to base arguments on hearsay evidence will likely deprive the administrative record of information necessary for a final determination, and prevent material issues from being reviewed and considered by ORES..

iii. Proposed Revision: This rule should be deleted as unnecessary and contrary to SAPA, and the associated definition of "hearsay" in §900-1.2(y) should also be deleted.

qq. <u>§900-8.9 Ex parte rule</u>

i. Proposed Rule **§900-8.9**, in its entirety.

ii. Comment: as drafted this Rule only limits ex parte communications with ALJ's, which may not be assigned in every proceeding. The rule should be

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Concerned Citizens Against Crossgates v Flacke, 89 AD2d 759, 760 [3d Dept 1982], affd for reasons stated below 58 NY2d 919 [1983]).

modified to also govern ex parte communications with the Executive Director, Director, or any staff or agents of the Executive Director. This rule is essential given the Office's role as final arbiter over a permit application.

iii. Proposed Revision: wherever the term "ALJ" or "Chief ALJ" is used in Rule 900-8.9, add the language or "Executive Director, Director, or their staff or agents."

rr. <u>§900-8.10 Payment of hearing costs</u>

i. Proposed Rule **§900-8.10**, in its entirety.

ii. Comment: the rule is vague and ambiguous and fails to state which parties to an adjudication are eligible for reimbursement of hearing costs by the applicant or ORES. At a minimum, local agency and intervenor parties' costs should be reimbursed by the applicant.

iii. Proposed Revision: add the following language to the end of **§900-8.10(a):** "All parties to the adjudication are eligible for reimbursement of the costs identified in this section, including but not limited to ALJs, ORES or other state agency representatives, experts, and staff, and Local Agency and public intervenor legal representatives and experts. ALJs shall have the discretion to award reimbursement of costs to additional attendees not listed in this section."

ss. <u>§900-8.11 Record of the hearing</u>

i. Proposed Rule **§900-8.11**, in its entirety.

ii. Comment: the rule fails to require ORES to make the entire record available on an online docket similar to the DMM system used in Article

10 proceedings. ORES should use the Siting Board's system as a model, and ensure all documents related to any application are publicly available online, and updated in real time. The rule, as drafted, appears to be designed to prevent the public from accessing application or hearing information online. The rule is contrary to the Open Meetings Law, SAPA, and due process. Even in cases where an adjudicative hearing is not conducted, all correspondence to and from the Office, rulings, applications, requests for party status, information requests, requests for local agency funding, deficiency notes, etc. should be available online for public review. It does a disservice to the public to hide the administrative record from public review. An example of a DMM docket for an Article 10 proceeding is available here: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=56497

iii. Proposed Revision: the rule should require all documents related to any ORES application, including pre-application documents, the application, party status requests, issues statements, hearing documents, and any other document that would be included in an administrative record as defined by SAPA, be hosted on a public available docket similar to the DMM system used by the Siting Board and the Public Service Commission.

tt. <u>§900-8.12 Final Decision</u>

i. Proposed Rule **§900-8.12**, in its entirety.

ii. Comment: this rule is vague and ambiguous and fails to provide any detail or specificity about the contents of any recommended decision, hearing report, or final decision in an ORES proceeding. As drafted, this rule does not require Executive Director to make any specific findings or determinations whatsoever prior to issuing a permit. The rule directly contravenes the express requirements of Exec Law §94-c, which requires ORES to consider, "all pertinent social, economic and environmental factors in the decision to permit such facilities as more specifically provided in this section." NY Exec Law 94-c, §1. This rule must be modified to set forth explicit findings and determinations that ORES must make, based on evidence in the Record, prior to issuing a permit.

iii. Proposed revision: ORES should incorporate the findings and determinations set forth in PSL 168, in their entirety. No ORES permit should be issued absent careful consideration of the impacts listed in PSL 168, which closely mirror the concerns listed in of Exec Law §94-c(1). A section (e) should be added to Rule **900-8.12** stating the following:

> (1) ORES shall not issue an permit without making explicit findings regarding the nature of the probable environmental impacts of the construction and operation of the facility, including the cumulative environmental impacts of the construction and operation of related facilities such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines, including impacts on:
>
> (a) ecology, air, ground and surface water, wildlife, and habitat;

(b) public health and safety;

(c) cultural, historic, and recreational resources, including aesthetics and scenic values; and

(d) transportation, communication, utilities and other infrastructure.

Such findings shall include the cumulative impact on the local Community including whether the construction and operation of the facility results in a significant and adverse disproportionate environmental impact.

(2). The Office may not grant a permit for the construction or operation of a major electric generating facility, either as proposed or as modified by the office, unless the office determines that:

(a) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; and

(b) if the office 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

(c) 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 office may elect
not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder or any local

standard or requirement, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. The office shall provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation or other local action issued thereunder.

(3). In making the determinations required in subdivision 2 of this section, the Office shall consider:

(a) the state of available technology;

(b) the nature and economics of reasonable alternatives;

(c) environmental impacts found pursuant to subdivision two of this section;

(d) the impact of construction and operation of related facilities, such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines;

(e) the consistency of the construction and operation of the facility with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan;

(f) the impact on community character and whether the facility would affect communities that are disproportionately impacted by cumulative levels of pollutants; and

(g) such additional social, economic, visual or other aesthetic, environmental and other

considerations deemed pertinent by the Office.

uu. §900-10.2 Pre-Construction Compliance Filings

i. Proposed Rule §900-10.2, in its entirety.

ii. Comment: the Rule appears to contain uniform conditions that should have been included in Draft Regulations Chapter XVIII Title 19 (Subpart 900-6). By including these uniform standards and conditions in the procedural regulations, ORES is violating state law by depriving the public of the opportunity for a hearing on all uniform standards and conditions, as required by NY Exec Law 94-c, §3(b). As an example of some of the uniform conditions and standards improperly included in this section:

1. Standards applicable to site restoration upon decommissioning;
2. Rules for vegetation management plans; and
3. Rules for complaint management plans;

iii. Proposed revision: All uniform standards and conditions improperly included in Draft Regulations Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-15), should be deleted, and added to Draft Regulations Chapter XVIII Title 19 (Subpart 900-6), and additional public hearings must be conducted in four regions of the state as required by Article 94-c.

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JOINT PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 – 900-5; 900-7 – 900-14)

Document prepared for joint submission by:

Benjamin E. Wisniewski, Esq..
The Zoghlin Group, PLLC
Attorneys for the Concerned Citizens
For Rural Preservation
300 State Street, Suite 502
Rochester, New York 14614
(585) 434-0790
Benjamin@ZogLaw.com

Dated: November 11, 2020
Rochester, New York

DocuSign Envelope ID: 8EEFF571-4D00-4653-95AC-91F43E769DFA

I. Introduction

This Joint Public Comment provides consolidated public comment on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law. The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-14) (the "Draft Regulations"). The comments are submitted to the Office of Renewable Energy Siting by following officials, interest groups, and municipalities, as indicated by the signatures at the end of this document:

A. Concerned Citizens for Rural Preservation

B. Save Ontario Shores, Inc.

C. Broome County Concerned Residents

D. Town of Copake, New York

E. Guilford Coalition of Non-Participating Residents

F. Concerned Citizens for the Cassadaga Wind Project

G. Ginger Schroder, Esq., Cattaraugus County Legislator, Legislative District 3

H. Town of Farmersville, New York

I. Prattsburg Preservation Alliance Inc.

J. Town of Yates, New York

K. Town of Rush, New York

L.

M. Rural Preservation and Net Conservation Benefit Coalition

N. Freedom United

O. Town of Malone, New York

P. Lake Hiram Club

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Q. Farmersville Citizens United

R. Tug Hill Alliance for Rural Preservation

S. Residents United to Save Our Hometown

T. Clear Skies Above Barre, Inc.

U. Town of Moriah, New York

V. Town of Ashford, New York

W. Town of Ischua, New York

X. Town of Solon, New York

Y. Sensible Solar for Rural New York

Z. Sardinia Rural Preservation Society

AA. Town of Somerset, New York

BB. Town of Cambria, New York

CC. Town of Ripley, New York

DD. Town of Byron, New York

EE. [redacted]

FF. [redacted]

GG. Citizens for Maintaining Our Rural Environment Inc.

HH. Rebecca J. Wydysh, Chairman, Niagara County Legislature

II. John Syracuse, Vice-Chairman, Niagara County Legislature

JJ. Richard Updegrove, County Manager, Niagara County Legislature

KK. Town of Wilson, New York

DocuSign Envelope ID: 8EEFF571-4D00-4653-95AC-91F43E769DFA

II. Specific Comments on Proposed Regulations

The signatories to this document provide the following comments to the Office of Renewable Energy Siting as if they were their own:

Comment 1: Inadequate Review of Environmental Impacts

The Draft Regulations do not allow for meaningful identification, assessment, or mitigation of the negative environmental impacts of individual renewable energy projects.

