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In response to the November 22, 2019 letter received from the Chair of the New York State Board on Electric Generation Siting and the Environment (Chair) regarding the Application submitted by East Point Energy Center, LLC (Applicant) pursuant to Public Service Law (PSL) 164 for a Certificate of Environmental Compatibility and Public Need for the East Point Energy Center Project (the Project), supplemental information is provided below and attached. The organization of this document (hereafter referred to as the “Supplement to the Application”) is consistent with the Chair’s November 22, 2019, letter and presents each comment followed by the Applicant’s response to the comment.

Exhibit 3: Location of Facilities

1. 16 NYCRR §1001.3(a) and Stipulation 3(a) require mapping on USGS topographic edition base maps. Figure 3-1 uses aerial photographs without topographic contours. Please provide a map of the Facility Layout based on USGS topographic edition base mapping as required by the regulation and Stipulation 3(a)(l) through (3).

Response: Figure 3-1 has been updated with USGS topographic contours, as requested, and is included herein as a new Figure 3-1A in Attachment A.

Exhibit 4: Land Use

1. Stipulation 4(n) requires overlays on aerial photographs that show proposed Project facilities and limits of clearing in relation to field verified vegetation cover types. Referenced Figure 4-7 and Appendix 11-1 do not indicate vegetation cover types. Please provide photographs showing facilities arrangement and limits of clearing, indicating the extent of clearing in relation to verified vegetation cover types.

Response: An additional figure showing the proposed Project facilities and limits of clearing in relation to field-verified vegetation cover types has been prepared and is included herein as a new Figure 4-9 in Attachment B. Figure 4-9 is presented on aerial photography to clearly depict on-site conditions.

2. Stipulation 4(s) requires the identification of current farmland classifications within the proposed limits of disturbance. Figure 4-8 does not show limits of disturbance. Please provide a revised Figure showing all Project facilities locations and proposed limits of disturbance in relation to farmland classifications

Response: Figure 4-8 has been revised to include the proposed limits of disturbance as requested, and is included herein as Attachment C.

3. Stipulation 4(v) requires a discussion of farmland conversion trends over the past 20 years within the Study Area. The Application does not contain the discussion agreed to in the terms of Stipulation 4(v). Please supplement Exhibit 4 to provide this information.

Response: Based on a review and comparison between the Schoharie County, New York Agricultural and Farmland Protection Plan dated August of 2000 and the Schoharie County, New York Agricultural and Farmland Protection Plan dated March of 2017, farmland in Schoharie County produced a total of approximately \$26.9 million sales in 1997 and has more than quadrupled since this time to approximately \$157.7 million sales in 2017. This significant sales increase occurred even with an 8.1% reduction in the number of farms reported in Schoharie County from 2002 to 2012. The 8.1% reduction in the number of farms equates to over 14,000 acres of land reduction (-12%) since 2002. In 1997, farms averaged approximately 214 acres per farm, and in 2012, farms averaged approximately 185 acres per farm. During this time, much of the dairy, nursery, and greenhouse farmland has shifted to other farm types including beef cattle, goats, mixed livestock, vegetables, and fruits. The Schoharie County New York Agricultural and Farmland Protection Plan dated March of 2017 reports that dairy farming has consistently decreased over the last 10 to 20 years (Schoharie County, 2017) (Schoharie County, 2000).

Factors contributing to the reduction in farmland over the past 20 years may include, but are likely not limited to, a 9% increase in the number of houses within the County, high cost of farming and low profitability (particularly for smaller scale farms), availability of labor, lack of next generation farmers, and fracking/industrialization sited within productive farmland. As of 2017, within the Town of Sharon, 322 parcels or 18,438 acres have been identified as farmed parcels, occupying 73.5% of the Town. Of these 322 parcels, 56%

have been determined as “high quality farm soil” (prime farmland, farmland of statewide importance, and/or prime farmland if drained). Approximately 11,700 acres (46.7%) of open tillable land still remains within the Town of Sharon (Schoharie County, 2017) (Schoharie County, 2000).

The information provided above supports farmland conversion trends represented in the historic aerial imagery provided in the revised Figure 4-7 in Attachment D. Aerial imagery for the Project Study Area is available between 1997 and 2018, highlighting 2001 and 2010 as the nearest publicly available aerial imagery to the data described above. As is evident when comparing this imagery over the past 20 years, farmland conversion within the Project Study Area has largely been minimal. Most farmland within the Project Study Area has remained unchanged over this 20-year span.

References:

Schoharie County (2000). Agricultural and Farmland Protection Plan. Available at:

<https://www4.schohariecounty-ny.gov/PdfFiles/AgDev/AgFarmlandProtectionPlan.pdf>

Schoharie County (2017). Agricultural and Farmland Protection Plan. Available at:

https://www4.schohariecounty-ny.gov/PdfFiles/AgDev/FinalPlanMarch17_2017.pdf

Exhibit 9: Alternatives

1. Stipulation 9(j) requires “[a] discussion of potential impacts to vegetation associated with alternative arrangements considered, and information regarding why proposed alternative arrangements were not selected. Vegetation to include, but not necessarily limited to, trees (saplings to mature), food and livestock feed producing crops, graze lands, and soil erosion prevention cover, as applicable. Alternative facility technology, scale layout, and design considerations assessing a range of degrees of continued agricultural use of the Facility Site will also be discussed.” The alternatives discussion provided in Exhibit 9 does not provide design considerations of a range of degrees of continued agricultural use of the Facility Site. Please provide this information.

