



December 2, 2020

Filed Electronically

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

Re: Proposed Office of Renewable Energy Siting Regulations, Addition of Subparts 900-1 through 900-5 and 900-7 through 900-14 to Title 19 NYCRR (I.D. No. DOS-37-20-00015-P)

Deputy Director Moaveni:

The Renewable Energy Legal Defense Initiative (RELDI) submits these comments on the Office of Renewable Energy Siting's (ORES) draft regulations pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Chapter XVIII, Title 19 of NYCRR, Subparts 900-1 through 900-5 and 900-7 through 900-14. RELDI is a joint effort of the Sabin Center for Climate Change Law and the law firm of Arnold & Porter Kaye Scholer LLP to provide pro bono legal representation to individuals and grassroots groups who support renewable energy facilities in their communities. RELDI submits these comments on behalf of the undersigned New Yorkers who want to welcome renewable energy facilities into their communities, and who are in favor of expediting renewable energy projects throughout New York.

The Climate Leadership and Community Protection Act (CLCPA) provides that a minimum of 70% of statewide electric generation must be supplied by renewable energy by 2030, and that 100% be derived from zero-emission sources by 2040.¹ The CLCPA also requires the development of at least 6,000 megawatts of solar energy by 2025 and 9,000 megawatts of offshore wind electricity generation by 2035.² The attached report commissioned by NYSERDA shows that by 2050, New York will need far more than this to meet the CLCPA's targets for emissions reductions: at least 45,900 megawatts of solar energy, 8,900 megawatts of land-based wind, and 15,500 megawatts of offshore wind.³ Meeting the CLCPA mandates depends on the rapid and large-scale deployment of renewable energy capacity across the state. Many farmers and other landowners wish to participate in that effort, both because they are concerned about the effects of climate change, and because leasing or selling land to a renewable energy developer

¹ NY PUB. SERV. LAW 66-p(2)(a), (b).

² *Id.* § 66-p(5).

³ ENERGY+ENVIRONMENTAL ECONOMICS, NEW YORK STATE DECARBONIZATION PATHWAYS ANALYSIS: SUMMARY OF DRAFT FINDINGS 14 (June 24, 2020).

can bring in much-needed income when making a sustainable living through agriculture alone has become untenable.⁴

However, local zoning restrictions can be a barrier to renewable energy development, even where proposed facilities enjoy broad favorability. For example, in 2019 the Town of Coxsackie enacted solar regulations that effectively block the Flint Mine Solar facility proposed to be located in Coxsackie and Athens,⁵ despite widespread community support for the project.⁶

The Accelerated Renewable Energy Growth and Community Benefit Act recognizes and seeks to address this problem by allowing ORES to “elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed major renewable energy facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed major renewable energy facility.”⁷ The proposed ORES regulations would allow an applicant to request that ORES waive a local substantive requirement on one of three grounds: 1) technological limitations make compliance technically impossible, impractical or otherwise unreasonable; 2) the costs to consumers outweigh the benefits of applying the local substantive requirement; or 3) the needs of consumers outweigh the impacts on the community of refusing to apply the local substantive requirement.⁸

⁴ See, e.g., Application of Flint Mine Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10, 18-F-0087 (N.Y.P.S.C.), Comments of Linda and Frank Drewello, available at <https://on.ny.gov/2JwDGP1> (“Like many of our neighbors, we have been looking for another source of income, because we are no longer able to scrape a living from farming this poor soil” and noting that solar energy will reduce emissions from the use of fossil fuels); Application of Horseshoe Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10, 18-F-0633 (N.Y.P.S.C.), Comments of Suzanne Stokoe, available at <https://on.ny.gov/2TQIUal> (“This clean, renewable energy will add diversity of income much needed by farmers.”).

⁵ See *Friends of Flint Mine Solar v. Town Board of Coxsackie*, No. 19-0216 (N.Y. Sup. Ct. Sept. 13, 2019) at 12.

⁶ For example, every Coxsackie resident who participated in a public statement hearing held on the Flint Mine Solar Facility pursuant to Article 10 voiced support for the project. See generally Application of Flint Mine Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10, 18-F-0087 (N.Y.P.S.C.), Public Statement Hearing Transcripts, Oct. 22, 2020 at 1pm and 6pm, available at <https://on.ny.gov/3lrBLJE>, <https://on.ny.gov/32EhUzI>. Many residents of Coxsackie and Athens have also submitted written comments to the Siting Board in favor of the project. See, e.g. Application of Flint Mine Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10, 18-F-0087 (N.Y.P.S.C.), Comments of Victoria Fiorelli, Isiah Garvey, Eamony Donnelly, Dominick Leo, Frank and Linda Drewello, Alex Agovino, Benjamin Oringer, Nicholas Oringer, Helen Meier and Others, Diane Oringer, Giuseppe Multari, available at <https://on.ny.gov/3kWhzzi>.

⁷ NY EXEC. § 94-c(5)(e).

⁸ Proposed 19 NYCRR § 900-2.25(c).

We encourage ORES, in the final regulations, to also allow an applicant to request a waiver on the ground that the environmental benefits of the proposed project outweigh the impacts of not applying the local substantive requirement, in light of the CLCPA's renewable energy mandates. Providing such an option would be consistent with both the language and the spirit of the Accelerated Renewable Energy Growth and Community Benefit Act, and would facilitate the rapid scaling up of renewable energy capacity that must occur for New York to meet its extremely ambitious targets.

We also ask ORES to reject any calls to make substantive siting standards more stringent due to unfounded concerns about the impacts of wind and solar energy development on local residents. For example, to guard against any possibility that a falling wind turbine would land on a nearby residence, substation, or other structure, any setback greater than the turbine height is sufficient; ORES's proposed setbacks provide ample protection to the host communities' property and safety. While larger setbacks have been adopted by some New York towns, they merely frustrate efforts to develop renewable energy with no public health or safety justification. We encourage ORES to ensure that the final standards will promote, rather than hamstring, the safe and sensible siting of wind and solar energy facilities in New York State.

Thank you very much for your time and consideration.

Sincerely,

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On behalf of:⁹

Win With Wind
Friends of Flint Mine Solar
Supporters of Horseshoe Solar
Carrie H. and William D. McCausland (Portland, NY)
Jeremy Verratti (Gasport, NY)
Ed Browka (Verona, NY)

⁹ The listed entities have authorized the filing of this letter on their behalf, but the undersigned attorney does not have an attorney-client relationship with all of them.