

STATE OF NEW YORK
OFFICE OF RENEWABLE ENERGY SITING

COMBINED NOTICE OF AVAILABILITY OF DRAFT PERMIT CONDITIONS, PUBLIC COMMENT PERIOD AND PUBLIC COMMENT HEARING, AND COMMENCEMENT OF ISSUES DETERMINATION PROCEDURE

Applicant: Hecate Energy Cider Solar, LLC
621 W Randolph Street
Chicago, IL 60661

Facility Location: Towns of Elba and Oakfield, Genesee County, New York

Applicant's Attorney: Sarah Main, Esq.
Foley Hoag LLP
1301 Avenue of the Americas, 25th Floor
New York, NY 10019

DMM Matter No.: 21-01108

Facility Description: Applicant applied to the New York State Office of Renewable Energy Siting (Office or ORES) for a permit pursuant to Executive Law § 94-c to construct and operate a 500 megawatt (MW) solar energy facility located in the Towns of Elba and Oakfield, Genesee County.

Applicant filed the application with the Office on June 3, 2021. A notice of complete application was issued on December 31, 2021 (see <https://ores.ny.gov/permit-applications>, click on Project DMM Matter Number 21-01108).

ORES staff published draft permit conditions on March 1, 2022. The draft permit conditions may be accessed at <https://ores.ny.gov/permit-applications> (click on Project DMM Matter Number 21-01108).

ORES Staff Position: On issuing the draft permit conditions, ORES staff takes the position that the proposed facility, together with the uniform and site-specific standards and conditions contained in the draft permit conditions, would comply with applicable laws and regulations. ORES staff recommends that the Office elect not to apply, in whole or in part, any local law or ordinance that as applied to the facility is unreasonably burdensome in view of the Climate Leadership and Community Protection Act targets and the environmental benefits of the proposed facility.

In-Person Public Comment Hearing: PLEASE TAKE NOTICE THAT in addition to the virtual public comment hearing scheduled for May 10, 2022, a public comment hearing pursuant to 19 NYCRR part 900 to hear and receive unsworn comments from the public will be held in person at **the Elba Fireman's Recreation Hall, 7143 Oak Orchard Road, Elba, New York, 14058** on **May 4, 2022, at 5:00 p.m.**

All persons, organizations, corporations, or government agencies who may be affected by the facility are invited to attend the hearing and comment on the application and the draft permit conditions. Lengthy comments will not be accepted and instead should be submitted in writing. Equal weight will be given to both oral and written comments. To ensure that all interested persons have an opportunity to speak, the presiding Administrative Law Judge (ALJ) may limit the time available for oral comments to 3 minutes per person. The public comment hearing will be transcribed for inclusion in the administrative record.

It is not necessary to provide comments at both the virtual and in-person hearings. At the virtual hearing, preference will be given to speakers who did not speak at the in-person hearing.

The hearing location is reasonably accessible to persons with a mobility impairment. Interpreter services shall be made available to deaf persons, and English language translator services shall also be made available, at no charge for either service, upon written request to James T. McClymonds, Chief Administrative Law Judge, New York State Office of Renewable Energy Siting, c/o OGS Mailroom, Empire State Plaza, 240 State Street, P-1 South, J Dock, Albany, NY 12242, telephone: (518) 473-4583, email: general@ores.ny.gov. All requests must be received no later than 4:00 pm on April 20, 2022.

In the event that the in-person public comment hearing needs to be canceled, rescheduled, postponed, or conducted virtually, notification of any change will be available at the ORES website at <https://ores.ny.gov>.

Public Comment Hearing: A public comment hearing pursuant to 19 NYCRR part 900 to hear and receive unsworn comments from the public will be held on **May 10, 2022, at 5:00 pm. The hearing is being conducted electronically through the Webex Events platform and by telephone.**

All persons, organizations, corporations, or government agencies who may be affected by the facility are invited to attend the hearing and comment on the application and the draft permit conditions. Instructions on how to attend the hearing electronically or by telephone are provided below. Lengthy comments will not be accepted and instead should be submitted in writing. Equal weight will be given to both oral and written comments. To ensure that all interested persons have an opportunity to speak, the Administrative Law Judges (ALJs) may limit the time available for oral comments to 3 minutes per person.

