

**Second Supplement to the Application
for a Permit Pursuant to § 94-c of the New York State
Executive Law for Construction of a Major Solar
Electrical Generating Facility**

Mill Point Solar I Project
Town of Glen, Montgomery County, New York

Matter No. 23-00034

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Introduction

In response to the Notice of Incomplete Application (NOIA) Letter received on October 15, 2024 from the Executive Director of the New York State Office of Renewable Energy Siting (ORES or the Office) regarding the Application submitted by ConnectGen Montgomery County LLC (Applicant) pursuant to Article VIII of the New York State Public Service Law for Construction of a Major Solar Electrical Generating Facility for the Mill Point Solar I Project (the Facility), supplemental information is provided below and attached.

The organization of this document (hereafter referred to as the “Second Supplement to the Application”) is consistent with the October 15, 2024, letter and presents each comment, as numbered by ORES, followed by the Applicant’s response to the comment. Additionally, the Applicant has included the ORES requested GIS data as a single updated ESRI file Geodatabase. The Geodatabase has an associated excel file indicating the data sources for the spatial data, which is provided in in the Confidential USB provided to ORES staff to this Second Supplement to the Application.

Since the filing of the NOIA by ORES, New York passed the Renewable Action through Project Interconnection and Deployment Act (RAPID). The RAPID Act (L 2024, ch 58, part O) became effective on April 20, 2024 and repealed New York State Executive Law § 94-c (Section 94-c). Additionally, the RAPID Act repealed the current provisions under Public Service Law (PSL) Article VIII and enacted a new Article VIII entitled “Siting of Renewable Energy and Electric Transmission” (herein referred to as Article VIII). With respect to ORES’s regulations at 19 New York Codes, Rules, and Regulations [NYCRR] part 900, the RAPID Act transfers part 900 to 16 NYCRR Chapter XI and continues part 900 in full force and effect subject to conforming changes, such as the substitution of numbering, names, titles, citations, and other non-substantive changes to be filed with the Secretary of State (see RAPID Act Section (§) 7).

The RAPID Act also transferred ORES (current regulatory body for Section 94-c) from the Department of State (DOS) to the Department of Public Service (DPS). ORES will continue all existing functions, powers, duties, and obligations related to major electric transmission siting. Article VIII places the review and permitting of both generating and transmission facilities into a single forum (ORES).

The Applicant is aware that on July 17, 2024, the conforming changes were adopted to ORES’s former regulations, creating a new 16 NYCRR Part 1100. However, given that the new regulations were only recently adopted and other papers filed in this proceeding reference ORES’s regulation, for continuity this response and the Application retain the numbering of the former Part 900.

Exhibit 14. Wetlands

1. In response to Item 33(a) in the Office's April 12, 2024, Notice of Incomplete Application, the Applicant has provided a new Figure 14-6, outlining a Draft Selective Tree Cutting Plan for the forested wetland area between the Facility collection substation and POI switchyard. The revised Exhibit 14 incorrectly assigns the feature/activity of "selective cutting of trees" to the area of the project limit of disturbance (LOD) that intersects with wetland W-NSD-01. This area is proposed for the siting of an electrical transmission line between the collection substation and point of interconnection switchyard. The Office considers this activity "Power Interconnections (including clearing for interconnections)", a major feature/activity in Table 1 of 16 NYCRR § 1101-2.15. Please revise Exhibit 14 to reflect the properly assigned feature/activity for the LOD within wetland W-NSD-01 and the regulated 100-foot adjacent area.

RESPONSE: The Applicant has updated the disturbance impacts to W-NSD-1 in **Revised Exhibit 14**, on **Revised Figure 14-3** and **Revised Appendix 14-4 Draft Wetland Mitigation Plan**. The Applicant has added information on the construction disturbance activities proposed in W-NSD-1 as well as detailed avoidance and minimization measures for impacts to the State-regulated wetland and adjacent area. The Applicant has clarified in the text and on **Revised Exhibit 5, Revised, Appendix 5-1, drawing MPS-C-101-17**, that although, for real property and safety reasons, selective tree cutting is required for the construction of the line in the right-of way (ROW), disturbance has been minimized to the temporary placement of a timber mat for construction. See **Revised Application Glossary** for revised definition of the limits of disturbance. The Applicant has also provided a new appendix, **Appendix 14-5** outlining a tree survey conducted within W-NSD-1 to identify the trees that will need to be selectively cut and the impacts to the wetland from hand cutting the trees.

