

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:** Somerset Solar, LLC  
c/o AES Clean Energy Development, LLC  
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Email: [somersetsolar@aes.com](mailto:somersetsolar@aes.com)

**Facility Location:** Town of Somerset, Niagara County

**Applicant's Attorney:** James A. Muscato, II, Esq.  
Young / Sommer LLC  
Executive Woods, Five Palisades Drive  
Albany, NY 12205  
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**ORES DMM Matter No.:** 22-00026

**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 125-megawatt (MW) solar energy facility located in the Town of Somerset, Niagara County.

Applicant filed the application with the Office on April 7, 2023. A notice of complete application was issued on February 5, 2024 (see <https://ores.ny.gov/permit-applications>, click on Project DMM Matter Number 22-00026).

ORES staff published draft permit conditions on April 5, 2024. The draft permit conditions may be accessed at <https://ores.ny.gov/permit-applications>, click on Project DMM Matter Number 22-00026.

**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, 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.

**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 at the **Barker Central School District Auditorium, 1628 Quaker Road, Barker, NY 14012** on **Tuesday, June 11, 2024, at 6:00 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 Administrative Law Judge (ALJ) may limit the time available for oral comments to three (3) minutes per person. The public comment hearing will be transcribed for inclusion in the administrative record.

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 Chief ALJ James T. McClymonds, Office of Renewable Energy Siting, Empire State Plaza, P-1 South, J Dock, Albany, NY 12242, (518) 473-4590, [hearings@ores.ny.gov](mailto:hearings@ores.ny.gov). All requests must be received no later than 4:00 p.m. on Tuesday, May 28, 2024.

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>.

**Written Public Comments:** Written comments concerning the application and the draft permit conditions must be filed with ORES by **5:00 p.m. on Friday, June 14, 2024**. 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 22-00026, and click on "Post Comments" in the upper right-hand corner of the screen.

Written comments may also be emailed to ORES at [hearings@ores.ny.gov](mailto:hearings@ores.ny.gov) or mailed to the Office of Renewable Energy Siting, Empire State Plaza, 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 **Friday, June 14, 2024**, or e-mailed or posted on DMM by 5:00 p.m. on that date.

Please take notice that written public comments will be publicly posted on the ORES DMM. ORES reserves the right not to post duplicate or repeat comments. In addition, ORES reserves the right to remove, without notice, comments containing any defamatory, infringing, obscene, indecent, discriminatory, confidential, or unlawful material or information of any kind.

**Issues Determination Procedure:** Pursuant to 19 NYCRR 900-8.3(b), a pre-adjudicatory issues determination procedure will be conducted by the assigned ALJ. The procedure will be conducted solely on papers and briefing unless the ALJ, in the judge's sole discretion, determines 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 Monday, June 17, 2024**. Instructions for registering in DMM and E-Filing documents may be found at: <https://dps.ny.gov/dmm-help-electronic-filing-registration-instructions>.

Address all petitions to John L. Favreau, Administrative Law Judge, New York State Office of Renewable Energy Siting, Empire State Plaza, P-1 South, J Dock, Albany, NY 12242, telephone: (518) 473-4590, email: [john.favreau@ores.ny.gov](mailto:john.favreau@ores.ny.gov); and Henry James Joseph, Administrative Law Judge, New York State Office of Renewable Energy Siting, Empire State Plaza, P-1 South, J Dock, Albany, NY 12242, telephone: (518) 473-4590, email: [henry.joseph@ores.ny.gov](mailto:henry.joseph@ores.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 address above, and furnished to applicant Somerset Solar, LLC's attorney, James A. Muscato, II, Esq., Young / Sommer LLC, Executive Woods, Five Palisades Drive, Albany, NY 12205, telephone: 518-438-9907, email: [jmuscato@youngsommer.com](mailto:jmuscato@youngsommer.com); and to ORES at the Office of Renewable Energy Siting, Empire State Plaza, P-1 South, J Dock, Albany, NY 12242, (518) 473-4590, [hearings@ores.ny.gov](mailto:hearings@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 Chief ALJ James T. McClymonds by telephone at (518) 473-4583. 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 February 5, 2024, if any, concerning the environment, or public health and safety. The statement must be filed and served by **4:00 p.m. on Monday, June 17, 2024**, 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 regulations.**

**Applicant Statement of Issues:** No later than **4:00 p.m. on Monday, June 17, 2024**, applicant shall file and serve on ORES staff and the ALJ 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 Monday, July 15, 2024**, 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 at 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, NY 12227, (518) 473-4590, [hearings@ores.ny.gov](mailto:hearings@ores.ny.gov). Electronic copies are available at <https://ores.ny.gov/permit-applications>, click on Project DMM Matter Number 22-00026.

Copies of all application materials are also available at:

Somerset Town Hall  
Attn: Tracy Carmer, Town Clerk  
8700 Haight Road  
Alfred Station, NY 14012.

Barker Public Library  
Attn: Lisa Thompson, Library Director  
8673 Church Street  
Barker, NY 14012.

**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.

James T. McClymonds  
Chief Administrative Law Judge

April 5, 2024  
Albany, New York