Because the hearing is being conducted electronically, it is reasonably accessible to persons with a mobility impairment. Interpreter services shall be made available to deaf persons, and English language translator services shall also be made available, at no charge for either service, upon written request to ALJ Daniel P. O'Connell at the address below. All requests must be received no later than **4:00 pm on April 15, 2022.**

Written Public Comments: Written comments concerning the application and the draft permit conditions must be filed with ORES by **5:00 p.m. on Thursday, May 12, 2022.** Persons filing written comments are strongly encouraged to post their comments on the Department of Public

Service's (DPS's) Document and Matter Management (DMM) system. To post a comment, go to <https://ores.ny.gov>, click on "Permit Applications," click on Project DMM Matter Number 21-01108, and click on "Post Comments" in the upper right-hand corner of the screen.

Written comments may also be emailed to ORES at general@ores.ny.gov or mailed to the Office of Renewable Energy Siting, Empire State Plaza, 240 State Street, P-1 South, J Dock, Albany, NY 12242. Written comments will be considered equally with oral statements delivered at the public comment hearing, provided they are postmarked by **Thursday, May 12, 2022**, or e-mailed or posted on DMM by 5:00 p.m. on that date.

Issues Determination Procedure: Pursuant to 19 NYCRR 900-8.3(b), a pre-adjudicatory issues determination procedure will be conducted by the assigned ALJs. The procedure will be conducted solely on papers and briefing unless the ALJs, in their sole discretion, determine that oral argument is necessary. The purpose of the issues conference is to determine party status for any person or organization that has properly filed a petition (as indicated below), and to narrow and define those issues, if any, that will require adjudication in this matter. Participation in the issues determination procedure is limited to ORES staff, applicant, and those persons or organizations requesting party status.

Filing for Party Status and Proposed Issues: Persons seeking to participate in the issues determination procedure and any subsequent adjudicatory hearing must register on DMM and file a written petition explaining whether their request is for full party status or amicus status. For the required contents of petitions for full party status, see 19 NYCRR 900-8.4(c)(1) and (2). To determine whether an issue is substantive and significant, see 19 NYCRR 900-8.3(c)(2) and (3). For the required contents of a petition seeking amicus status, see 19 NYCRR 900-8.4(c)(1) and (3). Petitioners may also file written briefs making arguments in support of their petitions.

All petitions requesting party status and briefs in support must be E-Filed on DMM no later than **4:00 p.m. on May 10, 2022**. Instructions for registering in DMM and E-Filing documents may be found at:

<https://www3.dps.ny.gov/W/PSCWeb.nsf/All/CC256BE982C58CF785257687006F39CE?OpenDocument>.

Address all petitions to Daniel P. O'Connell, Administrative Law Judge, New York State Department of Environmental Conservation, Office of Hearings and Mediation Services, 1st Floor, 625 Broadway, Albany, New York, 12233-1550, telephone: (518) 402-9003, email: daniel.oconnell@dec.ny.gov and to Michael C. Clarke, Administrative Law Judge, New York State Department of Public Service, Office of Hearings and Alternative Dispute Resolution, 3 Empire State Plaza, Albany, New York, 12223, telephone: (518) 408-1043, email: michael.clarke@dps.ny.gov.

At the same time petitions and briefs are E-Filed on DMM, a copy of all papers must be emailed to the ALJs at the email addresses above, and furnished to applicant Cider Solar, LLC's attorney, Sarah Main, Foley Hoag LLP, 1301 Avenue of the Americas, 25th Floor, New York, New York 10019, smain@foleyhoag.com; and to ORES at the Office of Renewable Energy Siting, Empire State Plaza, 240 State Street, P-1 South, J Dock, Albany, New York 12242, (518) 473-4590,

general@ores.ny.gov. Service of petitions and briefs by email is authorized provided they are received by all of the above parties and the ALJs by the 4:00 P.M. deadline.

Any questions about filing requirements or other hearing procedures may be addressed to ALJ Daniel P. O'Connell by telephone at (518) 402-9003 or ALJ Michael C. Clarke by telephone at (518) 408-1043. ORES's regulations may be found at <https://ores.ny.gov/regulations>.

Statement of Compliance with Local Laws and Regulations: Any municipality, political subdivision or an agency thereof that received notice of the filing of the application pursuant to 19 NYCRR 900-1.6(a) must file a statement indicating whether the proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations, in effect as of December 31, 2021, if any, concerning the environment, or public health and safety. The statement must be filed and served by the same deadline and in the same manner as petitions for party status. Any municipality, political subdivision or an agency thereof that proposes to adjudicate any issues related to a facility's compliance with local laws and regulations must file a petition for party status as provided for in 19 NYCRR 900-8.4(c) and include the statement of compliance with local laws and regulation.