Exhibit 15. Agricultural Resources

2. 16 NYCRR §§ 1100-2.16(b)(2) and (c) require maps showing "All agricultural production acreage to remain in agricultural use" and "Any agreed upon landowner development restrictions." Staff review of Exhibit 15 (Revised August 2024) at page 16, Revised Figure 15-4, Section 15(b)(3) and corresponding spatial data identified several structures located within the 421.61 acres of active agricultural land to be retained and available for continued production. Please provide clarification on the following:

a. Whether the presence of such structures impacts the calculation of 421.61 acres as stated in Exhibit 15. If so, please remove these areas from the estimated value of land available for continued agricultural production as appropriate.

RESPONSE: The Applicant **Revised Exhibit 15**, Section 15(b)(3) to describe that the structures included in Revised Figure 15-4 and in the acres of active agricultural land to be retained and available for continued production are associated with currently operating dairy farms that intend to continue dairy farming during the Facility's operation.

b. Please provide completed landowner surveys used to develop the information in Section 15(b)(3).

RESPONSE: The completed landowner surveys are included in the ***Revised Appendix 15-2. Agricultural Use Landowner Surveys.***

3. In accordance with the requirements of 16 NYCRR § 1100-2.16(c), please revise Table 15-4: Impacts to Active Agricultural Areas within MSG 1-4 as follows:

a. Categorize only those facility components that will result in impacts to active agricultural areas within MSG 1-4 for the operational life of the Facility (i.e., components proposed to be removed upon decommissioning and restored in accordance with New York State Department of Agriculture and Markets (NYSAGM) Guidelines) as temporary impacts.

RESPONSE: The Applicant ***Revised Exhibit 15***, Table 15-4 in Section 15(a)(8) of the revised Exhibit 15 document to include facility components that will result in temporary impacts to active agricultural areas within MSG 1-4 for the operational life of the Facility as these facility components will be removed, decommissioned, and restored in accordance with the NYSAGM Guidelines.

b. Please provide a revised spatial data layer, including attribute tables, to be consistent with such changes.

RESPONSE: The Applicant ***Revised the Spatial Data Layer***, including attribute tables, to be consistent with the revisions to Table 15-4 in ***Revised Exhibit 15***.

Exhibit 24. Local Laws and Ordinances

4. Please provide the following as required by 16 NYCRR § 1100-2.25(c):

a. Regarding the request for relief from Town of Glen Solar Law § 5(2)(b)(i), Setback requirements:

i. Please clarify and explain the differences between and the bases for the following calculations of acreage as described in Appendix 24-5: Statement of Justification (Revised August 2024): 1,235.98 acres (page 8), 164.54 acres (page 10), 158 acres (page 12), and 605 acres (page 12).

RESPONSE: The Applicant has updated ***Revised Appendix 24-5*** to clarify the impact on the Project if the Applicant were to fully comply with the Town setback requirement including better definitions for the acreage amounts. In addition, the Applicant revised Table 1 to highlight the number of “strings” lost instead of the panel acreage lost, to clarify the connection between strings/panels lost and MW lost on the Project. A string is a group of 27 modules connected in-series. A string sitting atop a tracker makes up a PV array.

ii. Please provide the basis and methodology for the calculation of MW loss in relation to acreage loss as presented on page 8 of Appendix 24-5: Statement of Justification (Revised August 2024) which states: “Removing this land from the buildable area eliminates at least 124.37 MWac of generation capacity...”

RESPONSE: The Applicant has updated **Revised Appendix 24-5** to clarify the impact on the Project if the Applicant were to fully comply with the Town setback requirement including better definitions for the acreage amounts. In addition, the Applicant revised Table 1 to highlight the number of strings lost instead of the panel acreage to clarify the connection between strings/panels lost and MW lost on the Project.

iii. Table 1 provides “Acreage of Facility Site Lost”, “MWac Lost” and “Percent of Parcel MW Lost” on a per parcel basis. Please revise Table 1 to provide totals for these columns and clarify how those totals relate to the acreages and capacity losses within the statement of justification. For example, and without limitation, please clarify how these totals relate to the purported “50 percent of the Facility’s generation capacity” as stated on page 9 and 164.54 acres containing Large Scale (Utility) solar energy systems equipment within the 500-foot setback as stated on page 10.

