

**TOWN BOARD
TOWN OF COXSACKIE
GREENE COUNTY NEW YORK**

Resolution

May 11, 2021

WHEREAS, Flint Mine Solar, LLC (the “Applicant”) proposes to construct a one hundred (100) megawatt (MW) solar energy facility in the Town of Coxsackie, Greene County (the “Project”), and has applied to the New York State Board on Electric Generation Siting and the Environment (the “Siting Board”) for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law to allow the Applicant to construct and operate the Project;

WHEREAS, the Town has participated fully in every phase of the review of the Project under Article 10 of the Public Service Law using intervenor funds awarded for that purpose;

WHEREAS, the Town opposes the Project as a whole because the Project is inconsistent with: (1) substantive local law, (2) the Town and Village of Coxsackie Comprehensive Plan, and (3) the rural and historic character of the Town, among other reasons;

WHEREAS, the Siting Board’s review of the Applicant’s proposed Project coincides with the review of Case No. 17-F-0619, the Application of Hecate Greene (“Hecate”) for a 50-megawatt solar facility, and together the Facility Areas of these Projects represent over 9% of land in the Town;

WHEREAS, the Applicant has not evaluated the way these projects will cumulatively alter the rural, agricultural, and historic character of the Town;

WHEREAS, the Applicant has sought no local approvals for the Project from the Town Board, the Town Planning Board or the Town Zoning Board of Appeals, and has instead requested a waiver from the Siting Board for Sections 167-6(B)(1),(2) of the Town’s Solar Energy Collection Systems Law prohibiting utility scale solar facilities in all zoning districts except for the Commercial and Industrial Districts;

WHEREAS, the Town disagrees with the Applicant’s request for a waiver and, has taken the position in testimony filed with the Siting Board that the request for a waiver should be denied as the Applicant has presented no or insufficient evidence that the Solar Law is unduly burdensome;

WHEREAS, the Town has participated in settlement negotiations with the Applicant through its counsel, Whiteman Osterman & Hanna, LLP, and engineering consultant, Barton &

Loguidice, D.P.C., in order to obtain the best possible terms for the Town, regardless of the Town's consistent opposition to the Project; and

WHEREAS, the Town has reviewed the proposed Certificate Conditions and the SEEP Guidelines, having been advised by its counsel and engineering consultant, that the Conditions and Guidelines are satisfactory with the exception of Certificate Conditions 17, 23, 57, and 59.

NOW THEREFORE BE IT RESOLVED, that after reviewing the settlement documents, including the proposed Certificate Conditions and SEEP Guidelines, which are posted on the NYS Department of Public Service website, and which are available at all times for public review, the Town Board of the Town of Coxsackie hereby finds that:

- 1) The Town has no objection to the proposed Certificate Conditions with the exception of conditions 17, 23, 57, and 59 in the version submitted to the Siting Board on January 12, 2021 (a copy of the objected to conditions are attached hereto as Exhibit A);
- 2) The Town has no objection to the SEEP Guidelines in the version of the document filed with the Siting Board on January 20, 2021;
- 3) The Town has no objection to the Complaint Resolution and Facility Communications Plan in the version of the document filed with the Siting Board on January 20, 2021, with the exception of the provisions highlighted in yellow and attached hereto as Exhibit B;
- 4) The Town finds that its agreement on the proposed Certificate Conditions and SEEP Guidelines is conditioned upon the Applicant entering into acceptable agreements with the Town on road use and repair, decommissioning and security, the visual mitigation planting plan, and a host community benefit agreement;
- 5) The Town also finds that, as compared to the Hecate Project, the Flint Mine Project is more appropriately sited and will have a lesser impact on the character of the Town; and
- 6) The Town Supervisor is authorized, through their legal counsel and engineering consultant, to submit a letter to the Siting Board evidencing the Town's position on the Certificate Conditions and SEEP Guidelines, as well as the Complaint Resolution and Facility Communications Plan, and to provide a copy of this resolution to the Siting Board.

Town Supervisor


Richard K. Hanse, Town Supervisor


Town Clerk

EXHIBIT A

OBJECTED TO CONDITIONS

17. *The Certificate Holder shall construct and operate the facility in accordance with the substantive provisions of the applicable local laws as identified in this proceeding, except for those provisions of local laws that the Siting Board determined to be unreasonably burdensome, as stated in the Order Granting Certificate.*

The Town finds that the proposed project is in violation of Section 167-6 (B)(1)-(2) of the Solar Law, which prohibits the siting and operation of a utility-scale solar facility in any zoning district other than the Commercial and Industrial Districts. The purpose of this provision is to protect the Town's agricultural land and rural landscapes in furtherance of the Town and Village of Coxsackie Comprehensive Plan. Despite these valid zoning restrictions, the Project is proposed in the Town's Rural Agricultural Zoning District. The Town cannot support a waiver of a fundamental component of the Towns Solar Law and Zoning Code.

The Town also objects to this condition to the extent that the Project does not comply with Sections 167-6 (C)(4) (l), (n) of the Solar Law, which requires that the landscape screening to mitigate views of a solar facility. There are two aspects of the Applicant's proposed landscape screening which does not comply with this provision. First, the Applicant proposes to space plantings according to mature growth. In order to obtain maximum visual mitigation within an abbreviated time period, plantings should be spaced at 2/3 of mature growth. Second, the Applicant proposes to use seven to ten pounds per acre of pollinator seed mix for fill between plantings. This is significantly low and manufacturer seeding rates are typically between 20 and 50 pounds per acre. In all other respects, the Project complies with the Solar Law's visual mitigation requirements.

