

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State
Board on Electric Generation Siting
and the Environment held in the Town
of North East on January 20, 2021

BOARD MEMBER PRESENT:

John B. Rhodes, Chair

CASE 17-F-0599 - Application of East Point Energy Center, LLC,
for a Certificate of Environmental
Compatibility and Public Need Pursuant to
Article 10 of the Public Service Law for
Construction of a Solar Electric Generating
Facility in the Town of Sharon, Schoharie
County.

ORDER ON RECONSIDERATION

(Issued and Effective January 20, 2021)

INTRODUCTION

On January 7, 2021, the New York State Board on
Electric Generation Siting and the Environment issued an Order
granting East Point Energy Center, LLC (East Point) a
Certificate of Environmental Compatibility and Public Need, with
Conditions.¹ In this Order, an ordering clause that was
contained in the Certificate Order is eliminated because its
inclusion in the Certificate Order was an error of law.

¹ Case 17-F-0599, East Point Energy Center, LLC - Article 10
Generation Siting, Order Granting Certificate of Environmental
Compatibility and Public Need, with Conditions (issued
January 7, 2021)(Certificate Order).

DISCUSSION AND CONCLUSION

Pursuant to the Certificate Order, East Point is authorized to build an electric generating facility that, for relevant purposes, will consist of approximately 350 acres of photovoltaic (PV) solar electric generating panels that will generate no more than 50 megawatts (MW) of electricity in the Town of Sharon, Schoharie County, New York (Project). After issuing the Certificate Order, it was discovered that an error of law was made in the ordering clauses as related to a requirement that East Point submit an application to the Public Service Commission (Commission) for an additional Certificate of Public Convenience and Necessity under Public Service Law (PSL) §68 notwithstanding that it is jurisdictionally exempt from such requirement.

Under PSL §68, no electric corporation may begin construction of electric plant without first having obtained the permission and approval of the Commission. Under the definition of PSL §2(13), an electric corporation includes every corporation and like entity owning, operating or managing any electric plant.² The definition of electric corporation does not include, however, an "alternate energy electric production facility" as defined by PSL §2(2-b), commonly referenced as a qualifying facility. Under PSL §2(2-b), an alternate energy electric production facility is defined as "any solar [facility], . . . together with any related facilities located

² The term electric plant includes "all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power." PSL § 2(12).

at the same project site, with an electric generating capacity of up to eighty megawatts, which produces electricity." Thus, as the Project that will generate no more than 50 MW of electricity, as a matter of law, East Point is not an electric corporation, but is the owner and operator of qualifying alternate energy electric production facility. As such, it is not subject to Public Service Law §68.³ Accordingly, the Certificate Order is amended to remove the requirement that East Point comply with any additional requirements under PSL §68.

It is ordered:

1. Consistent with the above discussion, the Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions, issued by the New York State Board on Electric Generation Siting and the Environment on January 7, 2021, is amended to remove Ordering Clause 4.
2. This proceeding is continued.

(SIGNED)

Board Member

³ Case 13-E-0233, Niagara Generation LLC - Petition for Declaratory Ruling, Declaratory Ruling on Qualifying Facility Status and Order Rescinding Lightened Ratemaking Ruling (issued September 23, 2013); Case 07-E-0674, Advocates for Prattsburgh, et. al - Petition for Declaratory Ruling, Declaratory Ruling on Electric Corporation Jurisdiction (issued August 24, 2007); Case 07-E-0301, Advocates for Prattsburgh, et. al - Petition for Declaratory Ruling, Declaratory Ruling on Electric Corporation Jurisdiction (issued September 24, 2007).