Comment 2: Improper Reliance on Secrecy to Avoid Public Scrutiny

The Draft Regulations do not allow for meaningful public participation in the renewable energy siting process and fail to provide open and transparent access to project details, applications, case documents, or docket lists.

Comment 3: Violation of Home Rule Principles

The Draft Regulations violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers.

Comment 4: Elevation of Private Corporate Interest over Public Interest

The Draft Regulations improperly elevate project economics and profitability over local siting concerns.

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JOINT PUBLIC COMMENT ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 – 900-5; 900-7 – 900-14) – Part 2

Document prepared for joint submission by:

Benjamin E. Wisniewski, Esq.
The Zoghlin Group, PLLC
Attorneys for the Concerned Citizens
For Rural Preservation
300 State Street, Suite 502
Rochester, New York 14614
(585) 434-0790
Benjamin@ZogLaw.com

Dated: December 2, 2020
Rochester, New York

DocuSign Envelope ID: D8419EEA-7A5E-45DB-8E91-9132CDD1599B

I. Introduction

This Joint Public Comment provides consolidated public comment on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law. The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-14) (the "Draft Regulations"). The comments are submitted to the Office of Renewable Energy Siting by following officials, interest groups, and municipalities, as indicated by the signatures at the end of this document:

A. Cambria Opposition to Industrial Solar, Inc.
B. River Residents Against Turbines
C. [redacted]
D. Byron Association Against Solar, Inc.
E. Town of Hopkinton, New York
F. Town of Ancram, New York
G. Jefferson County Land Preservation Alliance
H. [redacted]
I. Town of Willing, New York
J. Town of Milan, New York

II. Specific Comments on Proposed Regulations

The signatories to this document provide the following comments to the Office of Renewable Energy Siting as if they were their own:

DocuSign Envelope ID: D8419EEA-7A5E-45DB-8E91-9132CDD1599B

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The Draft Regulations violate Article IX of the New York State Constitution and effectively strip local governments of legislative, zoning, and police powers.

Comment 4: Elevation of Private Corporate Interest over Public Interest

The Draft Regulations improperly elevate project economics and profitability over local siting concerns.

III. Signatories to Joint Public Comment

We, the undersigned, hereby agree with the foregoing comments and direct the Concerned Citizens for Rural Preservation, through their legal counsel the Zoghlin Group, PLLC, to submit these comments to the Office of Renewable Energy Siting:

CONCERNED CITIZENS FOR RURAL PRESERVATION'S MEMBER COMMENTS ON THE NEW YORK STATE OFFICE OF RENEWABLE ENERGY DRAFT REGULATIONS CHAPTER XVIII TITLE 19 (SUBPARTS 900-1 – 900-5; AND 900-7 – 900-15)

Document prepared by:

Benjamin E. Wisniewski, Esq.
Bridget O'Toole, Esq.
The Zoghlin Group, PLLC
Attorneys for the Concerned Citizens For Rural Preservation
300 State Street, Suite 502
Rochester, New York 14614
(585) 434-0790
Benjamin@ZogLaw.com

Dated: December 7, 2020
Rochester, New York

I. Introduction

This Additional Public Comment provides comments drafted by members of the Concerned Citizens for Rural Preservation (CCRP) on the Draft ORES regulations necessary to implement Section 94-c of the New York State Executive Law. The comments address the proposed Office of Renewable Energy Siting draft regulations, Chapter XVIII Title 19 (Subparts 900-1 – 900-5; 900-7 – 900-15) (the "Draft Regulations"). The comments are submitted to the Office of Renewable Energy Siting by the Concerned Citizens for Rural Preservation. The comments represent further commentary and questions submitted by members of the Concerned Citizens for Rural Preservation and are intended to supplement all other comments filed by the group. These comments have been drafted by members Lucia Dailey and Richard Hayes Phillips. Brief statements by Sandy Hayes and Dr. Phillips do not necessarily represent the opinions of CCRP.

Members of CCRP have numerous questions, concerns and objections to the draft regulations, which they request be submitted, recorded, and answered before any are enacted.

II. Specific Comments, Questions, and Concerns Related to Draft Regulations

900-1.1 Purpose and Applicability

This provision allows an applicant previously defeated under the prior law to try again under the new law and is unreasonably burdensome to local governments and citizen interveners who played by the rules existing at that time and were victorious. Basically, this amounts to a "do-over" for the defeated applicant.

(b)(3) "except where an applicant elects to be subject to this Part as authorized by Public Service Law Section 162;" This is not clear-Shouldn't PSL 162 should be footnoted? Does this basically

allow the applicant to change the ground rules on the application process, anywhere in the process, even if a permit has already been made or granted under Article 10, or only in the case where a pre-application public involvement plan has been filed? How does this expedite siting?

(b)(4) "renewable energy system" is not in the definitions. Shouldn't Section 66(p) of the New York State Public Service Law be footnoted here? Doesn't allowing systems with 20-25 MW, "opt-in renewable energy systems" blur and confuse the line between minor and major facilities, and leave the door open to problems?

(b)(5) "any stand-alone battery energy storage system." Why isn't 'Battery energy storage system' in the definitions, and why isn't 'stand-alone battery energy system', either?

900-1.2 Definitions

(b) Administrative Law Judge- will ALJ's in hearings associated with ORES proceedings be employees of NYS ORES, NYS Department of State, the NYS Department of Public Services, or the NYS Public Service Commission? Since they will be designated by "the Executive Director" (of ORES), doesn't this seem like a slight conflict of interest, if they are ORES employees?

(j) If "commencement of construction" does not include "staging, limited tree-cutting activities related to testing or surveying (such as geotechnical drilling and meteorological testing), together with such testing, drilling and similar pre-construction activities to determine the adequacy of the site for construction and the preparation of application materials or compliance filings" what are these activities defined as, and what hours and regulations cover them?

(ac) What is a "census block group", and what is "the poverty threshold" by dollar amount and household size?

(az) "Opt-in renewable energy facility" Doesn't this completely throw the definitions of major and minor facility into question?

(bd) Pending Article 10 facility- Why does a 'draft public involvement program plan' qualify a proposed project as a pending Article 10 facility? Absolutely no important studies or investigations have been performed, and no public outreach has been performed.

(bg) "Potential community intervenor"- The definition is not clear as written. After the exceedingly long sentence, needing commas, describing who qualifies, another sentence is confusing. "For purposes of this definition, the term "residing" shall include individuals occupying a dwelling within the geographical limitations described above." Some properties are "occupied" part-time but would be severely impacted by a facility. "Why is "dwelling" not defined? In previous Article 10 applications, applicants tried to exclude properties not on public water, sewer, electricity, etc. as dwellings or residences, which they most certainly are. To simplify, why not define "Potential community intervenor" as “any resident or owner of property within the geographical limitations listed", because many properties are purchased with the intent to build a home, camp, or cottage at a later time? To exclude these property owners from the process could deny them the right to protect the use, enjoyment, and value of their property.

(bl) Public Service Commission or PSC- Is this different from the New York State Department of Public Service? How does it differ, and what are their separate roles in this process?

(bo) "Repurposed site"- What level of remediation would permit the siting of a major renewable energy facility?

(bv) "Study area"- Once again, unclear because of long, unseparated sentences. What is a highly urbanized area? Because the definition of "interconnections" includes "off-site electric

transmission lines less than 10 miles in length, water supply lines, waste water lines, communication lines, steam lines, storm water drainage lines, appurtances thereto" wouldn't this extend the study area out from these also?

(bx) "Transfer application"- Isn't it illegal to change the rules to advantage an applicant and disadvantage intervenors in an ongoing Article 10 process, by allowing the applicant to "transfer out" of that process to this "applicant friendly" office and these lenient draft regulations? Once again, how does a "draft public program plan" qualify this change?

900-1.3 Pre-application procedures

(a) Consultation with Local Agencies. “Why is 60 days before filing an application considered adequate time for consultation with local officials on a facility that would affect and change the community forever? Why wouldn't 120 days be more appropriate on such far-reaching issues? Why just consult with the chief executive officer, and not the entire board? Why not allow the public to attend and learn what the applicant intends? Why should a transfer application for a pending Article 10 application that has been deemed complete, be exempt from this consultation, since transfer to this ORES process changes the ground rules?