RESPONSE: The Applicant has updated **Revised Appendix 24-5** to clarify the impact on the Project if the Applicant were to fully comply with the Town setback requirement including adding totals to Table 1 and adding the number of strings lost and the calculation/ratios to calculate the MW lost on the Project.

b. Regarding the request for relief from Town of Glen Solar Law § 5(2)(b)(iii) Setbacks for wetlands, ponds, and streams:

i. Table 2 provides “Facility Component Setback from Wetland or Stream (feet)”, “Acreage of Panels Lost” and “MWac Lost” for the wetlands and streams subject to this waiver request. Please revise Table 2 to provide totals for these columns and clarify how those totals relate to the purported 4.67-acre loss of buildable area and 9.17 MW capacity loss associated with panels proposed within the setback (pages 17-18). Please also provide the basis and methodology for the calculation of MW loss in relation to acreage loss.

RESPONSE: The Applicant has updated **Revised Appendix 24-5** and Table 2 to add totals for each column and clear up any confusion between the “Acreage of Panels Lost” and the MW capacity lost with panels proposed within the setback. The Applicant now reports the total Facility Site acreage to be lost due to the town setbacks, the number of 100 foot solar panel strings lost, and the MW to be lost on the Project in Table 2. Finally, the Applicant revised Section B (2) to provide further information on the analysis presented in Table 2.

ii. Please revise Table 2 to clarify whether Applicant is seeking relief from setbacks to non-jurisdictional wetlands. If not, please remove these numbers from the MW and acreage totals in the narrative to ensure that Table 2 and the narrative are consistent.

RESPONSE: The Applicant has updated **Revised Appendix 24-5** Section B (1) and Table 2 to clarify that the Applicant is seeking relief from setbacks to non-

jurisdictional wetlands, and therefore, the MW and acreage totals lost due to the non-jurisdictional wetland features are included in the narrative and Table 2.

c. Regarding the request for relief from Town of Glen Solar Law § 5(2)(c)(a) Maximum Lot Coverage:

i. Please revise Table 3 to add a “zero percent tilt” column to the table for consistency with the narrative which states on page 23, “Table 3 shows a parcel-by-parcel analysis of the minimum lot coverage for zero percent tilt”.

RESPONSE: The Applicant has updated *Revised Appendix 24-5* and Table 3 to include the zero-percent tilt column as requested.

ii. Please revise Table 3, specifically the “Waiver Requested Y/N” column, for consistency with the statement in the narrative that “At maximum tilt (60 degrees) none of the parcels hosting panels would exceed the 20% lot coverage, at zero-degree tilt 2 parcels would be between 21 and 30 percent lot coverage.”

RESPONSE: The Applicant has updated the Table 3 in *Revised Appendix 24-5*, and specifically the “Waiver Requested Y/N” column to request a waiver for any parcel that has over 20% lot coverage at any tilt scenario.

iii. Table 3 indicates that the substation, POI, and O&M building are proposed on parcel 52.-2-17.111 but Table 2 indicates they are on parcel 68.-1-9.111. Please confirm which parcel(s) the substation, POI and O&M building are located on and revise Table 3 accordingly.

RESPONSE: The Applicant revised Table 3 in *Revised Appendix 24-5* to correctly indicate that the substation, POI, and O&M building are located on parcel 68.-1-9.111.

5. Pursuant to 16 NYCRR § 1100-2.25(d), page 26 of Exhibit 24 (Revised August 2024) states ““The Facility O&M building will be designed to comply with the ‘Public or private utility facility with building’ requirements ...” and further “The Facility substation and POI switchyards will be designed to comply with the ‘Public or private utility facility without building’ requirements ...” Please address the applicability of Town of Glen Land Use Management Law revised June 2024 at § 2.02 and Local Law No. 5 of 2022 (Town of Glen Solar Law) with regard to the proposed Facility, specifically the O&M building, substation, and POI Switchyard, and revise Exhibit 24 and Appendix 24-5 as necessary.

RESPONSE: The Town of Glen Land Use Management Law revised June 2024, changed the definition of private or public utility to explicitly exclude “a major renewable energy facility as set forth in Local Law No. 5 of 2022 which shall be regulated pursuant to Local Law No. 5 of 2022”. The term “major renewable energy facility” is not defined in Local Law No. 5 of 2022. Presumably this reference was supposed to be to large scale utility solar energy systems which are defined in Local Law No. 5 of 2022 as “a Solar Energy generation facility, whether a ground-mounted and / or rooftop installation, principally used to convert solar energy to electricity,

whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, designed and intended to supply energy primarily into a utility grid for sale to the general public or to supply multiple users located off-site on which the energy system is located.”