Response: As described in Exhibit 9 of the Application, the arrangement of Project Components within the Project Area considered existing environmental constraints, public health and safety concerns, and engineering constraints in the area, such as slopes, geography, elevation, topography, as well as a number of other variables. Additionally, the Applicant accounted for input from the public and participating landowners when siting Project Components. This included a range of degrees of continued agricultural use of the Project Area, outside of the Project fence line.

From a technological standpoint, the exact technology available for solar panels upon construction of the Project is not able to be known at this time. However, the Applicant has evaluated the potential use of fixed tilt arrays as an alternative to the tracking arrays proposed if deemed more efficient for Project output. Based on the Applicant's evaluation of both technological alternatives, the two types of systems (fixed or tracking) are similar in height, area, and color so there would be no significant difference in appearance. Additionally, the Applicant has been awarded a contract for this Project under the New York State Energy Research and Development Authority's (NYSERDA's) Renewable Portfolio Standard Program Purchase of Renewable Energy Attributes specifically for the development of a solar project; therefore, alternative energy supplies or technologies are not a reasonable nor viable alternative and energy supply sources other than solar energy were not considered in the Application.

The scale and magnitude of the Project is limited to the development of a 50 MW solar project as stated in the NYSERDA Renewable Energy Credits (REC) contract. As described in the Application, the Applicant acquired 1,313 acres within the Town of Sharon as the Project Area. Currently, the Project is limited to the installation of panels on 352 acres of the 1,313-acre Project Area. Therefore, a large portion of the Project Area can remain active agriculture even with the development of the Project.

There are varying degrees of agricultural use that may continue in the Project Area outside the fence line once the Project is constructed.. There is no plan to use the area within the Project fence line for agricultural purposes due to safety and maintenance reasons. However, solar payments to landowners through purchase or lease for this land can help stabilize revenues for local participating farmers (crop and dairy prices often fluctuate from year to year). This is an increased benefit to the local participating farmers and their

operations that could stimulate either continued farming outside the fence line or increased farming thereon.

Considerations were made throughout the design of the Project to enable continued agricultural use of areas where Project Components would not be placed. The Applicant has worked closely with participating landowners during the development of the Project to allow continued agricultural use, as requested by the participating landowners, to the maximum extent practicable. Specifically, agricultural use is allowed to continue outside of the fence line of the Project. The Applicant placed access roads, fencing, and access gates within the Proposed Layout to ensure that access to agricultural areas was sufficient for continued agricultural use.

Throughout the Project Area, the range of continued agricultural use varies by parcel. As described above, there are multiple parcels throughout the Project Area which will not have Project Components sited on them and therefore, those parcels can continue in agricultural use entirely. For parcels being crossed by collection lines, the collection lines will be installed underground, and agricultural activity may continue on the entirety of the area above the collection line. The Project is represented by five “areas” as depicted on the Site Plan in Appendix 11-1 of the Application. These areas are discussed in further detail below specifically relating to their potential for degrees of continued agricultural use.

Area 1 – Project Components in this area cover both agricultural and non-agricultural land and consist primarily of co-located panel arrays, inverters, access roads, and collection lines. Co-locating collection lines with access roads limits overall disturbance outside of the array areas. During the operational period of the Project, agricultural use in this area could continue in a limited capacity outside of the fence line on the eastern and southern portions of the array. Site access across these locations has been limited to one location to further minimize disturbance to these areas.

Areas 2 & 3 – These areas consist of a higher range of continued agricultural use than Area 1, with open portions of existing agricultural fields set to remain outside of the fence line between Gilberts Corners Road and the Project Area, as well as to the west of Area 3. Access roads in this location are entirely within the solar array or along the edges of the array and have been limited to the extent practicable.

Area 4 – Panel arrays in Area 4 are proposed on primarily agricultural land and due to the location and significance of this parcel to the Project, only an inconsequential amount of potential farming space will remain during the operational period.

Area 5 – The Proposed Layout and the Alternate Layout had different Panel Component arrangements in Area 5 (south of Route 20), as shown in the Application. The Project Area south of Route 20 consists primarily of agricultural land. Regardless of panel placement in Area 5 under the Proposed or Alternate Layouts, both layouts would allow the remainder of the Project Area south of Route 20 not used for Project Components to continue in agricultural use. Both of the areas south of Route 20 (Proposed and Alternate Layout) are currently used for row crops and there is no significant difference in the degree of continued agricultural use which may continue in one layout versus the other when viewing the Project parcels in their entirety. Therefore, as noted in Exhibit 9 of the Application, through coordination with the Town of Sharon, Project stakeholders, and input received from the public, the Applicant worked to accommodate requests to avoid siting Project Components where they would be visible along the State-designated scenic byway (Route 20), as agricultural impacts were not significantly different.

Exhibit 11: Preliminary Design Drawings

1. Stipulation 11(a)(4) requires site plans showing "[e]lectric cable collection lines and number of circuits per proposed electric cable route; overhead and underground cable routes will be differentiated with specific line-types." It is unclear how many electric circuits are proposed for the Project:
 - a. Drawing G-003 includes a legend with designations of two different colored dashed lines (red and yellow) as single circuit underground collector circuits; however, site plans do not show any routes with both the red and yellow circuits running parallel with each other.
 - b. Exhibit 11 notes that 1 to 2 circuits are required for the Project. However, trenching details for cables included in Drawing CS-001 indicate a maximum number of 3 parallel running circuits.

