



**SOMERSET SOLAR, LLC**

**MATTER NO. 22-00026**

**§900-2.26 Exhibit 25 Revised**

**Other Permits and Approvals**

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## ACRONYM LIST

§	Section
CEHA	Coastal Erosion Hazard Area
CR	County Route
CWA	Clean Water Act
FAA	Federal Aviation Administration
Facility Substation	Somerset Collector Substation
NOI	Notice of Intent
NYCRR	New York Codes, Rules and Regulations
NYS	New York State
NYSDOT	New York Department of Transportation
OPRHP	Office of Parks, Recreation, and Historic Preservation
ORES	Office of Renewable Energy Siting
SPDES	State Pollutant Discharge Elimination System
SWPPP	Stormwater Pollution Prevention Plan
USACE	United States Army Corps of Engineers
WQC	Water Quality Certification

## GLOSSARY TERMS

<b>Applicant</b>	Somerset Solar, LLC, a subsidiary of The AES Corporation, Inc. (AES), the entity seeking a siting permit for the Facility Site from the Office of Renewable Energy Siting (ORES) under Section (§) 94-c of the New York State Executive Law.
<b>Application</b>	Application under §94-c of the New York State Executive Law for review by the ORES for a Siting Permit.
<b>Facility</b>	The proposed components to be constructed for the collection and distribution of energy for the Somerset Solar Facility, which includes solar arrays, inverters, electric collection lines, and the collection substation.
<b>Facility Site</b>	The limit of disturbance (LOD) that will be utilized for construction and operation of the Facility, which totals about 700 acres on the Project Parcels in the Town of Somerset, Niagara County, New York (Figure 2-1).
<b>Project Parcels</b>	The parcels that are currently under agreement with the Applicant and Landowner, totaling about 1,784 acres in the Town of Somerset, Niagara County, New York, on which the Facility Site will be sited (Figure 3-1).
<b>Project Site</b>	The acreage of the Project Parcels under agreement between the Applicant and the Landowner, consisting of approximately 1,396 acres, in which the Applicant has performed diligence, surveys and assessments in support of Facility design and layout.

## EXHIBIT 25 OTHER PERMITS AND APPROVALS

This exhibit addresses the requirements specified in 19 New York Codes, Rules and Regulations (NYCRR) Section (§) 900-2.26 regarding other permits and approvals.

The Applicant anticipates the Facility shall comply with a United States Army Corps of Engineers (USACE) Clean Water Act (CWA) Nationwide Permit (NWP); therefore, the Applicant will apply for a Section 401 Water Quality Certification (WQC) and will comply with NWP general and regional conditions. A Section 106 review process has been conducted to obtain approval under the National Historic Preservation Act, and the Applicant has received concurrence from the Office of Parks, Recreation and Historic Preservation (OPRHP) on the results of the Phase IA and Phase IB reports, as well as the Historic Architecture report and the proposed mitigation that addresses their identification of potentially significant visual impacts to the Babcock House (a participating property and National Register of Historic Places-eligible property) (Appendix 9-A). To obtain coverage under the New York Department of Conservation (NYSDEC) State Pollutant Discharge Elimination System (SPDES) Permit, the Applicant has prepared a Preliminary Stormwater Pollution Prevention Plan (SWPPP) and will submit a Notice of Intent (NOI) approximately 60 days prior to construction. The Applicant will obtain a Special Hauling Permit from the New York State Department of Transportation (NYSDOT) prior to scheduling the delivery of the Somerset Collector Substation (Facility Substation) transformer and will obtain applicable driveway permits from NYSDOT and Niagara County Department of Public Works (Exhibit 16). A Federal Aviation Administration (FAA) Notice of Criteria review was performed for the Facility, and results determined that FAA review of the Facility would not be required (Appendix 8-A, Attachment 8, Appendix A).

The Facility has been designed to comply with 19 NYCRR §900-2.26 and the Uniform Standards and Conditions and all applicable permits and approvals will be obtained prior to construction, as applicable.

### **25(a) Anticipated Federal or Federally Designated Permits, Consents, Approvals, or Licenses**

The following sections describe the federal or federally delegated permits, consultations, consents, approvals, or licenses that are anticipated to be required for construction or operation of the Facility. Table 25-1 identifies federal permits anticipated to be required for the Facility and the timeline for obtaining these. ORES will be notified of any significant changes to the status of

each of these permits, as needed throughout the construction period for the Facility. No permits are anticipated to be required for the operations period for the Facility.

### **United States Army Corps of Engineers**

To facilitate the request for Jurisdictional Determination submitted to the USACE, the Applicant submitted a copy of the Facility's Wetland and Waterbody Delineation Report (Appendix 14-A) along with other required documents requested to the USACE Buffalo District Office. A site-walk verification was completed with the USACE in September 2022 and the Applicant received both Approved and Preliminary Jurisdictional Determinations for Project Site wetlands and waterbodies from USACE on March 2, 2023.

The Applicant has designed the Facility such that coverage under a CWA NWP is applicable. The permanent impacts to USACE-jurisdictional wetlands are anticipated to fall beneath the NWP threshold that would trigger the need for submittal of a pre-application notification (i.e., application) to the USACE. Given the proposed activities qualify for coverage under a CWA NWP, the Applicant shall comply with the applicable NWP (likely NWP 51), NWP General and Regional Conditions, and New York State (NYS) Section 401 WQC conditions during construction and operation of the Facility.