A solar energy system is further defined as “a system of components and subcomponents intended for the collection, inversion, distribution of solar energy and the directly or indirectly generates thermal, chemical, electrical or other usable energy” this includes “electrical material, hardware, inverters, conduit, or other electrical and photovoltaic equipment, including tracking equipment to move the panels or equipment used to connect to the grid, associated with the production of electricity.”

Given the broad definition of what is included as part of a large-scale utility solar energy system, arguably this definition would include the O&M building, substation and POI Switchyard. And given the revised definition of private or public utility in the Town of Glen Land Use Management Law, the requirements for public or private utilities (Sections 5.01 and 71.6) appear to no longer be applicable to the O&M building, substation and POI Switchyard, or any other component of the Facility.

However, given the ambiguity in the laws with the terms and definitions used, the Applicant has not further revised ***Revised Exhibit 24*** or ***Revised Appendix 24-5***. If ORES determines that Town of Glen Land Use Management Law is not applicable to the O&M building, substation, and POI Switchyard, then correspondingly any waivers related to the Town of Glen Land Use Management Law would be unnecessary.

Additional Work Conducted by the Applicant

Exhibit 4. Real Property

The Applicant revised Figure 4-1. Real Property to reflect the current Facility Layout that was revised in June 2024. See ***Revised Figure 4-1. Real Property***.

Exhibit 6. Public Health, Safety, and Security

On November 19, 2024, the Applicant received an email from Jonathan Forward, Project Manager at ORES summarizing the comments that ORES received from the NYS Office of Fire Prevention and Control (OFPC) who coordinated their review of Exhibit 6, Appendix 6-2. Safety Response Plan (SRP) with the Division of Homeland Security and Emergency Services (DHSES). Listed below are the comments received from the NYS OFPC on the Safety Response Plan and the Applicant’s response to each comment.

1. Several sections of the SRP require reporting a fire to the Site Manager. For instance, Section 7.1.1, 7.3 (several places), 7.3.1, 7.3.2. This is contrary to the Fire Code, which requires immediate notification to Emergency Services without delay.

RESPONSE: The Applicant revised Section 7 in the SRP, **Revised Appendix 6-2**, in several places to indicate that Emergency Services will be notified at the same time the Site Manager is of any onsite fires.

2. Consider including emergency medical services in the training in section 3.2.

RESPONSE: The Applicant revised Section 3.2 in the SRP, **Revised Appendix 6-2**, to include emergency medical services staff in the preformed annual trainings and onsite drills.

3. Section 7.2.1 regarding fire extinguishers: staff should be trained in their use and expected to use them when appropriate.

RESPONSE: The Applicant revised Section 7.2.1 in the SRP, **Revised Appendix 6-2**, to indicate that staff will be trained in the use of the fire extinguishers onsite and are expected to use them when appropriate.

Exhibit 24. Local Laws and Ordinances

The Applicant met with the Town of Glen officials and their representatives on October 29, 2024, to discuss the local law waivers that the Applicant has requested from ORES. Summarized below are the comments the Applicant received from the Town during that meeting to incorporate into the Exhibit 24 waiver request and the Applicant's response.

Maximum Lot Coverage Waiver Request

1. Please add the parcel acreage to Table 3 in Appendix 24-5 Statement of Justification.

RESPONSE: The Applicant added the parcel acreage to Table 3 in **Revised Appendix 24-5**.

Slope Waiver Request

2. Please include the total acreage of panels across the Project so one can better understand what percentage of panels across the Project are being sited on slopes greater than 15 percent.

RESPONSE: The Applicant revised Section E (1) in **Revised Appendix 24-5** to include this information.

Tree Clearing Waiver Request

3. Please clarify why areas without panels need to be cleared.

RESPONSE: The Applicant revised Section F (4) in **Revised Appendix 24-5** to include this information.

Lighting Plan Request

4. Please confirm that no lighting spillage will occur beyond the property line.

RESPONSE: The Applicant prepared a new figure, **Figure 24-1. Lighting Plan Contours**, to illustrate that the proposed lighting will not result in spillage beyond the property line.

Comments Received from Montgomery County

RESPONSE: See Revised Exhibit 24 and Revised Appendix 24-5 for more information related to Montgomery County Local Law 3 of 2024.