(a)(3) and (4) This is the whole purpose of the law pursuant to which these regulations are being proposed. The idea is to revoke the ability of local governments to enact zoning measures intended to control or restrict industrial development within their jurisdictions. A newly created state agency has been empowered to exempt applicants from the laws that apply to ordinary citizens, merely because the applicants find them “unreasonably burdensome”.

(a)(7) Will the designated contact person be required to answer questions posed on the website, email, or on the phone? Will there be a required time limit set for answers to the public? Will there be a process if the answer is inadequate?

(b)Meeting with community members. As above, don't these facilities' profound and permanent effects on a community, warrant more time for those who would have to live with them to become informed and involved in the process? Considering the requirements for requests for funds from the local agency account, at 900-5.1(h) items (8)(9)(10), isn't 30 days an 'unreasonable burden' for potential community intervenors and local agencies to find experts, line out the studies, and draw up contracts, especially for those with no expertise in these matters? Why wouldn't 60 days within the date of the date of application filing be more appropriate and reasonable? In addition, why can't the applicant provide notice of the meeting 28, 21, 14 and 7 days prior to the meeting in accordance with the publication requirements?

(c) This is nothing more than a presentation wherein the applicant announces its intentions. The local citizens in attendance are not allowed to oppose the project, but can only ask questions. There is no requirement that the meeting be recorded or transcribed. The applicant is allowed to summarize, in their own words, the questions raised and the responses provided.

(d)Why shouldn't the notice of intent to file an application include, as part of (1), A brief summary of the proposed facility and location, AND a list and map of properties with signed leases, easements, and "good neighbor agreements"? Many property owners have been duped into signing leases by applicants, being told "all your neighbors have signed, so you might as well, because you're going to be surrounded." This was told to me by a gentleman from Clinton County, at a gun show.

(e) Wetland delineation

(1) Would only "regulated" wetlands be delineated? Shouldn't the delineation include notation of wetland downslope/ down/gradient from the facility or the area to be disturbed by construction? A steep slope could cause damage and disturbance to a wetland more than 100 feet from the area of disturbance.

(3) Would the draft wetland delineation report be available to the public on the project website, so any omissions could be noted by those in the vicinity?

(4) Why shouldn't the applicant consult with both the Office AND the DEC, not just "as necessary", as stated in the regulations, as ORES is not familiar with wetlands, and DEC is?

(5) "At the request of the Office, the NYSDEC shall review the draft wetland delineation..."As above, if the Office does not request, why leave DEC out of a process with which they are familiar, and ORES is not? “The Office, with a copy to the NYSDEC, shall provide a final approved jurisdictional determination to the applicant..." Does this mean that ORES is now deciding on wetlands? "In the event that weather or ground conditions prevent the Office" shouldn't there be added "or NYSDEC" "from making a determination...."

(f)Water Resources and Aquatic Ecology

(1) Why would only "regulated" waters be in the stream delineation? At least here, there is mention that waters beyond the limit of disturbance may be hydrologically or ecologically influenced by development, why not include that in the wetlands delineation?

(2) Would NYSDEC make a simplified summary or map available to the public on the project website for feedback?

(4) "At the request of the Office, the NYSDEC shall review the draft delineation..." Once again, is it the option of the Office to request DEC review? Also, shouldn't the last sentence read, "In the event that weather or ground conditions prevent the Office 'OR NYSDEC' from making a determination...”?

(g) NYS threatened or endangered species

(1) Why does the Office trust applicants to conduct or construct an accurate wildlife characterization, when some applicants, still operating in New York, have mischaracterized reports or actually attempted to harass wildlife in order to deny their presence at a site? Why doesn't the Office require that wildlife site characterization be prepared by a third-party professional in that field, at the applicant's expense?

(2) "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." Why was DEC not included in those who need to agree? “unless otherwise agreed upon by the applicant, the NYSDEC, and the Office."

(2)(ii) Why is a non-disclosure agreement needed here?

(3) Why are applicants conducting habitat assessments, instead of third-party professionals in that field, at the applicant's expense?

(5) Why are the applicants conducting surveys, instead of third-party professionals in that field, at the applicant’s expense?

(6) Why is the public not allowed to comment, correct, and add information to the habitat assessments and surveys, after they are completed and submitted and before the Office provides

its draft determination regarding whether occupied habitat for one or more NYS threatened or endangered species exists within the facility site? Why is the Office leaving those who are most familiar with the site out of the information gathering process?

(i) Consultation with the Office

(1) Why are "Applicants seeking a siting permit for a major renewable energy facility other than a solar facility or wind facility required to consult with the Office at least one when (1) year prior to submitting an application", when there seems to be no such requirement for wind or solar facilities?

(2) What is intended by "Any applicant" may request a pre-application meeting with the Office? Any applicant for a wind, solar, battery energy storage system, or a major renewable energy facility other than a solar facility or a wind facility? Will the request be granted or denied based on the type of facility?

900-1.4 General requirements for application

(a)(4)(ii) Would the map at a size and level of detail...inform the public of the location of the proposed facility site, and all associated project components, access roads, transmission lines, inverters, and battery energy storage systems? Would another website map include the location of all signed "participating properties", easements, "good neighbor agreements" and other real properties for which the applicant may consider filing eminent domain motions? If not, why not, since all these would affect adjoining and nearby neighbors' future use and property values?

(iii) The persons who drafted these proposed regulations seem unaware that a global pandemic is presently raging. The local libraries are closed. There are no “normal business hours”. The applicant is required to have a website, but is not required to post the application in digital format

on that very website, in which case the application would be readily available to all persons with internet access in the homes in which they are presently quarantined.

(iv) Would the explanation of the application review process include an explanation of why any local agency or potential community intervenor must file a request for initial funding within 30, instead of 60, days of application filing?

(viii) Would the website include a list of "participating property owners" (leaseholders, "good neighbors", easement granters), including their name, physical address, mailing address, and location of the leased property, so that adjoining and nearby neighbors are aware of future use of those properties? What authority grants ORES the power to vary health and safety protections based on the presence or absence of a property owner's land use contracts? Do participants understand the protections they are waiving—in advance of any project review?

(8) Why is the fee to be deposited in the local agency account by the applicant only one thousand dollars ($1000) for each 1000 kilowatts, when the experience in Article 10 proceedings has shown the legal and expert expenses for intervenors to be twice or three times that amount? Applicants are getting production tax credits, investment credits, subsidies, PILOTS, priority power sales, and transmission line upgrades to move their power to the market, all at taxpayers' expense, so why can't intervenors get appropriate amounts to bring their concerns to light? Why shouldn't the Office adjust the amount now to account for the inflation of these projects in our state?

(b) Water Quality Certification (1) Why does an applicant's "statement of a plan for making such a request" suffice for a federal license or permit? (2) Why does ORES intercede on the part of the applicant with the Army Corps of Engineers or other federal agency on time limits required to

obtain certification?(3) Why would the Office issue a siting permit before the applicant files a request for a Water Quality Certification? (4) Hasn't DEC been delegated exclusive authority to determine WQCs?

<u>900-1.6 Filing, Service, and Publication of an Application</u>

(a)(1) So the applicant is required to provide an electronic copy to pretty much everybody but the quarantined general public. There is no denying that electronic copies will exist in cyberspace. At least twelve entities will receive them by electronic mail. But the applicant doesn't have to post it on their website.

(6) Why is the applicant required to file one electronic copy and one 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", but not on libraries in the actual communities where the project would be located?

(8) Is the Office considering siting major renewable energy facilities, transmission lines, or battery energy storage systems in the Adirondack Park? Is that why "an electronic copy on the APA" should be filed "if such proposed facility is located in the Adirondack Park"?

(9) Why is the applicant not required to provide electronic and paper copies to intervenors, adjoining landowners to proposed facilities, or other residents who could be adversely impacted by the proposed facility?

(c) Why is three days before filing an application considered adequate time for publication, wouldn't 30 days before filing be more appropriate?

(c)(3) Because a facility would profoundly and permanently affect the entire area where it would be sited, why shouldn't the applicant provide written notice to all LANDOWNERS, not just persons residing, within 1 mile of a proposed solar facility or within 5 miles of a wind facility?

(d)(3) Shouldn't the notice of availability of local agency account funds be that requests for initial funding be submitted within 60 days of the date of application funding, to enable local agency or potential community intervenors adequate time to meet the many requirements of that request?

Subpart 900-2 Application Exhibits

900-2.1 Filing Instructions

(a) Who will decide if an exhibit is not relevant to the particular facility's technology or proposed location; the applicant or the Office? And if another agency or an intervenor does feel it is relevant, what is the process to bring up this issue?