Please provide updated site plans which clearly indicate the number of proposed circuits for each proposed collector circuit installation route. Alternatively, please provide a stand-alone circuit map that indicates the number of proposed circuits for the entire collection line route.

Response: The legend in Drawing G-003 has been updated to indicate that the red dashed line is indicative of a single-circuit underground collector and the yellow dashed line is indicative of a double-circuit underground collector (see Attachment E). There are no routes where both the red and yellow circuits run parallel with one another. Trenching details in Drawing CS-001 have been updated to indicate a maximum number of two circuits (see Attachment F). A standalone circuit layout map is provided as Attachment G. Additionally, Drawings C-001, C-014 through C-022, and C-039 through C-047 have been updated accordingly and are provided as Attachment H.

2. Stipulation 11(e) requires "[a] lighting plan detailing the type, number, height, standards and location of exterior lighting fixtures and indicating measures to be taken to prevent or mitigate, as reasonable, unnecessary light trespass beyond the Project property line. The plan will also specify use of full cut-off fixtures, no drop-down optics, and use of task lighting wherever feasible. The Application will include typical manufacturer's cut sheets or similar information for proposed light fixtures." The Lighting Plan at Appendix 11-1 does not provide typical manufacturer's cut sheets or similar information for proposed light fixtures. Additionally, Lighting Plan Drawing S-012 references drawing 327851-XX, which is not included in the Plan. Please provide this information.

Response: The information requested in Stipulation 11(e) is included on the updated Lighting Plan (Sheet S-005) attached herein as Attachment I. The Applicant has also removed reference to drawing 327851-XX on the Lighting Plans and added a note describing the yard lighting control equipment. The Lighting Plan noted above should refer to Drawing S-013 instead of S-012. The Applicant has updated the drawing reference on Drawing S-013 as requested (see Attachment I).

Exhibit 12: Construction

1. 16 NYCRR §1001.12(a) requires "[a] preliminary Quality Assurance and Control plan, including staffing positions and qualifications necessary, demonstrating how applicant will monitor and assure conformance of facility installation with all applicable design, engineering and installation standards and criteria." The necessary qualifications are not provided for the staffing positions (project manager, inspectors, etc.) listed in Exhibit 12 and Appendix 12-1 (the QA/QC Plan). Please provide these qualifications.

Response: All staffing positions listed in Exhibit 12 shall have applicable educational degrees in areas such as construction management or engineering, together with demonstrative experience in project construction. The Appendix 12-1 QA/QC Plan has been updated to include necessary qualifications for staffing positions and is provided herein as Attachment J.

Exhibit 15: Public Health and Safety

1. 16 NYCRR §1001.15(a) requires a statement and evaluation of "the anticipated gaseous, liquid and solid wastes to be produced at the facility during construction and under representative operating conditions of the facility, including their source, anticipated volumes, composition and temperature, and such meteorological, hydrological and other information needed to support such estimates and any studies, identifying the author and date thereof, used in the analysis." The Application does not provide an estimate of the volume of waste wood to be generated by clearing and construction. Please provide an estimate of the volume of waste wood, including tree stumps, to be generated by site clearing and grading. Additionally, please indicate the proposed method of disposal of tree stumps resulting from site clearing and grading.

Response: Where Project Components impact forested land parcels, there will be some amount of tree clearing required. This will be necessary for construction of access roads, panel array, collection routing, and solar shading. The locations of tree clearing are presented on Sheet C-002 of the Preliminary Design Drawings in Appendix 11-1 of the Application. The Applicant is proposing to clear approximately 50 acres of forested area.

The Applicant has conservatively estimated the average diameter at breast height (DBH) of the existing timber at the Project Area at 11 inches. According to the US Department of Agriculture (USDA), a typical northeastern hardwood stand yields approximately 500 trees per acre or roughly 90 tons of biomass not including stumps. Assuming one stump will occupy approximately 0.3 cubic yards of material per stump, 500 stumps will equal roughly 150 cubic yards per acre. Additional small stumps and woody debris on the ground that will need to be cleared for construction will add roughly another 100 yards of woody debris per acre. Therefore, 50 acres would yield roughly 12,500 cubic yards of woody stump debris.

Trees otherwise not claimed by the given landowner will be cut, logged, and removed to local timber/firewood buyers. To reduce impacts to existing land uses, branch and brush debris and tree stumps will be chipped in place and spread to a maximum depth of 3 inches in upland areas (safely away from water resources) onsite so as not to interfere with existing land use practices. Any wood that is chipped will be used as stabilization in accordance with the Project's Stormwater Pollution Prevention Plan (SWPPP) and any other regulatory requirements attached to this Project.

Exhibit 20: Cultural Resources

1. 16 NYCRR §1001.20(a)(2) requires inclusion of a Phase IA archeological/cultural resources study. The Application indicates that a Phase IA/B field survey was done; however, the Application does not include the study report. Please provide this study report.

Response: As requested in East Point Energy Center's Trade Secret Request, submitted to the Presiding Examiner under separate cover on September 25, 2019, Appendix 20-1 of the Application contains the Phase IA/B Archaeological/Cultural Resources Study Report for the Project. This Appendix contains information on the character and locations of archaeological and cultural resources which were requested confidential status. The Applicant provided Appendix 20-1 to the Presiding Examiner on September 27, 2019 under separate cover.

