SOS

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December 4, 2020

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

Subject: Comments on ORES Draft Regulations and Uniform Standards on behalf of Save Ontario Shores, Inc. with Appendices A-H

Dear Mr. Moaveni:

Please accept the comments below on behalf of Save Ontario Shores, Inc., (SOS), an environmental organization representing residents in the towns of Somerset and Yates in western New York. These comments are organized by subject in separate appendices, identified below. Several additional stakeholders across upstate have, by signing on to these comments, expressed their support for the positions taken by SOS. Please consider this cover letter as an introduction to the specific issues addressed in the appendices.

Appendix A comments on the ORES proposal's potential to result in adverse noise impacts on those who would be living near large-scale renewable energy projects. Two documents comprise Appendix A, one by our legal counsel Gary Abraham, based on his experience in renewable energy project siting proceedings in New York, and the other by Robert Rand, the principal of Rand Acoustics LLC, in Brunswick, Maine. Mr. Rand has extensive experience in renewable energy project siting proceedings throughout the U.S.

Appendix B comments on the potential impacts of the Draft Regulations and Uniform Standards (the "ORES proposal") on natural resources. Appendix B was prepared by our consultant Karen Schneller-McDonald, the principal of Hickory Creek Consulting LLC, in Red Hook, New York.

Appendix C, prepared by Gary Abraham, comments on the legally questionable use of different health and safety standards for project "participants", compared to everyone else.

Appendix D includes comments by Gary Abraham on the need for additional protections from shadow flicker, the highly annoying strobing of sunlight through moving wind turbines. Appendix D also includes comments on the visual impacts and design drawings (including setbacks) prepared by Kate Kremer, SOS VP.

Appendix E offers a comment on ORES's obligations under New York's State Environmental Quality Review Act ("SEQRA") when proposing new regulations, and on how the draft regulations conflict with the State's policies for the preservation of agricultural and natural resources, set forth in the State Constitution. These comments were prepared by Gary Abraham.

Appendix F comments on the need to align the siting of large-scale renewable energy projects with the siting of transmission improvements, in order to improve the ability of generation projects to make a meaningful contribution to the State's policy of reducing greenhouse gas emissions. These comments were prepared by Gary Abraham.

Appendix G, prepared by Kate Kremer, comments on the draft regulation procedures and on several application exhibits as proposed in the draft regulations. She enumerates revisions needed to ensure stakeholders who would be asked to host large-scale renewable energy projects can participate in the review of siting proposals.

Appendix H comments on the proposed Uniform Standards, and argues that the need to expedite siting does not require weakening substantive protections for the environment and rural communities developed under Public Service Law, Article 10. These comments address subjects not already covered in other appendices and were prepared by Kate Kremer.

The remainder of this cover letter offers comments prepared by Gary Abraham on the conflicting policies of New York that ORES must navigate in order to satisfy its statutory mandate.

INTRODUCTION: The Need for Balance

What is being proposed in the Draft Regulations and Uniform Standards is not the product of a thorough review of commercial-scale renewable energy development in New York State. The ORES proposal would benefit from a transparent and open review process, but up to now it has conducted a closed process unresponsive to upstate rural stakeholders. Rural New Yorkers want to contribute to the State's programs for reducing greenhouse gas emissions, and most rural towns and counties are developing programs to do so. In every case, these programs call for preservation of the environment, and discourage proposals that would harm the environment in which they live.

Large scale renewables industrialize rural communities in violation of land use plans focused on preserving rural amenities. Permanent jobs created are few, and project sponsors are reluctant to commit to hire locally. Nighttime noise has health effects. Rural communities trying to preserve and develop rural amenities reasonably see the spoliation of the night sky with dozens of elevated blinking red FAA warning lights, shadow flicker from wind farms during the day, the fragmentation of forested lands, and the introduction of a 24/7 industrial noise source as the wrong kind of development.

As explained elsewhere in SOS's comments, New York's electric system does not now have the capacity to transport electricity generated upstate by renewables to downstate areas where (unlike upstate) demand for electricity is growing. In addition, as intermittent generators, renewables face the same physical constraints they face everywhere: their actual generation rate

is 20-30% of their rated or design capacity, their generation rate declines over time, they require large areas of land, and they cannot be utilized by the electric grid without backup power from fossil fuels. These limits threaten to severely reduce the contribution renewables can make for the foreseeable future to New York's emissions reduction goals.

In contrast to New York's 2002 Energy Plan, which lists 43 measures to reduce greenhouse gas emissions, the current energy plan prioritizes one of these measures: large-scale renewables.