900-2.3 Exhibit 2: Overview and Public Involvement

Exhibit 2 shall contain (a) "A brief description of the major components of the facility"- Along with "collection lines, transmission lines, interconnections, access roads," will this include inverters, transformers, stand-alone Battery Energy Storage Systems, and other Battery Energy Storage Systems?

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

(a)(3)Will the USGS map show the proposed limits of clearing and disturbance for construction of all facility components and ancillary features, as well as the proposed limits of clearing and disturbance for transport of the components, access roads, and collection and transmission lines? If there are changes to the proposed location, limits of clearing, etc., will a new map be prepared

and made available to the public? Will local agencies, participating and non-participating landowners be notified of the changes to the proposed locations and limits of clearing?

(f) Will the map of the properties described here also include the name, address, and contact information of the owner of record of each? If not, where in the application will this information be found?

(l) Considering the profound and permanent effects of these facilities on the communities where they may be sited, why shouldn't "the compatibility of the facility and off site staging and storage with existing, proposed and allowed land uses and local and regional land use plans" within a five mile radius be considered, instead of just a two mile radius?

(m) Would "the qualitative assessment of the compatibility of proposed transmission, lines, collection lines, interconnections and related facilities with existing, potential and proposed land uses" include inverters, transformers, stand-alone Battery Energy Storage Systems and other Battery Energy Storage Systems?

(q) Would the overlays on the aerial photographs also clearly identify other changes to the hydrology, along with the other features noted?

(s) As part of this exhibit, shouldn't a survey of residents, landowners, business owners and stakeholders (example hunting club members) be included, to gauge the effect that a facility would have on community character?

<u>900-2.5 Exhibit 4: Real Property- Exhibit 4 shall contain:</u>

(a) Will "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; also show the owner of record for all easements, grants, deed restrictions, and related encumbrances on the parcels comprising the facility site? Will the proposed areas of permanent or temporary clearing and disturbance be shown for all private and public roads on or adjoining or planned for use as access to the facility site? This is important, because landowners in the Clinton/Franklin industrial wind facility area were told by the applicant that the access road would be a certain width, but then the clearing was twice that to accommodate the transport of the components, wiping out a considerable planting of roadside maple syrup-producing trees to their horror and dismay.

(b) Will "the 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" ALSO include the name, mailing and physical address of the owner of record?

(c) If "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," shouldn't that be included in the public notices required for the project? Shouldn't the applicant be required to specifically notify all property owners, both participating, and non-participating whose land may be affected?

900-2.6 Exhibit 5: Design Drawings

(b) Why does the Office encourage "trespass zoning" by including these setbacks that measure from the centerline or midpoint of a wind turbine tower to various features, including residences and structures, rather than from the farthest outer reach of the turbine blades to property lines? Will these setbacks allow a wind turbine so close to a property borderline that the neighbor is

only a few yards away and is still on his own land? Why does the Office promulgate setback distances that have been shown to be inadequate in existing wind facilities, as in Clinton County, where Amish residents cutting wood on an adjoining property in winter had to literally "run for their lives" to avoid ice throw from a wind turbine? Will the Office take responsibility for property or physical damages that occur from inadequate setbacks, such as these? How can the Office assert that these setbacks are "protective of the health, safety, and wellbeing of the citizens and the 'quiet enjoyment of their property', which is stated in most deeds from the State of New York? Why does the Office choose to ignore the World Health Organization's most recent recommendations?

Further, After years of struggle, the citizens of the Towns of Hopkinton and Parishville, St. Lawrence County, New York, succeeded in enacting setback requirements of five times the total height of any wind turbines. A 500-foot wind turbine would have a 2500-foot setback requirement, a 600-foot wind turbine would have a 3000-foot setback requirement, and so on. These, under existing duly enacted law, would be the distances from the property lines of the nearest non-participating landowners. The proposed regulations, pursuant to retroactive legislation imposed upon local governments by the State Legislature, would reduce these setback requirements to 1000 feet and 1200 feet, respectively. Fair warning: There is an existent body of law on the subject of retroactive legislation, with which this writer[1] is thoroughly familiar.

It is interesting to note that, under the proposed regulations, more stringent setback requirements may be enacted by the manufacturers of the wind turbines, but not by the towns and municipalities that would have industrial wind turbines imposed upon them.

[1] Richard Hayes Phillips, Ph.D.

For the record, the proposed regulations would enact these setback requirements for solar facilities adjacent to non-participating landowners.

(f) Exhibit 5 shall contain: (1) Site plans of the proposed facility, including the following:

(f)(1)(i)(j) Will the site plan include any local requirements, including lot coverage?

(ii)(a) Although the general site plan drawings shall include "the extents of proposed access roads, existing roads to be utilized; turn-around areas/temporary road improvements for components, will the limits of disturbance and clearing ALSO be indicated for travel routes to the facility area? Or should (ii)(g) and (h) specifically mention the routes for delivery of facility components?

(b) Shouldn't the site plan drawings include the extents of wind turbine blades also?

(c) Will "proposed trenchless collection line installations" be entirely on the facility site, or will any be off-site? Couldn't these be a serious hazard?

(f) Would the site plan show the proposed route of additional transmission or collection lines around any non-participating properties, or would this be in the drawings below in (2)? Shouldn't property owners be made aware if they are in the path of these lines? Will the applicants be authorized to exercise Eminent Domain?

(f)(4) How does a summary of correspondence with local fire department representatives, especially non-professional, volunteer squads ensure their safety and that of the public, in dealing with emergencies involving exotic, toxic, and unfamiliar materials and components?

(i) Shouldn't there be a separate site plan drawing of proposed wind turbine setbacks, represented by radii, (setback circles), showing locally adopted setbacks, in case of lawsuits that uphold these laws?

(j) Why are there no suggested setbacks for Battery Energy or other energy storage systems?

(k) Would local ordinances and requirements, including lot coverage restrictions be included here or elsewhere?

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

Why shouldn't this section, first of all, inform the public of the applicants', contractors', and/or operators' records of accidents, violations, convictions, and lawsuits where they were found to be negligent, fraudulent, or engaged in bribing or corrupting local officials? Wouldn't this be important for performance of due diligence by county, town, or other municipalities?

(a)(1) Shouldn't soil runoff be included in the wastes anticipated to be released from the facility? Although there are discussions of this in relation to wetlands, streams, and water bodies, it can also cause problems for stormwater control, drainage ditches, and other private and public infrastructure.

(4) Would the ultimate disposal of decommissioned and/or damaged facility components be addressed here, as many parts of solar panels, wind turbines and Battery energy storage systems are hazardous or toxic? Shouldn't those special components be addressed specifically, not in a general way? Shouldn't it note that the applicant or operator, not the municipality or leaseholder, is responsible for legal disposal of these specialized materials? Doesn’t the prospect of thousands of tons of crushed wind turbine blades going into New York landfills waste valuable landfill space?

(5) Shouldn't the maps of the study area include the relation of the facility site AND associated off-site ancillary components to: public AND private water supply sources within 1 mile of these, to the extent locations are available or made known to those preparing the maps? Is there any reason why information on the water supply sources could not be requested from local governments and the general public?

(b)(2) In order to ensure privacy of adjoining properties, participating or non-participating, shouldn't the electronic security and surveillance features restrict coverage to the facility property only?

(3) In avoiding off-site light trespass, would all lighting be certified "dark-sky friendly"?

(4) As mentioned later, are Aircraft Detection Lighting System(s) the preferred method of ensuring aircraft safety?

(c) Who would participate in developing the Safety Response Plan?

(7) Shouldn't the training drills with emergency responders be required twice a year, once each in winter and summer, because in New York, the conditions are so different in those two seasons?

<u>900-2.8 Exhibit 7: Noise and Vibration</u>

General comments: Doesn't setting noise limits at a residence, whether participating, or non-participating, deprive the landowner of the "quiet enjoyment " of their property between the residence and the property line? Don't most deeds from the state mention this "quiet enjoyment" of our properties? Mine does!

I do not have professional understanding of noise standards, decibel levels, or most of the discussion of sound or its effects in these regulations. However, at the invitation of residents of

Franklin and Clinton Counties, I have visited homes and properties there and witnessed the conditions that are negatively impacting their lives- everyday! To add injury to insult, after being coerced, coaxed, or cajoled into signing leases or "good neighbor agreements", some learned that they have signed away their right to complain, or seek any relief from the company. Others never signed any agreement, but are suffering the effects of others' poor decisions, especially those of elected officials. Complaints to the operators go unanswered and unresolved.