Since that time, the Phase IA/B Study Report has been updated since the submittal on September 27, 2019. The updated Phase IA/B Study Report is being provided under separate confidential cover pursuant to the protective order issued in this proceeding (see Attachment K).

2. 16 NYCRR §1001.20(a)(3) requires "a Phase 1B study, if required, as determined in consultation with OPRHP." The Application indicates that the Phase IB survey was made and summarizes the preliminary results; however, the Application does not provide a Phase 1B study report. Please provide the complete Phase 1B study for SHPO and DPS consultation regarding the need for Phase II studies.

Response: See preceding comment response regarding the Phase IA/B Study Report.

Exhibit 21 Geology, Seismology and Soils

1. Stipulations 21(g)(l)(ii) and (iii) require "maps of the Project Area identifying proposed HDD locations" and a "typical HDD equipment layout diagram," respectively. This information was not provided in the Application. Please provide the maps showing proposed HDD locations and a typical HDD equipment layout diagram.

Response: Horizontal directional drilling (HDD) locations were presented in the Application in Appendix 11-1, specifically, Sheet C-104. The typical HDD equipment layout diagram is included in the Application in Appendix 11-1 on Sheet C-102.

2. Stipulation 21(m)(2) requires "A site-specific karst conditions assessment that will provide the following: (i) identification of manner(s) in which construction activities will minimize excavations in karst-prone areas where excavations may facilitate subsurface erosion; (ii) risks and impacts to karst features and aquifers from directional drilling frac-outs and soil and bedrock displacement during excavations, boring operations, and pile driving will be addressed; (iii) although blasting is not anticipated, if blasting is proposed, a description of potential impacts to karst features from blasting operations." While the Application acknowledges the potential presence of subsurface karst within the Facility Site and discusses mitigation measures for excavations in confirmed karst locations, it does not

describe risks and impacts to karst features and aquifers from directional drilling, frac-outs, and pile driving. Please provide the required discussion.

Response: The risks and impacts of post installation as it pertains to the karst formations are generally limited. The main risk associated with post installation is the potential for highly variable depths to rock which was indicated in select areas in the borings. Karst formations can make achieving the required post lengths for the required capacity challenging. The impacts of post installation on karst formations are expected to be minimal as long as the surface water is adequately diverted away from the post installation areas both during installation and for the lifetime of the Facility. The existing and proposed grades at the Project Area promote positive drainage away from the area where karst features were found and therefore standing surface water is not expected.

The HDD locations proposed for the Project are not located within the area of the site where evidence of karst features was found (i.e., Boring B-4 and the nearby limestone bedrock outcroppings). The subsurface conditions found within the borings drilled near the proposed HDD locations generally consisted of glacial till soils over limestone. Because HDD is not proposed in areas of the site where evidence of karst features is found, risks to karst features from directional drilling are not anticipated.

As described in Exhibit 23 and Appendix 23-2 (Preliminary Stormwater Pollution Prevention Plan [SWPPP]) of the Application, potential impacts to the local water table during the construction phase of the Project can be avoided and mitigated through the use of best management practices (BMPs) and the specific measures outlined in the Preliminary SWPPP.

3. 16 NYCRR §1001.21(q) requires vertical profiles demonstrating typical foundation depths. The boring logs included in Appendix 21-1 (the Preliminary Geotechnical Engineering Report) do not show typical foundation depths for the corresponding Project Facility components at each of the respective boring locations. Please provide updated boring logs indicating the anticipated foundation depth of Project Facility components at each boring location.

Response: Updated boring logs indicating the anticipated foundation depth for Project Components are included herein as Attachment L.

Exhibit 22: Terrestrial Ecology and Wetlands

1. Stipulation 22 requires submission of GIS shapefiles; however, they were not provided. Please provide the GIS shapefiles

Response: The following shapefiles pursuant to the referenced stipulation are being provided to the New York State Department of Public Service (NYSDPS) and NYSDEC under separate cover:

- Shapefiles depicting plant communities identified within the Project Area, electric interconnection lines, and adjacent properties (Stipulation 22(a));
 - GIS shapefiles of all areas of disturbance (vegetation cover types and any concentrations of invasive species in relation to proposed limits of disturbance) (Stipulation 22(b)(1)(iv));
 - Shapefiles depicting the boundaries of all delineated wetlands, NYSDEC mapped wetlands, state-jurisdictional wetlands, predicted wetlands, and all corresponding adjacent areas within the entire Facility Area
 - GIS files of invasive species concentration areas (Stipulation 22(q)(i)).
2. Stipulation 22(i)(4) requires "[i]nformation indicating which delineated wetlands are likely NYSDEC regulated, including those that are part of wetland complexes that meet NYS-criteria for jurisdiction (i.e. 12.4 acres or larger, of unusual local importance and/or support listed species) whether currently mapped or not, will be included. All NYS-regulated wetlands will be identified by NYSDEC's wetland identification number in addition to the code assigned by the Applicant during delineation. The applicant will coordinate with NYSDEC and USACE, so agencies may make final wetland Jurisdictional determination of field verified, mapped and unmapped wetlands. The Application shall include information concerning the jurisdictional status of wetlands that is provided by NYSDEC or USFWS prior to the submission of the Application (if practicable, upon notice to NYSDEC and USFWS as to the estimated filing date of the application)." Additionally, Stipulations 22(m), (n), and (o) all require either a jurisdictional determination or other

information, which must be confirmed by the NYSDEC, and which has not yet occurred. Please coordinate a site visit with the NYSDEC Region 4 Bureau of Ecosystem Health (BEH) in order to confirm wetland boundaries, verify that flagging has occurred, and to determine NYSDEC freshwater wetland jurisdiction within the Project boundary