23. *The Certificate Holder shall provide host community benefits such as Payments in Lieu of Taxes (PILOTs), other payments or other project(s) agreed to by the host community (i.e., the Towns of Coxsackie and Athens) pursuant to a host community agreement. Such host community agreement(s) will be executed prior to commencement of construction.*

The Town objects to this condition to the extent that the Applicant proposes a \$5,000 per megawatt PILOT payment. This proposed PILOT payment is effectively the only local benefit provided by the Project and is insufficient to justify the damage the Project will cause to the Town's historic and rural character.

57. *Prior to commencement of construction, the Certificate Holder shall submit a final Visual Mitigation Planting Plan (VMPP), which shall be appropriate for the scale of the Facility and visual character of the surrounding area, based on the conceptual mitigation plan presented in Appendix 24-D of the Application.*

The Town object's to this condition and the Applicant's proposed landscaping to the extent that: (1) the Applicant proposes to space plantings according to mature growth as opposed to 2/3 of mature growth; and (2) the Applicant proposes to use seven to ten pounds per acre

of pollinator seed mix as opposed to typical seeding rates of 20 and 50 pounds per acre. In all other respects, the Town agrees with the Applicant's proposed landscaping and VMPP requirements.

59. *Construction Hours. Construction activities which may result in noise off-site, including excavation, tree clearing, or pile driving activities, shall be limited to 7 a.m. to 7 p.m. Monday through Saturday and 8 a.m. to 7 p.m. on Sunday and national holidays, with the exception of construction, deliveries or maintenance work which may need to occur during extended hours beyond this schedule on an as-needed basis, subject to the notice requirements in subsection (b).*

(a) Construction work hour limits apply to facility construction and to construction-related activities, including maintenance and repairs of construction equipment at outdoor locations, large vehicles idling for extended periods at roadside locations, delivery and off-loading of equipment, and related disturbances. This condition shall not apply to vehicles used for transporting construction or maintenance workers, small equipment, and tools used at the facility site for construction or maintenance activities. Crews will be allowed to assemble in Project Area and conduct pre and/or post workday meetings (i.e. morning plan of the day and/or safety brief, evening progress meeting) outside of the timeframes identified in this Condition. This condition shall also not apply to activities that do not generate noise.

(b) If, due to safety or continuous operation requirements, construction activities are required to occur beyond the allowable work hours, the Certificate Holder shall notify the NYSDPS, affected landowners and the host Towns. Such notice shall be given at least twenty-four (24) hours in advance, unless such construction activities are required to address emergency situations threatening personal injury, property, or severe adverse environmental impact that arise less than twenty-four (24) hours in advance. In such cases, as much advance notice as is practical shall be provided. Such notice shall include appropriate measures taken to avoid, minimize and mitigate any noise, traffic or other construction impacts.

The Town objects to this condition to the extent that the Applicant proposes to construction activities on Sundays and National Holidays.

EXHIBIT B

Complaint Response – Operations

If the Sound Complaint originates from a residence within one half (0.5) mile of any component of the solar facility, and based on monitoring and/or modeling, there appears to be a reasonable possibility that the sound level induced by the Project exceeds or falls within 5 dBA of applicable noise limits or design criteria specified in the Certificate Order at the complainant's location, and the sound is not related to Project maintenance or abnormal operational conditions, then Flint Mine Solar will investigate the incident as follows:

i. The Certificate Holder is not required to conduct sound testing if:

1. the modeled sound levels are lower than 5 dBA below any applicable noise limit, or
2. the complaint has occurred as a result of abnormal operation. In this case, the Certificate Holder shall make necessary repairs.

ii. The Certificate Holder shall conduct sound monitoring if:

1. The complaint location is further than 0.5 miles from any previously evaluated monitoring locations, or
3. The location is closer than 0.5 miles of a previously evaluated monitoring location but the final computer noise modeled levels or the results of any preliminary measurements of sound levels are higher or expected to be higher than the positions previously evaluated, or
4. There is a reasonable possibility that mechanical or operational conditions have changed that affect noise source (e.g. Inverter/Medium to Low Voltage Transformer or substation equipment) sound levels, or,
5. The issue is different than the one previously evaluated, or
6. The last monitoring was conducted more than three years ago.

If Certificate Conditions of the Order or any preliminary investigation suggests that sound monitoring is warranted, the Certificate Holder shall conduct such sound monitoring through an independent third party capable of producing verifiable results.

The Certificate Holder may request that a Complainant maintain a written log of potentially offending sound events over some reasonable period of time, in order to assist in identifying influences that may affect the sound from the solar facility. If the identified factors demonstrate that follow-up sound monitoring is warranted, Flint Mine Solar shall make reasonable efforts to conduct such monitoring under conditions similar to those existing at the time the complaint arose. Flint Mine Solar may have access to a sound level meter within 24 hours of request. This meter may be used to perform "spot checks" of sound levels at the area of complaint.

Flint Mine Solar shall inform a resident when it intends to conduct any exterior sound monitoring and cooperate with the resident to determine an appropriate location for the monitoring equipment.

If Flint Mine Solar determines that a Sound Complaint is not valid for two separate instances at the same location, then any future complaint, beyond the first two, requires that particular complainant to pay the cost of additional sound testing.