GK's in-laws guilt tripped her into signing a good neighbor agreement, pleading poverty and a dire retirement. Now they have left the area, and she has giant wind turbines a few hundred feet from the cabin behind her home, and some malfunction produces a clanging sound every 30 or 40 seconds, like a metal cable hitting a flagpole, or an elevator in a shaft. The camp was built as a family project, where they used to spend every weekend and holiday. Her daughters cannot even spend time at her home anymore because they get terrible migraine headaches there. This never happened before the turbines began operating.

A couple on their farm on the highway nearby have two border collies that will not go outside alone, because of the noise from the nearby wind turbines. Not far away, a high school teacher, KS, whose small house was surrounded by wind turbines, was unable to sleep because of the constant noise and vibration. He finally gave up and moved away. Another house down the road has a big sign out front, pleading to stop the 24/7 noise from the turbines. There are other homes in the area that have been abandoned, including my friend Noni's beautiful cabin that had a 180 degree view of mountains to the east, and now looks out on a seeming endless horizon of flashing red lights at night and spinning turbines by day. These are not mere "annoyances", these are peoples' lives being destroyed.

What I do know is that noise is the major problem with wind facilities, inverters, and potentially at Battery Energy Storage Systems, and the noise limits in the draft regulations will not protect the public at all. The experts tell you that, and the residents that I have met and visited with, will tell you that. The World Health Organization's updated studies tell you that, and the doctors treating entire families in Franklin and Clinton County tell you that. There is an entire department at Lewis County General Hospital dedicated to vestibular disorders. Can the Office explain how they came up with the noise limits?, In addition, what is the logic behind allowing noise limits right up to a residence? Why don't landowners have the right to peace and quiet all over their property? Don't participating landowners have the right to protect their health and hearing also? I know a person who rents their residence, and the owner of the property signed a "good neighbor agreement", so that person, who has built up a small engine repair shop at that location, and works for the landowner, is put into a very difficult situation with uneven regulations like these.

(b)(1)(i) As a matter of high school physics, sound intensity will decrease by the inverse square of the distance. This was one of the reasons why the setback requirements lawfully enacted by the Towns of Hopkinton and Parishville (five times the height of the wind turbine) are 2.5 times more stringent than the setback requirements in the proposed regulations. For every doubling of distance, the sound level reduces by 6 decibels (dB). Thus, if the decibel level would be 45 dB at 1000 feet, it would be 39 dB at 2000 feet, and about 36 dB at 3000 feet. (ref. https://www.schoolphysics.co.uk or https://www.acoustical.co.uk – or google: decibel level decrease over distance)

(b)(1)(vi), what are the proposed noise limits across portions of non-participating properties delineated as NYS-regulated wetlands?

(c) Radius of Evaluation: Shouldn't "sensitive sound receptors" be included here or in the definitions, as it has not appeared earlier?

(1) Would this evaluation just be a "modeling", or would it be from an actual wind turbine and substation? Wouldn't the sound and noise be affected by humidity, temperature, wind speed, topography, model and number of turbines and other factors? Should this really be considered a valid measurement of the maximum noise level to be produced during the operation of a facility, when it appears that it would be measured in relation to one wind turbine, or isn't that what is written here?

(2) Also needs definition of "sensitive sound receptors". Where are the noise limits for "stand alone" or other Battery Energy Storage Systems, should that be included in this category, the evaluation of wind facility noise, or should it have its own evaluation?

(d) Modeling standards, input parameters, and assumptions. How closely does modeling relate to reality? Has ORES considered information and reports on the actual noise readings at existing facilities of a similar size and using similar equipment?

(h)(1) Would cabins and hunting camps have to be identified by property tax codes to be shown as sensitive sound receptors? Why would other seasonal residences be required to have septic systems/running water to qualify or be included on the map?

(i) Shouldn't the evaluation of ambient pre-construction baseline noise conditions be performed in a secure area where it cannot be tampered with? In our community, the testing site was set up on a snowmobile trail on a leaseholder's property, and the very first night, a monster truck showed up and attempted to drive down the trail. Could this be considered an attempt to skew the ambient pre-construction baseline noise measurement? Shouldn't sound surveys be conducted by a third-

party, not the applicant? Isn't there a generally accepted acoustic standard specifying the proper method for determining baseline sound levels? Shouldn't the regulations state that no applicant, leaseholder, other person, or organization shall interfere with, or cause any activity that skews the baseline sound survey, under penalty of law? Why not simply require all noise assessments to comply with generally accepted and applicable acoustic standards? This would avoid all the details of the proposed protocol, which may not comply with such standards and, because of the complexity, open the door to gamin by developers' experts.

<u>900-2.9 Exhibit 8: Visual Impacts.:</u>

(b)(1) and (4) The array of industrial wind turbines once proposed for the Towns of Hopkinton and Parishville would all have been visible from the summit of Azure Mountain (elev. 2518 feet), a popular hiking destination located entirely within the Adirondack Forest Preserve. The nearest wind turbine site (elev. 1030 feet) was 13 miles from the summit, and the farthest wind turbine site (elev. 675 feet) was 19 miles from the summit. Scenic viewsheds must be protected no matter how distant from the scenic viewpoints the industrial wind turbines are located. Five miles is nowhere near enough.

(b)(1) Shouldn't this section specifically state "as well as any potential visibility from significant visual resources beyond the specified study area, such as nearby mountains? Would it be a good idea to break up the sentence there? The map shall be prepared and presented....

(4) Shouldn't there be an addition to this paragraph: In developing the application, the applicant shall confer with LOCAL OFFICIALS, RESIDENTS, municipal planning representatives , the Office, and where appropriate, OPRHP, and/ APA in its selection of important or representative viewpoints.

(d)Visual Impacts Minimization and Mitigation Plan. Is there any way to "minimize" the visual impact of a 500', 600' or 700' tower with blades extending out in all directions?

(2) Shouldn't the electrical collection system be located underground to the FULLEST extent possible, not just to the extent practicable? And yes, "structures shall only be constructed overhead for PORTIONS where necessary..." However, this doesn't seem to cover the transmission lines, which are the major eyesore, does it? What will be done to minimize or mitigate those?

(6) Why would any shadow flicker be allowed at any non-participating residence (which is not anywhere in the definitions) at any time? When it happens on property without a shadow flicker easement or good neighbor agreement, shadow flicker is a nuisance and a trespass. The regulation read, "Shadow flicker shall not be allowed at any non-participating PROPERTY. (PERIOD!)

(v) This should read "Shielding or blocking measures (such as landscape plantings and window treatments) may ONLY be implemented at receptor locations with the approval by the resident receptor AND THE PROPERTY OWNER.

(9)(iii) This should read, "ONLY if FAA/DOD determine that ADLS or dimmable lighting options are not appropriate for the project, or if the applicant PROVES installation of ADLS or dimmable lighting options are not technically feasible, the applicant shall seek local approval of other means of minimizing lighting effects?

<u>900-2.10</u>

It should be noted that cemeteries are cultural and historic resources deserving protection.

<u>900-2.11 Exhibit 10: Geology, Seismology, and Soils- Exhibit 10 shall contain:</u>

(a)(1) Couldn't this map delineating existing slopes, also be used to determine possible impacts to waters and wetlands from construction activities or operations at sites uphill, upslope. or upgradient and at a significant angle, but outside of the estimated limit of disturbance?

(4) In fact, there should be another map prepared, showing subsurface hydrologic characteristics, groundwater levels, watersheds, and their recharge areas.

(5) The plan for blasting operations should include measures to protect "nearby structures, groundwater wells, AND groundwater recharge areas.

(6) Similarly, the assessment of potential impacts of blasting should include "environmental features, above-ground structures and below-ground structures, such as pipelines, PUBLIC AND PRIVATE WELLS, WATERSHEDS AND THEIR RECHARGE AREAS.

(13)(b)(3) The identification of mitigation measures regarding pile driving impacts should include limits on the number of hours per day, and times of day that it can occur, in addition to a plan and financial assurances, such as a bond, for securing compensation for damages that may occur.

<u>900-2.16 Exhibit 15: Agricultural Resources</u>

(a)(6) This should include agricultural homesteads, and forest-based businesses, including "stands" of maple trees, and "woodlots" whether presently active or not. Just because these resources are not presently being used does not diminish their value or indicate they will not be used in the near future.

(b)(1) Again, this should take into account that not all land is used all the time for agriculture. What about forest or brushland that is being gradually cleared in order to be used for crops when it is ready? This can take many years to accomplish, would that be included? Protections should

include potential farmland, consistent with the State Constitution. Applicants should demonstrate that the proposed site has not potential use as farmland.