Applicant Statement of Issues: No later than **4:00 p.m. on May 10, 2022**, applicant shall file and serve on ORES staff and the ALJs a statement of issues applicant intends to raise with respect to any determination of the Office, and briefing in support. Applicant shall serve the statement of issues and brief on persons filing petitions for party status within five (5) days of such filing. For the required contents of an applicant's statement of issues, see 19 NYCRR 900-8.4(b)(1).

Responsive Briefing and Response to Comments: No later than **4:00 p.m. on May 25, 2022**, ORES staff may file and serve a response to any petitions for party status, any statement of issues by applicant, and the statement of compliance with local laws and regulations. By the same deadline, applicant may file and serve a response to any petition for party status or statement of compliance with local laws and regulations. In addition, the applicant shall file and serve on ORES staff a response to public comments received during the public comment period, including any supplemental information.

Document Availability: Copies of all application materials and draft permit conditions are available for inspection from the Office's Albany office during normal business hours: Contact the Office of Renewable Energy Siting, W.A. Harriman Campus, Building 9, 4th Floor, 1220 Washington Avenue, Albany, New York 12223, Telephone: (518) 473-4590, Email: general@ores.ny.gov. Electronic copies are available at <https://ores.ny.gov/permit-applications>, click on Project DMM Matter Number 21-01108.

Copies of all application materials are also available at the Haxton Memorial Library, 3 North Pearl Street, Oakfield, New York 14125; Byron Bergen Public Library, 13 South Lake Avenue, Bergen, New York 14416; Town of Elba Town Clerk's Office, 7 Maple Avenue, Elba, NY 14058; and Town of Oakfield Town Clerk's Office, 3219 Drake Street, Oakfield, New York 14125.

Statutory and Regulatory Provisions: The application is being processed and this proceeding is being conducted according to Executive Law § 94-c and 19 NYCRR part 900.

Instructions for Attending the Public Comment Hearing:

To join the hearing through the internet, visit www.webex.com and click “Join a meeting.”

Event Number: 2344 807 5929
Password: May10-5PM

To join by phone only:

Dial: 1-518-549-0500
Access Code: 2344 807 5929

Persons wishing to comment on the application or the draft permit conditions will have the opportunity to make a statement at the public comment hearing. **Any person wishing to provide a public statement must register in advance of the hearing no later than 10:00 a.m. May 9, 2022.** Any person may listen to the hearing by phone without pre-registration.

To register electronically: Persons who will log in to the hearing electronically must register. To register, visit <https://www.webex.com>, click on “Join a meeting,” input the event number listed above, click “Register,” and fill in the requested information. You will be asked whether you wish to make a public statement or not. After registration is complete, you will receive a confirmation by email with information about how to join the hearing.

On the appropriate date and time of the hearing, participants should visit <https://www.webex.com>, click “Join a meeting” at the top right-hand corner of the screen, and input the appropriate event number for the hearing. Participants will be asked to “select audio system.” It is recommended that participants choose to have the system “call me” or “call using computer.” The “call me” option will require participants to enter their phone numbers.

To register by telephone: Any person who is not able to log in electronically may participate by telephone. Call-in participants who wish to make a public comment must register in advance no later than 10:00 a.m. on **May 9, 2022** by calling (518) 473-4590, or by emailing general@ores.ny.gov. Please provide your first and last name, address, email address if any, and telephone number, and reference the Cider Solar public comment hearing.

On the day and time of the hearing, use the phone access phone number, (518) 549-0500, and the appropriate access code listed above to join the hearing.

All participants will be muted upon entry into the hearing. The ALJs will call on each person who has registered to speak. The ALJs will continue the hearing until everyone wishing to speak has been heard or other reasonable arrangements have been made to include their comments in the record. The ALJs may limit the time available for oral comments, as necessary to afford all participants an opportunity to be heard. Lengthy comments should be summarized for oral

presentation and submitted in writing as provided above. The hearing will be stenographically recorded for inclusion in the record.

Daniel P. O'Connell
Administrative Law Judge

Michael C. Clarke
Administrative Law Judge

March 1, 2022; Supplemented March 31, 2022
Albany, New York