This is a fundamentally unfair choice, prejudicing effective technologies in other categories, and creating a new environmental justice[1] issue: whether the burden of energy policy should be borne disproportionately by New York's rural communities. In many places upstate, siting a wind farm is environmentally unacceptable.[2]

"Environmental justice" under current New York law targets urban poor and minority communities for relief from the adverse consequences of energy policies. It does this by defining "disproportionate" environmental and health burdens of power generation and usage by comparing the minority and income status of adjacent census block groups. If a census block group has a statistically substantial higher poverty rate or minority concentration than surrounding neighborhoods, the census block group is an "EJ community" and disproportionate negative impacts on that "community" must be avoided, minimized or offset. EJ communities will rarely be found in rural upstate communities because those communities have small minority populations and their poverty rates do not generally differ substantially from neighboring census block groups. Rural census block groups encompass much larger areas than urban census block groups. As a result, disproportionate impacts on rural communities, however dramatic, will also rarely be found.

Just as important as the sociopolitical burden on New York's rural population, picking winning technologies at the beginning of what will be a long-term energy transition is unlikely to be effective. When the power density of various energy technologies is calculated as function of the land required, the power density of solar PV is an order of magnitude greater than large-scale wind, owing to the larger land area required to space wind turbines and to provide a buffer for the effects of wind turbine noise (1 km).[3] Using energy returns on investment shows that renewables are far more costly than other forms of energy, including zero-emitting nuclear and hydropower.[4] The most technologically difficult and costly way to decarbonize the electric

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1 *See* 6 NYCRR § 487.3 ("'Environmental justice' or 'EJ' means the fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."); NYSDEC, *Commissioner Policy 29 on Environmental Justice* (March 19, 2003), sec. III(A)(2) ("Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."), available at <https://www.dec.ny.gov/regulations/36951.html>.

2 For example, Apex Clean Energy's Lighthouse Wind proposal onshore along the Lake Ontario coast would be sited within an internationally recognized migratory bird path; Invenergy's Alle-Catt Wind Energy proposal is anticipated to kill 41 Bald Eagles and 26,000-39,500 bats, among them the Northern Long-Eared Bat now on the verge of extinction, and remove 1,550 acres of interior forest.

3 Vaclav Smil, *Power Density: A Key to Understanding Energy Sources and Uses* (2015), 64-71, 191-192 (assuming a noise design goal of 40 dBA).

4 *Id.*, 254-255.

sector is to use large rural areas capable of supporting large-scale renewables to support megacities.[5] But this is the path New York is taking.

Advocates of a rapid transition to intermittent renewables often assert that the cost of renewables is now competitive with fossil fuels. However, this assertion fails to account for out-of-market supports for renewables, including tax subsidies, direct subsidies, loan guarantees, purchase obligations, and long-term contracting requirements such as Renewable Energy Credits. Large-scale renewables obtain most of their revenue from these sources, not from the sale of electricity. As a result, these technologies often bid very low or even negative numbers into the wholesale market in order to be chosen to generate. However, "choosing the suppliers with the lowest supply bids without regard to when the electricity will be supplied is likely to fail to lead to the selection of the highest value renewable electricity supply offers."[6] If we want to know "the cost of achieving the environmental benefits resulting from promoting renewable technologies that would not otherwise be economical choices with subsidies, credits, and mandates" it will be necessary to disregard the government procurement programs that support renewables. Instead, we need to look to "competitive wholesale markets for electricity, as well as electric power system models for forecasting spot prices and time-varying demand and which integrate network constraints and reliability considerations", including "costs of intermittency associated with reliable network integration".[7]

In light of the high cost of large-scale renewables and the modest contribution they can make to New York's emissions reduction goals, the apparent goal of the draft regulations, to make large-scale renewables "economic", is misplaced. More emphasis is needed on ensuring rural communities do not shoulder large and serious environmental burdens in return for small environmental benefits.

All signatories submit this letter and Appendix A-D as comments on the draft Regulations. What is being proposed in these regulations from your office is not a transparent, open, or thorough review for commercial-scale renewable energy development in New York State.

Sincerely,

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5 *Id.*, 251-251 (doing so "might be impractical or impossible"). *See also* V. Smil, What we need to know about the pace of decarbonization, 3 *Substantia* 13 (2019), available at <http://vaclavsmil.com/wp-content/uploads/2020/01/Substantia.pdf>.

6 Paul L. Joskow, Comparing the Costs of Intermittent and Dispatchable Electricity Generating Technologies, 100 *American Economic Review: Papers & Proceedings* 238, 239-240 (2011).

7 *Id.*, 241 (criticizing the use of traditional "levelized cost" calculations and "least cost/MWh" competitive procurement programs for neglecting the costs of necessary public supports for renewables).

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