(b)(3) This should include a map showing temporary or permanent impacts to agricultural production within the study area. Doesn't the disruption of these large facilities impact more than just the facility site?

(b)(4) As future land uses are taken into account, acreage proposed to be put into agricultural production should be considered here.

(b)(7) USDA soil mapping for the facility site AND ADJACENT AREAS, at a minimum, within a one-mile radius, should be included. Some agriculture requires large amounts of various types of land, and not all is in one small area, e.g. the facility site, shouldn't this be considered?

(b)(8) Similarly, this should include areas adjacent to and in an area beyond the facility site, as roads, transmission lines, collection lines, and ancillary off-site components will definitely impact agriculture.

(c) The agricultural plan should include NYS Agriculture and Markets Land Classified (?) Mineral Soil Groups, other than 1-4, if in present agricultural use.

(f) There should be an estimate of the total amount of land, in acres, that will be permanently unavailable for agricultural use, if the facility and all ancillary on site and off site components- access roads, transmission lines, collection lines, substations, cleared right of ways, stand alone and other Battery Energy Storage Systems are permitted and constructed.

<u>900-2.17 Exhibit 16: Effect on Transportation- Exhibit 16 shall contain:</u>

(a)(2) For wind facilities, the conceptual site plan should show access roads locations and widths, including TEMPORARY AND PERMANENT CLEARANCE WIDTHS, and characterizations of road intersection suitability FOR TRANSPORT OF COMPONENTS.

(b) This review should include the entire travel route, not just "in the vicinity of the proposed facility", as traffic, roads, bridges, and culverts along the entire route would be affected during transport and construction.

(c) Although these trip generation estimates may be useful to predict the traffic impacts on the area, can the "Office" or the applicant make any claim that they are accurate or adequate for the requesting of permits by NYSDOT? A landowner, living next to an access road to a gravel pit, told me that there were at least double, and sometimes, triple the number of trips as were permitted by the NYSDOT down that road during the construction of a wind facility nearby, but, as a "participating" property owner, he had no recourse. In addition, he said that the access road also created a big problem with trespassing by "hunters from Vermont, where the season ended earlier than in New York. They just drive right around the gates that the company put up."

(c)(4) The applicant should also have parking and litter control plans for all areas where construction will be occurring. Especially during winter, roadside parking can interfere with snow plowing and cause visibility and traffic hazards.

(d)(4) The mitigation measures should include the repair of not just local, but also COUNTY AND STATE roads, bridges, culverts, drainage infrastructure, and other features damaged by heavy equipment, TRANSPORTATION OF COMPONENTS, or construction activities during construction or operation of the facility construction.

900-2.18 Exhibit 17 Consistency with Energy Planning Objectives

(f) Considering the present NEGATIVE impacts of industrial scale renewable energy on: state reliability (b); fuel diversity (c); regional requirements for capacity (d); and electric transmission constraints (e); why is the Office trying to accelerate the construction of these facilities? Shouldn't the Office be rethinking their approach and considering "reasonable and available alternative locations" and SCALE of PROJECTS, INCLUDING SMALL, COMUNITY OWNED PROJECTS INSTALLED ON THE BUILT ENVIRONMENT IN AREAS WHERE THE ELECTRICITY NEED IS GREATEST?

(h) What is the actual estimated efficiency of the proposed facility, (production vs. nameplate capacity),based on the meteorological information for the location in question?

(i) What is the estimated efficiency of the facility (h), compared to alternative fuel sources?

(j) What is the true carbon footprint of the proposed facility, accounting for the production of all components, transportation to the site from the place of production, average life of the components, and transportation of the construction workforce? Do you account for the fact that one ton of cement creates one ton of carbon?

<u>900-2.19 Exhibit 18: Socioeconomic Effects</u>

(a) Will the applicant include in the estimate information about the probable hiring source and home location of the construction workforce, since many of the tradespeople are highly specialized, and not from the community where the project is proposed?

(f) What are "benefit assessment districts" or "user fee jurisdictions"? They are not in the definitions.

(g) What are "host community benefits", "benefit charges", and "user charges"? None are in the definitions.

(i) Shouldn't the applicant be responsible for hiring and providing professional trainers for local emergency responders, most of whom are volunteers, with no experience with these facilities?

900-2.20 Exhibit 19: Environmental Justice- Exhibit 19 shall contain:

(a) Will the identification and evaluation include information about the economic data used, the impact area studied, the evaluator, their credentials, and the investigations and methods used to determine whether or not there is a qualifying Environmental Justice designation?

900-2.21 Exhibit 20: Effect on Communications

(f) Will the applicant be including information on why these facilities interfere with communications, their experience with interferences, what the reasons were, and how and if they actually remedied the problems?

One of our Franklin/Clinton County hosts, LC, had constant interference with his radio, tv, and cell phone after a wind facility began operating in his area. Those of us visiting experienced the same, no one could get a cell signal, or if they did, it was off and on, dropping calls. I do not know if his problem was ever resolved , but the facility had been in service for many years when we met him.

900-2.22 Exhibit 21: Electric System Effects and Interconnections

Why are there no clear definitions for "collection line" or "transmission line" in this document? How can the public discriminate between all these connections, especially when the definition

for 'interconnections' includes "water and waste water lines, communication lines, steam lines, stormwater lines, and appurtenances thereto"?

(b)(c)(d) How can/ why would the Office accelerate the siting process when there are already unresolved problems in terms of reliability, "interconnections", and the entire state transmission system, all due to existing renewable energy facilities?

900-2.23 Exhibit 22: Electric and Magnetic Fields

It would be helpful to know what these interim standards are. The proposed regulations do not offer a citation. This is a serious matter. In 1974 and 1975, Robert O. Becker and Andrew A. Marino, medical investigators at the Veterans' Administration hospital in Syracuse, New York, testified at length before the Public Service Commission in regard to 765-kV (765,000-volt) transmission lines. They stated that persons living near the right-of-way, and chronically exposed to a field strength of 1.5 volts/cm or higher, would run the risk of some biological effect due to this exposure. At the edge of the right-of-way proposed by the Power Authority of the State of New York (PASNY), 125 feet distant from the centerline, the electromagnetic field would be 25 volts/cm. Becker regarded this as "human experimentation."

Marino, in addition to his own studies exposing rats and mice to electromagnetic radiation, cited thirty-two others that showed a wide range of biological effects upon a variety of species, outlined here:

MARINO'S OWN STUDIES[2]:

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[2] Ref. https://www.andrewamarino.com – Publications – Prepared Testimony, November 1975.

150 volts/cm, 60 Hz, one month exposure: depressed body weights, serum corticoids, and water consumption in rats 150 volts/cm. 60 Hz, continuous exposure, three generations: decreased body weight and increased mortality rate in mice MARINO'S LITERATURE REVIEW:

70 volts/cm, 3 Hz and 30 Hz, 2 hrs/day for 28 days: 5 of 5 rats @ 30 Hz, and 2 of 6 rats @ 3 Hz, developed tumors

4 volts/cm, 2 to 12 Hz: affected response times in humans

200 volts/cm, 50 Hz: affected rates of cell division in mice

0.02 volts/cm, 65 Hz, 28 days of continuous exposure: augmented bone repair in dogs

16 volts/cm, 60 Hz, 16 weeks: short-term reduction in egg production in hens

3.1 to 4.2 volts/cm, 60 Hz: altered regeneration in flatworms

6000 volts/cm, 60 Hz, one week: killed all mammalian cells in culture

10 volts/cm, 1 to 100 Hz: altered shapes of amoeba, perpendicular to electric field

1000 volts/cm, 1 Hz: altered growth of chick embryos

1000 volts/cm, 50 Hz, 1000 hours (9 hours on, 3 hours off): altered distribution of white blood cells in mice

0.4 volts/cm, 640 Hz: altered brain activity in rats

110 volts/cm, 50 Hz: caused grossly abnormal behavior in bees

500 to 700 volts/cm, 50 Hz: affected drinking behavior of trained rats

5000 volts/cm, 50 Hz, several hours of exposure: killed mice and insects

0.007 volts/cm, 45 to 75 Hz: delayed cell mitosis

0.002 volts/cm, 45 to 76 Hz: disrupted orientation of gull chicks

0.01 to 0.10 volts/cm, 60 to 75 Hz: affected growth rates of chick embryos

0.000007 to 0.0007 volts/cm, 60 Hz to 75 Hz: slowed heart beat of eels

0.0035 to 0.35 volts/cm, 7 to 75 Hz: affected response times in trained monkeys

1.55 volts/cm, 60 Hz, 40 minutes exposure: complete loss of biochemical function in brain mitochondria

0.025 volts/cm, 10 Hz: influences circadian rhythms in humans

Why doesn't this regulation also require including the most recent information available on the hazards of Electromagnetic Fields to human health? Don't adjoining landowners have the right to know, and don't the applicant and the Office have the responsibility to inform them?