Response: The Applicant has contacted NYSDEC to coordinate the requested site visit. The Applicant was informed by NYSDEC that the site visit would likely take place during the upcoming growing season. Per Stipulation 22(i)(4), the Applicant will coordinate further with the NYSDEC and the US Army Corps of Engineers (USACE) to determine jurisdictional status of wetlands at the Project Area. Additional clarification is required. Neither the Article 10 regulations, nor the Stipulations require that jurisdictional determinations be issued by the NYSDEC and USACE, or that wetland information be confirmed by NYSDEC before an Application may be deemed compliant by the Chair. . Stipulation 22(i)(4) requires that the Applicant “include information concerning the jurisdictional status of wetlands that is provided by NYSDEC or US Fish & Wildlife Service (USFWS) prior to submission of the Application (if practicable, upon notice to NYSDEC and USFWS as to the estimated filing date of the Application) Information regarding the jurisdictional status of wetlands was included in the Wetland Delineation Report and Exhibit 22 based on regulatory guidance from the NYSDEC and USACE/USFWS. The Wetland Delineation Report was submitted to the NYSDEC via file transfer on August 9, 2019 and no additional information was received from the NYSDEC regarding jurisdictional status prior to submittal of the Application.

Stipulation 22(m) states that the Applicant must present “all state-regulated and jurisdictional wetlands, Federal wetlands, streams, and environmentally sensitive areas that could potentially be impacted by the proposed Project as depicted in preliminary design drawings or wetlands delineations.” The jurisdictional status of wetlands and streams was included in the Application and was based on USACE and NYSDEC regulations and mapping. Stipulation 22(m) does not require confirmation of jurisdictional status by the agencies prior to submittal of the Application .and a determination of compliance by the Chair..

Stipulation 22(n) states that “final impact calculations to the 100-foot adjacent area of NYS-regulated wetlands and associated mitigation will be based on verified delineation

boundaries for jurisdictional wetlands,” however, this Stipulation is specific to updating, if necessary, avoidance and mitigation measures upon final verification of boundaries and a jurisdictional determination. Final impact calculations for the Project will be submitted in the Compliance Filing or in a filing with the Secretary and will be based upon agency-verified boundaries of wetland and stream resources and after a coordinated site visit. For purposes of the Application, per Stipulation 22(i)(4), a jurisdictional determination is not required at this time. Additionally, if final impact calculations indicate the need for mitigation, as per Stipulation 22(n), “a final mitigation plan, as applicable, will be provided in the Compliance Filing after consultation with the NYSDEC and USACE.”

Stipulation 22(o) refers to off-site mitigation and does not state a requirement for submittal of a jurisdictional determination for purposes of the Application. Based on preliminary calculations of wetland and stream impacts, no mitigation is necessary and therefore off-site mitigation is not applicable. If the Siting Board determines that wetland mitigation is required, the Applicant will comply with the stated conditions of the Stipulation, consistent with any issued Article 10 Certificate conditions, and make a filing with the Secretary or in the Compliance Filing regarding the use of off-site locations for mitigation.

3. As noted above, after consulting with NYDEC last week, the Applicant will coordinate a site visit at the Project Area with the NYSDEC and USACE in the spring (2020) to confirm the jurisdictional boundaries of wetlands and streams delineated on-site. Stipulation 22(p)(3) requires “[a] table of state listed species, federally listed species, SSC, and SGCN, occurring or likely to occur within the Project Area, including the following columns:
 - i. Species name;
 - ii. Federal status;
 - iii. NYS status;
 - iv. SSC/SGCN listing;
 - v. Habitat preference identified according to Ecological Communities of New York State (Edinger et al., 2014);
 - vi. Identification of maps from 1001.22(a) that include habitat for each species;
 - vii. Source of information indicating potential or documented presence of species;
 - viii. Indication if species was observed onsite;
 - ix. Discussion of the type of impact (direct and/or indirect) that may occur to each listed species
 - x. Estimated take of each listed species (if applicable);
 - xi. Evaluation of all impact avoidance measures considered and, if full avoidance is not feasible, a discussion of why such actions are not practicable.”Table 22-10 does not include a discussion of the type of impacts that may occur to each listed species or an evaluation of impact avoidance measures. This information does appear throughout the Application, however. Additionally, Table 22-10 misidentifies the State-

listing status of at least two species: Henslow's sparrow is shown as unlisted (it is State-threatened), and Short-eared owl is shown as State-threatened (it is State-endangered). Please update Table 22-10 to make these corrections and either replicate the information in Table 22-10 or identify where in the Application such information can be found.

Response: Table 22-10 has been updated with two additional columns: Potential Impacts and Impact Avoidance Measures. The likelihood of potential impacts due to the presence of potentially suitable habitat for each species are discussed in the Potential Impacts column. Potential direct and indirect impacts for each species is discussed in the Potential Impacts column. Direct and indirect impacts for most of these species is unlikely given the limited area of optimal suitable habitat (e.g., extensive grasslands and extensive, mature forests). There will be no direct or indirect impacts to some species, because their habitats are either not present at the Project Area or Project components are not planned to be sited within their habitat. The State-listing statuses of Henslow's sparrow and Short-eared owl have been updated to State-threatened and State-endangered, respectively. The Revised Table 22-10 is included herein as Attachment M.