900-2.24 Exhibit 23: Site Restoration and Decommissioning

(b) "For facilities to be located on lands owned by others", would the "description of all site restoration, decommissioning, and security agreements between the applicant and the landowner, municipality, or other entity", include provisions for REMOVAL AND PROPER DISPOSAL of all components and ancillary equipment- towers, blades, nacelles, guy wires, foundations, solar panels, supports, inverters, stand alone or other Battery Energy storage Systems, and electrical

collection, transmission, and interconnection facilities? Since the Office is issuing permits for these installations, are they willing to take responsibility for removing them, if no "responsible party" can be found if and when it becomes necessary? The taxpayers of New York are still paying for other hazardous, toxic, and environmental remediation projects where industries have failed, or abandoned sites of former activities, is it fair to risk more?

(c)Why, nowhere in this section does it specify that the applicant would actually put money into any fund to insure future cleanups? Would a "transfer application" remove that responsibility, since the conditions of the Article 10 process would supposedly, no longer apply? Why does this section only mention "estimates", and even state "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? Isn't this rather confusing? The cities, towns and villages would certainly not be responsible to pay for decommissioning, shouldn't this be clarified?

900-2.25 Exhibit 24: Local Laws and Ordinances

Also, the Office of Renewable Energy Siting has the autocratic power to decide that an applicant need not comply with local laws (or ordinances, resolutions, regulations, standards and other requirements – making sure everything is covered). They can elect to do this. All they have to do is “find” that such requirements are “unreasonably burdensome.” It appears that the only consideration is economics. There is no appeal from their decision.

(a)(b)(c) In all these sections, the applicant is allowed to request from the Office, that "local substantive requirements" not apply. In (c) the proposed regulations state "Pursuant to Executive

Law 94-c, the Office may elect to not apply local substantive requirements if it finds that, as applied to the facility, such requirements are unreasonably burdensome in view of the CLCPA (Climate Leadership and Community Protection Act) targets and environmental benefits of the facility." Isn't this rather oxymoronic, taking away protections from a community and calling it a community protection act?

(c)(1)(2)(3) This is where the regulations attempt to justify ignoring local ordinances for the reasons of technological limitations, costs to consumers, and needs of consumers, because they outweigh the compliance, protection or impacts on the community.

900-2.26 Exhibit 25: Other Permits and Approvals

(b) Calls for "a statement as to whether the applicant knows of others who have any pending federal, state, or local applications OR FILINGS which concern the facility". Would 'filings' in this case include lawsuits, injunctions, investigations, bankruptcies, or other civil or criminal proceedings? These may actually concern the developers, contractors, or operators, but they should certainly concern the public and their elected representatives.

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

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

(1)Why is there no requirement that the original lead agency conducting the environmental impact review agree to this change? What changes would result from a transfer, if granted by the Office? Would the lead agency conducting the environmental impact review lose that responsibility, and be replaced by the Office? What changes would occur as a result of the

change from a minor to a major project? What changes would the applicant be allowed to make to the original project or application?

(6)Shouldn't the fee to be deposited in the local agency account be two thousand dollars ($2000) for each 1000 kilowatt of capacity, to more accurately reflect the cost of expert guidance and legal expenses?

900-3.2 Transfer Applications for Pending Article 10 Facilities

(a)(1)(i) Why is there no requirement that the Secretary of the PSC agree to this transfer?

(vi) Shouldn't the fee to be deposited in the local agency account be two
thousand dollars ($2000) for each 1000 kilowatts of capacity, to more accurately reflect the cost of expert guidance and legal expenses?

(2) Shouldn't this part be reworded to avoid confusion about what the Office will actually do? "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." Will the Office be doing the actually be doing site work? Will the Office be writing the rules to adapt to the needs of the applicant and the project? This sentence doesn't make it clear, does it?

(b)(6) Again, shouldn't the fee to be deposited in the local agency account be two thousand dollars ($2000) for each one thousand (1000) kilowatts of capacity, to more accurately reflect the cost of expert guidance and legal expenses?

Subpart 900-4 Processing of Applications

900-4.1 Office of Renewable Energy Siting Action on Applications

(c) and (h) To prevent the Office from getting "sandbagged" or stampeded by a deluge of applications, and thus, failing to protect the "health, safety, well-being" or property rights of residents, shouldn't the Office have a "queue" for applications, just as the NYSISO does? Could an application received also be assigned a number in the queue, to prioritize them? Wouldn't (h) open the Office to legal liability for dereliction of duty for failure to perform the duties for which the Office was created, if they were unable to review a large number of applications? Who wrote these rules anyway?

(j)Why shouldn't the extension be able to be extended for more than 30 days?

(k) Why shouldn't the Office add to these regulations, the ability for public review of the application AND include in those who may request, and whose consent is considered, in the right to request extension of the time period for determination of completeness or incompleteness by any entity, agency, person, group, or organization listed at 900-1.6(a) (1-8) with the addition of, any local agencies, potential intervenors, or property owners in the proposed facility study area? Don't all these have a legitimate interest in an accurate and complete application and all the required exhibits? Wouldn't section (h) above, be an illegal override of this right?

Subpart 900-5.1 Local Agency Account

All of these requirements, among others, need to be met by prospective intervenors within thirty days after the date on which the application is filed – which, of course, is on the applicant's timetable. The intervenors may be caught totally off guard, need to drop everything else they are doing, review a voluminous document, line up all their expert witnesses, and describe their studies and methodology . . . One might say that this time frame is "unreasonably burdensome."

(a) Considering all the requirements listed at (h) in this part, wouldn't it be more reasonable to allow a longer period, 60 days, for local agencies and potential community intervenors seeking funds from the local agency account to submit requests? Most of these entities have no experience or background in these areas, and need more than 30 days to find experts, outline work needs, and execute contracts, as required.

(b) As the local agencies and potential community intervenors are tasked with contributing "to an informed permit decision as to appropriateness of the site and the facility" and "to determine whether a proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations", is there any reason why the agencies and potential intervenors should not be allowed to request and be granted an extension of the period for the determination of completeness or incompleteness of the application?

(h)(2) The requirements for proof of residency are discriminatory and impossible for some residents to meet. There are members of our rural communities that do not have any of these

items that prove residency. These hard working people should have equal access to community intervenor funds, with other proofs to be considered.

900-7.1 Amendment of an Application

(a)Does this part give the applicant the ability to change the application after the entire pre-application process has been completed, with no review or consultation with local agencies, community members, other interested organizations, or regional, state or federal agencies?

(b) Why is the Office the only entity that determines whether the changes requested constitute a minor or a major amendment? Why doesn't it mention the process or ability of any others to contest the decision?

(c)(2) Considering that this includes proposals to increase the nameplate capacity of the facility, which would increase the noise output, as well as other impacts, why doesn't this section mention any notice to, review of, or approval by local officials, community members, other interested organizations, or regional, state or federal agencies? Why doesn't it mention the process or ability of any of these entities to contest the change?

Subpart 900-8 Hearing process, 900-8.1 Publication of draft siting permit

(b) Is there, back there in the beginning of these regulations somewhere, any requirement for the publication in 2 local papers, one being free, that an application has been deemed complete by the Office, and that the items mentioned in this part are available on the ORES website? If not,

why not? If an application has been deemed complete, isn't it important that all potentially affected and interested parties be made aware of the fact?

Thus, prospective intervenors have only thirty days after the filing of an application in which to meet the numerous requirements for applying for approval and funding, and thirty days later there will be a draft permit to review in addition to the initial application.

<u>900-8.2 Notice of hearing</u>

(a) Why does this section state that persons who wish to participate in a public hearing have to make a written request to do so? Does that mean that they just have to sign in when they arrive and check a box indicating that they wish to speak? Can you site the law that requires this, and show where it passes muster in terms of the open meetings laws? Shouldn't the last sentence read "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, except for natural disasters, pandemics, emergencies, and dangerous weather conditions", or be struck completely?

(d)(1) This should read," The deadline and instructions for filing public comments on the draft permit conditions or statement of intent to deny by mail or at a in-person, non-virtual 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, with the right of any interested party to request and receive an extension of 30 to 60 additional days." Doesn't it seem Draconian that the Office has already refused to extend the public comment period on these regulations, as residents of this state struggled to protect their health, restart

schools, participate in a challenging election process, save their jobs and businesses, AND prepare for what is predicted to be a very difficult winter? Can transparency be expected from an agency that refused to post the comments on these regulations from agencies, organizations and the public?

(e) Which "other persons" will "the Office deem to have an interest in the application"? Shouldn't the municipality also publicize the hearing and collect the contact information from those who wish to be "served"?

900-8.3 Public comment hearing and issues determination.

(a) Public comment hearing (1)- Why would" A stenographic transcript of such statements" "be made but shall not be part of the record of the hearing"? And, if, in section 900-8.11, the applicant, rather than the ALJ, made arrangements to produce a stenographic record, would it require a certified reporter?

(c) Standards for adjudicable issues.

(iv)Why do public comments and those by a potential party have to be both substantive AND significant to be adjudicable? (2) If a substantive issue shows sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to a project, isn't that (3)significant because it should have the potential to result in denial of a siting permit, a major modification to the proposed project, or the imposition of significant permit conditions to those proposed in the draft permit, including uniform standards and conditions?

(6) Why shouldn't the completeness of an application, as defined in this Part be an issue for adjudication? If an applicant leaves out, or does not provide accurate information, they have not met the requirements of the application, have they?

900-8.4 Hearing Participation

(d) It is not clear whether private citizens or community intervenors will be allowed to contest any lack of compliance with “local ordinances, laws, resolutions, regulations, standards and other requirements.”

900-10.2 Pre-Construction Compliance Filings

(b) Final Decommissioning and Site Restoration Plan- If the permittee could install components more than 4 feet below grade in agricultural land and 3 feet below grade in non-agricultural land, why shouldn't they remove them from that depth?

(e) Construction Management (3)(i)or(ii) There is no mention of Battery Energy Storage Systems here, are they considered part of the facility, if they are called "stand alone", or are they part of the electric collection, transmission, and interconnections?

(6) Would the environmental monitor be a permanent employee/ subcontractor/ independent consultant or a temporary one? If temporary, for which components of the project?

(7) A Complaint Management Plan

(iii) Shouldn't it require a time limit, perhaps less than 4 hours, for a response from the permittee/ operator? Isn't "timely" very vague, for these regulations that are loaded with time limits?

(iv)Logging and tracking of all complaints

(e) This should include "Current status, DATE AND TIME of response and description of measures taken to resolve complaint."

(v)(vi)(vii) the complaint resolution tracking reports should be filed quarterly, so that growing problems at the facility don't go too long without being noticed by the Office and NYSDPS.

(8) Traffic Control Plan

(ii)Shouldn't there be a limit to the number of trips allowed per day, a traffic monitor and traffic control contractors, and special instructions to drivers about unusual situations, unexpected conditions, and hazardous locations in the area, or along the route?

(iv) The road use and restoration agreements include "local, STATE AND COUNTY roads, bridges, culverts, drainage features and other roadway infrastructure damaged by heavy equipment, construction, TRANSPORTATION OF COMPONENTS, or maintenance activities during construction and operation of the facility."

Subpart 900-11 Modifying, transferring, or relinquishing permits, 900-11.2 Transfers of Permit and Pending Applications

(b) This should read "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 THE LOCAL MUNICIPALITIES, and shall contain:"

(g) Similarly, this should read "Any noncompliance by the existing permittee, associated with a permit proposed to be transferred, shall be resolved to the Office's satisfaction AND THAT OF THE LOCAL MUNICIPALITIES prior to the transfer of such permit."

Statements from individual members:

*Note: Comments from the following CCRP members do not necessarily represent the opinions of CCRP.

1. Sandy Maine:

I am a local entrepreneur involved in running two companies in St. Lawrence County within the blue line and on the outskirts of the Adirondack Park. One of my companies is a low tech manufacturing company that employs as many as 18 people during peak season. My other business is a short term rental business. I rent cabins in natural settings to tourists who wish to spend time enjoying the natural beauty of our area and thereby renew themselves physically and mentally.

A lot of my revenue comes from recreational tourists who either rent cabins or own second homes in my area. These people visit my factory outlet store and then order on line when they go back to their home bases. Over the past ten years this tourism revenue stream has grown for me and many other local businesses.

Our location is becoming more and more attractive to tourists who enjoy time hiking, boating fishing, camping and being in natural settings. (One popular short term rental platform called Airbnb has documented that searches for short term rentals have increased 165% in the past 18 months in SLC.) Tourists also value being among the many AMISH farms and farm stands where they enjoy buying fresh foods and baked goods from farm stands as well as seeing the Amish at work in their fields. Our area is beginning to look like a happy place and tourists love to visit happy places…and small business thrives when they do.

This change of landscape has been a hard won and welcome one from a previous travesty of the 1970's where **big business** factory dairy farms put hundreds of North Country small farmers and their offspring out of work, out of life style, and out of business. Hundreds of beautiful small farms and livelihoods were left in abandoned status making our area very desolate, poverty struck and miserable. Not only was that a terrible problem on so many levels with ripple effects into subsequent generations of displaced farmers, it also caused our natural ability to have a working rural economy to be turned on its head. Our milk, cheese and hay and corn profits are now going to the large farm conglomerates and silent investors instead of local folks working so hard to create that value. The old order Amish have bought up the smaller farms in SLC and are

helping to regenerate the land, farm houses and community wealth. My point here is that protections from big business were largely non- existent in the 70's and our area was unfair game for corporate farm developers. There have been devastating effects for two generations of residents because of this. And now….here we are again with the renewable energy multi national corporations.

I have grave concerns that the Office Of Renewable Energy Siting is in the talons of a process engineered by the lawyers and lobbyists of multinational corporations to once again silence the voices of rural residents. We do not want our landscape and valuable farm lands co-opted for the sake of massive scale wind and solar energy projects. Its hard to imagine any economic upside to this for us and easy to imagine devastating downsides for rural residents.

Collectively we have made progress regenerating our region since its ruination 50 years ago by corporate marauders. Let us not make the same mistake again! Any renewable energy projects should be **locally owned** and appropriately sized and sited. Over ruling the rights of rural citizens and communities to effect their own destiny denigrates our guaranteed constitutional right to life liberty and the pursuit of happiness.

The St Lawrence County Farm Bureau and others have submitted explicit lists of problems with your draft rules. Please listen to our wisdom and spare us. The future is not about the "1 % take all" model of greed and destruction, but rather it's about the equitable and just ownership and sharing of resources and responsibilities.

Sandy Maine

2. Richard Hayes Phillips, Ph.D.

These proposed regulations are as tyrannical as the legislation to which they are pursuant. The whole purpose is to facilitate the approval of large-scale industrial wind and solar facilities by overriding local zoning laws and making public opposition meaningless. I am familiar with both the draft and the final versions of the legislation. It is obvious when examining the differences between the two that the concerns of state agencies defending their turf were addressed, and the concerns of citizens and local governments whose zoning powers would be stripped away were dismissed.

The New York State Constitution, Article IX, Section 2, Paragraph (c), states that "every local government shall have power to adopt and amend local laws not inconsistent with the provisions

of this constitution or any general law relating to property, affairs or government." (emphasis added).

A "general law" is a statute that applies equally, across the boards, statewide, to all municipalities, as does the law pursuant to which these regulations have been proposed.

Courts at the state level have held that the encroaching governmental unit (such as the Office of Renewable Energy Siting in the instant case) is subject to the zoning laws of the host community unless exempted by state legislation, in which case a local law governing the same subject matter must yield. However, courts at the federal level have held that, in the interest of fairness, state legislation and administrative regulations must not be construed to be retroactive unless the wording is so clear that no other interpretation is possible, or unless the intent of the state legislature cannot otherwise be satisfied.

The lawful enactment of setback requirements in the towns of Hopkinton and Parishville (and elsewhere) establishes a vested property right for all non-participating landowners whose property lines are within the setback distance. Any violation of these rights by the applicant or by the encroaching government agency would constitute a "taking" under the Fifth Amendment of the United States Constitution, in which case, upwards of three hundred non-participating landowners would have to be compensated.

The proposed regulations would negate previous administrative victories by citizen opposition; would exempt the applicant from any zoning laws deemed "unreasonably burdensome"; would fail to make the application readily available to the public; would establish minimal setback requirements for wind turbines (and substations); would fail to require graphs of electromagnetic field strength at any distance from substations; would allow for no challenge to the completeness of the application, even if "deemed complete" by default; would impose unreasonably burdensome requirements on short notice upon prospective citizen intervenors; and would make a charade of "public hearings" wherein oral testimony "shall not constitute evidence" and "shall not be part of the record of the hearing." Only a cynic would consider this to be "due process" under the Fourteenth Amendment of the United States Constitution.