4. Stipulation 22(q)(ii) requires "[f]or areas of high invasive species density and as useful for management of individual invasive species, identification of an area and concentration threshold that requires mapping and an individual management plan. GIS files of such concentration areas will be provided to NYSDEC." The Application does not provide identification of an area and concentration threshold that requires mapping and an individual management plan in Exhibit 22 of the Application or in the Invasive Species Management and Control Plan provided in Appendix 22-6. Please supplement the Application with this information.

Response: As discussed in the ISMCP (Appendix 22-6 of the Application), the Applicant identified 12 invasive vegetative species which are listed as prohibited on the *Prohibited and Regulated Invasive Plants* list published by the NYSDEC on September 10, 2014, or listed as a priority invasive according to the Catskill Regional Invasive Species Partnership (CRISP) Partnership for Regional Invasive Species Management (PRISM). These species were identified in low densities throughout the Project Area and no high-density concentration areas of invasive species were identified in the Project Area.

Documented occurrences of invasive species are included on new Figure 22-5, provided as Attachment N. Note, the invasive species occurrences on Figure 22-5 are not to scale and do not represent their full extent. A shapefile of these invasive plant species occurrences will be submitted to the NYSDEC and NYSDPS.

5. Stipulation 22(q)(iii) requires "[a] list of invasive species other than plants included in 6 NYCRR §§575.3 and 575.4 (http://www.dec.ny.gov/docs/lands_forests_pdf/islist.pdf), if any, limited to those incidentally observed during field work, including maps at a scale of 1:1,200 of any identified concentrations of non-native invasive species in areas of proposed disturbance. Additional invasive species not included on this list (e.g. wild parsnip, reed canary grass, etc.) may also warrant specific management and control measures, depending on current populations of such species within and nearby the Project Area." This information is not discussed in the Application. Please identify which invasive species, if any, occur in concentrations that trigger consideration under Stipulation 22(q)(ii), and provide mapping of concentrations.

Response: As described above, 12 invasive vegetative species which are listed as prohibited on the *Prohibited and Regulated Invasive Plants* list published by the NYSDEC on September 10, 2014 or listed as a priority invasive according to the CRISP PRISM. Based on the on-site field surveys performed at the Project Area, the Applicant found invasive species to occur at very small population sizes and very dispersed and therefore do not occur in concentrations that trigger consideration under Stipulation 22(q)(ii).

The following invasive plant species were identified in low densities throughout the Project Area:

- Black Locust (*Robinia pseudocacia*)
- Canada Thistle (*Cirsium arvense*)
- Common Buckthorn (*Rhamnus cathartica*)
- Curly Pondweed (*Potamogeton crispus*)
- Garlic Mustard (*Alliaria petiolata*)
- Glossy Buckthorn (*Frangula alnus*)
- Japanese Barberry (*Berberis thunbergii*)
- Leafy Spurge (*Euphorbia esula*)

- Morrow Honeysuckle (*Lonicera morrowii*)
- Multiflora Rose (*Rosa multiflora*)
- Oriental Bittersweet (*Celastrus orbiculatus*)
- Purple loosestrife (*Lythrum salicaria*)

The Applicant has provided mapping depicting the approximate locations of the 12 invasive species throughout the Project Area and it is included herein as Attachment N. Invasive species data points are approximate locations only and do not depict the locations of the invasive species to scale. Identified occurrences of invasive plant species are provided on Figure 22-5 (Attachment N). Additional invasive plant species observed at the Project Area that are not prohibited or regulated were reed canary grass (*Phalaris arundinacea*), wild parsnip (*Pastinaca sativa*), and mugwort (*Artemisia vulgaris*). Occurrences of both species are also included on Figure 22-5.

6. The cover page for Attachment A of Appendix 22-6 appears at the end of the appendix, however the referenced attachment is not included. Please provide the attachment.

Response: Attachment A of Appendix 22-6 is provided as Attachment O to this response.

Exhibit 23: Water Resources and Aquatic Ecology

1. 16 NYCRR §1001.23(a)(2) requires a map showing the locations of public and private wells within the study area. Figure 23-1 of the Application shows the confirmed and approximate locations of NYSDEC groundwater wells within the Project study area but does not show the confirmed or approximate locations of wells identified in the results of the private well survey. Please provide a revised Figure 23-1, showing all public and private wells, including the wells identified in the results of the private well survey. The figure should distinguish between NYSDEC wells and private wells identified from the survey results, and further distinguish whether well locations are approximate or confirmed.

Response: 16 NYCRR §1001.23(a)(2) and Stipulation 23(a)(2) both require a map be prepared using only publicly available data. The Applicant provided Figure 23-1 in the Application, which identified groundwater aquifers, groundwater recharge areas, and

groundwater wells obtained from the NYSDEC Division of Water Resources. The purpose of the private well surveys, per Stipulation 23(a)(4), was to collect data on the wells within a 2,000-foot radius of proposed blasting and post installation locations (if applicable). Information collected included depth, well construction, approximate yield, and overall water quality characteristics, etc. The well survey also included a summary of the Project, contact information and a description of where the well owner can get more information about the Project as well as an invitation to join the stakeholder list (Stipulation 23(a)(4)). . Well location beyond parcel identification was not required to be part of the scope of the well survey per Stipulation 23(a)(4), as other parts of the stipulations relied on public information for well survey locations.

The Applicant submitted a Freedom of Information Act (FOIA) request for groundwater well information from the New York State Department of Health (NYSDOH) on May 21, 2019, and received a response on June 17, 2019, indicating that their office does not maintain this data. Furthermore, NYSDOH indicated that the Applicant should reach out to NYSDEC and the Schoharie County Department of Health for this information. The Applicant submitted a Request for Access to Public Records to the Schoharie County Department of Health on May 23, 2019, requesting information on groundwater wells within the Project Area. On May 29, 2019, the Applicant received a response from Schoharie County Department of Health indicating that their office does not regulate private wells. All correspondence regarding private well data requests was provided in the Application as Appendix 23-1. During final design, the Applicant would agree to consult with participating landowners, and any adjacent landowners within 1,000 feet of a proposed blasting location (if applicable) or post installation location to obtain private well locations in order to comply with any applicable Article 10 Certificate Conditions.

2. Stipulation 23(b)(l) requires that shapefiles containing "on-site survey data for surface waters" be provided. These shapefiles were not included with the Application filing. Please provide the required shapefiles to NYSDPS and NYSDEC.

Response: Shapefiles of on-site survey data for surface waters pursuant to the referenced stipulation are being provided under separate confidential cover to the NYSDPS and NYSDEC.

Exhibit 24: Visual Impacts

1. 16 NYCRR §1001.24(a)(4) and Stipulation 24(a)(4) require the Visual Impacts Analysis to address the "appearance of the facility upon completion, including building/structure size, architectural design, facade colors and texture, and lighting associated with the collection substation." The substation control room building is mentioned in Exhibit 24, but the Exhibit does not include the required details. Please provide this information.

Response: The requested details regarding the substation control room building are included herein as Attachment P.

Exhibit 25: Effect on Transportation

1. 16 NYCRR 1001.25(a)(l) and Stipulation 25(a)(l) require a conceptual site plan depicting all facility site driveway and roadway intersections, showing "horizontal and vertical geometry, the number of approach lanes, the lane widths, shoulder widths, traffic control devices by approaches, and sight distances." The Application was missing some of this information. Accordingly, please provide:
 - a. The estimated line of sight distances from gates proposed at areas 1 and 2, taking into account the existing trees and vegetation near these locations.
 - b. The estimated sight distances at area 1 and 2 gate locations, incorporating potential trimming measures to the surrounding vegetation. The Applicant should describe any sight distance exceptions from NYSDOT, citing specific standards regarding the allowance of a reduced sight distance due to the existing road intersection at a lesser distance.
 - c. Alternative locations for entrance/exit gates should be considered in the case that NYSDOT sight distances cannot be met at these locations. Updated site plans should be submitted to reflect alternative locations of area 1 and 2 gate locations.

Response: Additional Intersection Sight Distance figures showing the estimated line of sight distances at Areas 1 and 2 have been prepared which take into account existing

trees and vegetation, included herein as Attachment Q. The New York State Department of Transportation (NYSDOT) Highway Design Manual (HDM) allows the use of warning signs if the Intersection Sight Distance cannot be met. Included with Attachment Q are the warning signs being proposed due to the reduced sight distances at Areas 1 and 2.

Given that the access roads are not expected to generate high volumes, and Empie Road is a seasonal/low-use roadway, no additional mitigation measures proposed pertaining to limited Intersection Sight Distance. Relocating the entrance/exit gates at Areas 1 and 2 is not recommended due to existing road grades, specifically, high points both north and south of the proposed entrance/exits along Empie Road.

2. 16 NYCRR §1001.25(f)(2) requires a statement that the Applicant has consulted with operators of airports and heliports that are non-military facilities, has supplied said operators with a detailed map and a requested review and comment on the proposed construction or alterations. Although there are no airports or heliports identified within the Project Study Area (as noted on page 22 of Exhibit 25), there appear to be small airports and heliports potentially within 12 and/or 6 miles of the Project Site, which triggers the consultation process under §1001.25(f)(2). Please provide the required information.

Response: The nearest airport to the Project Area is the Sharon Springs Airport, which has a runway length of 2,570 feet according to the Sharon Airport website.

A Federal Aviation Administration (FAA) Notice of Proposed Construction or Alteration is required as a small portion of Array 5 along Beech Road exceeds an imaginary surface extending outward and upward from the Sharon Airport at a slope of 50 to 1 for a horizontal distance of 10,000 feet. Accordingly, the Applicant will submit the required notice to the FAA. Given the distance from Array 5 to the runway (approximately 3,950 feet) and the low height of the proposed solar array (maximum height of 12 feet), no impacts are anticipated.

When a Notice of Proposed Construction is required, 16 NYCRR §1001.25(f)(2) further requires that the Application include a statement that the Applicant has consulted with the operators of such airports and heliports that are non-military facilities, has provided a map and description of such construction to such operators, and has requested review of and

comment on such construction by such operators. Table 25-12 below lists all identified airports and heliports within 12 miles of the Project Area.

Table 25-12. Airports and Heliports within 12 Miles of the East Point Energy Center Project Area

Name	FAA Identifier	Approximate Distance from Project Area (miles)	Runway Length (feet)	Private or Public Use
Sharon Airport	K31	0.1	2,570	Public
Boyle's Landing Airport	NK91	3.0	1,650	Private
Russell Airport	NY51	6.2	1,700	Private
TGP-249 Heliport	1NY6	7.3	N/A (heliport)	Private
The Ranch Airport	3NY0	8.0	2,200	Private
Hop House Airpark	11NK	8.4	2,400	Private
Hickory Acres Airport	NY88	8.6	2,000	Private
Di Stefano Airpark	3NY4	9.1	1,530	Private
Tomcat Airport	44NY	≥12	2,000	Private
MMC Heliport	07NY	≥12	N/A (heliport)	Private
Valley View Airport	7NK0	≥12	3,000	Private
Schoharie Creek Airport	32NK	≥12	1,600	Private
Hogan Airport	NY05	≥12	3,000	Private

None of the airports/heliports within 12 miles of the Project Area are military airports and none have runways greater than 3,200 feet. Neither of the two heliports are located within three miles of the Project Area. Additionally, only the Sharon Airport is a Public Use airport and all others listed are Private Use. Therefore, in accordance with the requirements of 16 NYCRR §1001.25(f)(2)(i-iii), only the Sharon Airport requires consultation. The Sharon Airport was already identified as a Stakeholder in the Applicant's Public Involvement Program Plan dated November 2017. Accordingly, the airport has received all Project notifications including those required for the Project's first open house (August 2018), the filing of the Preliminary Scoping Statement (September 2018), stipulation commencement (November 2018), the Project's second open house (August 2019), the notice of proposed stipulations (August 2019) and the notice of submission of application (August 2019). The

Applicant sent a consultation letter to the Sharon Airport on December 18, 2019, a copy of which is included herein as Attachment R.

Exhibit 29: Decommissioning

1. 16 NYCRR §1001.29(c) requires, "For wind-powered generation facilities and other facilities to be located on lands owned by another, a description of all site restoration, decommissioning and guaranty/security agreements between the applicant and landowner, municipality, or other entity, including provisions for turbines, foundations, and electrical collection, transmission, and interconnection facilities." It is noted on page 5 of Exhibit 29 that "[t]here are no wind power facilities proposed as part of the Project. Therefore, this section of the Exhibit 29 regulation is not applicable." However, the Application indicates that the facility would be located on lands owned by another. Thus, this regulation applies to the Project. Please provide this information.

Response: As noted in the comment above, the Project will be located on lands owned by another in accordance with Stipulation 29(c). To clarify, the Application included a Decommissioning Plan which applies to lands owned by others, the Project Area, and which describes site restoration and decommissioning of the Project. This plan is provided in Appendix 29-1 of the Application.

The Applicant agrees to work with NYSDPS Staff and the Town of Sharon on an acceptable form of letter of credit. The letter of credit will remain active for the life of the Facility, until it is decommissioned. The Town or NYSDPS could hold the letter of credit and the Applicant would execute a decommissioning agreement with the Town/NYSDPS establishing a right for them to draw on the letter of credit.

Exhibit 32: State Laws and Regulations

1. 16 NYCRR §§1001.32(c) and (d) require a listing and summary table of the "all state approvals, consents, permits, certificates, or other conditions for the construction or operation of the proposed major electric generating facility (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) of a substantive nature, together with a statement that the

facility as proposed conforms to all such state substantive requirements." Exhibit 32 of the Application does not identify the New York State Department of Transportation Use and Occupancy requirements. Please provide this information.

Response: The New York State Department of Transportation Use and Occupancy permit has been included in Revised Table 32-1, below.

Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature

Permit/Clearance	Regulatory Agency	When Required	Potential Studies & Application Requirements	Status
Stormwater Permit for Discharges from Construction Activity (SPDES GP-0-15-002 or that in effect at time of construction)	NYSDEC	Soil disturbance of 1 or more acre	Preparation of a SWPPP	Applicant will submit a Final SWPPP to the Secretary of the Department of Public Service Staff; submit NOI to NYSDEC at least five days prior to construction.
Water Quality Certification (Section 401 of Clean Water Act [CWA])	NYSDEC	Projects that will result in the discharge of dredged or fill material into Waters of the United States (WOTUS)	Wetland and waterbody delineations for this application were completed in July 2017, August 2018, and May 2019	Issuance will be coordinated as part of the Article 10 process.
Historic Preservation Act (Section 14.09)	SHPO	Project must go through review/consultation to determine whether it will affect historic or culturally significant properties	Phase I Assessment	Project has been preliminarily reviewed on SHPO CRIS; Phase IA and IB review coordinated with Article 10 process.
Agricultural and Markets Law – Article 25-AA	NYSDAM	Consultation required as Project is located within certified Agricultural Districts	Review of Agricultural District Mapping & Coordination with NYSDAM	Consult with NYSDAM for recommendations on how to minimize impacts to agricultural operations as part of the Project. Consultation will be incorporated into the Article 10 process.

Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature

Permit/Clearance	Regulatory Agency	When Required	Potential Studies & Application Requirements	Status
Interconnection Studies	NYISO	Interconnection Required	SRIS complete.	Interconnection request submitted 3/24/2017.
Highway Work Permits	NYSDOT	Required for overhead or underground crossings of state highways, access roads from state highways, and temporary widening of intersections at state highways	Complete Standard Permit Application	Approved once routes are final; anticipated immediately prior to start of construction
Highway Use and Occupancy Permit	NYSDOT	Required for all utilities (except municipally owned) constructing improvements in the New York State highway ROW; must be obtained in addition to a	Complete Standard Permit Application	Approved once routes are final; anticipated immediately prior to start of construction

Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature

Permit/Clearance	Regulatory Agency	When Required	Potential Studies & Application Requirements	Status
		Highway Work Permit		