### **National Historic Preservation Act, Section 106 Compliance**

The Facility will meet the criteria of a NWP under the CWA, and as such, consultation for the Facility will fall under the Section 106 review process. The Applicant initiated formal consultation with the OPRHP on February 18, 2021 to develop the scope and methodology for cultural resources studies for the Facility. Results of historic architecture and archaeological surveys completed are described in Exhibit 9 and reports are included in Appendix 9-C (Phase IA), Appendix 9-D (Historic Architecture), and Appendix 9-E (Phase IB). A copy of all correspondence with OPRHP received to date for the Facility is provided in Appendix 9-A and includes OPRHP concurrence of the Applicant's archaeological survey results and Historic Architecture surveys, including approval of the Applicant's proposal to mitigate potentially significant visual impacts to the Babcock House, a participating property and National Register of Historic Places-eligible property. A copy of all correspondence with state recognized Indian Nations to date for the Facility is provided in Appendix 9-B. Additional information on the record of consultation with OPRHP, and the Section 106 compliance review process is provided in Exhibit 9, Section 9(a).

**Office of Renewable Energy Siting**

Following the final design of the Facility and consultation with Office of Renewable Energy Siting (ORES), the Applicant will prepare and submit a request to obtain a Section 401 WQC indicating that the proposed Facility construction and operation will be in compliance with the water quality standards set forth in Title 6 of the NYCRR §608.9 regarding Use and Protection of Waters. The WQC from ORES will be obtained by the Applicant prior to construction. The ORES will issue the WQC.

**New York State Department of State**

The NYS Department of State Coastal Management Plan describes the boundaries of the NYS coastal Area; explains how NYS coastal uses and resources will be managed; identifies resources and concerns; and provides a set of enforceable policies to be followed by NYS and federal agencies when undertaking actions that may affect these uses and resources. The Facility will comply with the NYS Department of State Coastal Management Plan and will be requesting formal coastal consistency review from NYS Department of State through submittal of an application for review anticipated to be initiated in August 2023 (Appendix 2-C).

**New York State Department of Environmental Conservation Coastal Erosion**

The Applicant consulted with NYSDEC in June and July 2023 regarding overlap of the Facility Site with designated Coastal Erosion Hazard Area (CEHA) and Structural Hazard Area limits mapped by NYSDEC on 1988 coastal erosion hazard maps (NYSDEC 1988) (Appendix 2-C). Minor adjustments to the Facility layout have been completed that removes any infrastructure or construction activities from occurring within these limits in Area 1 that defines the northwest area of the Facility Site located adjacent to Lake Ontario (see Appendix 5-A, Sheet PV-C.02.01). A small portion of a laydown area, fencing and edge of an access road have been adjusted in Area 1 to eliminate siting of infrastructure or construction activities within the Structural Hazard limits that overlap the Facility Site. No portions of the Facility Site are located within NYSDEC-mapped CEHA and Structural Hazard Area limits, and no infrastructure or work will be required within the CEHA. As the Facility will not require work within designated CEHA as defined on NYSDEC 1988 mapping, a permit or variance from NYSDEC is not required (NYSDEC no date a, NYSDEC no date b).

**New York State Department of Environmental Conservation SPDES**

Authority to regulate stormwater discharges in accordance with the federal CWA has been delegated to the NYSDEC. The NYSDEC requires coverage under the NYSDEC SPDES General

Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) for construction projects that disturb 1 or more acres of soil. The Facility will require coverage by a SPDES General Permit, which will be obtained prior to initiating construction activities. The Applicant has prepared a Preliminary SWPPP (Appendix 13-B) for the management of stormwater discharges from the Facility during construction as part of the requirements for coverage under GP-0-20-001. The Applicant will submit the NOI for SPDES General Permit Coverage approximately 60 days prior to construction.

The Applicant will notify ORES of any significant change in the status of each application noted above as applicable and warranted.

### **New York State Department of Transportation**

The NYSDOT oversees issuance of Special Hauling Permits, which are required to move vehicles and/or loads on NYS highways if the vehicle and/or loads exceed the legal dimensions or weights specified in Section 385 of the NYS Vehicle and Traffic Law. NYSDOT oversees issuance of Highway Work Permit for Non-Utility Work and Niagara County Department of Public Works oversees issuance of driveway permits, which will be required for construction of access road entryways for roads under their jurisdiction (NYS routes and Niagara County routes, respectively). The Facility will have 18 new access road entrances along NYS Route 18/Lake Road, Niagara County Route (CR) 108/Hartland Road, and CR 65/Hosmer Road.

The particular vehicles involved in the construction of the Facility have not yet been finalized; however, conventional construction vehicles will be utilized, with the largest vehicle expected to be a semi-trailer (AASHTO WB-67), which has been identified as the design vehicle in the determination of potential restrictions on the haul routes to the Project Site. Except for the delivery of the Facility Substation transformer, the delivery of solar components and construction materials are not anticipated to require oversize or overweight transport vehicles. The transformer delivery is expected to require a Special Hauling Permit from the NYSDOT for an oversize/overweight vehicle. The Applicant will coordinate with the NYSDOT to obtain the required Special Hauling Permit prior to scheduling delivery of the Facility Substation transformer to the Facility Site; and coordinate with NYSDOT and Niagara County Department of Public Works to obtain the highway and driveway permits prior to initiating construction of the access road entrances.

### **Federal Aviation Administration**

The FAA evaluates potential impacts on air navigation for proposed structures that exceed certain criteria, such as structures having heights greater than 200 feet above ground level, and



structures located in close proximity to public use and military airports (14 Code of Federal Regulations §7.9 a-e). A FAA Notice of Criteria review was performed for the Facility, and results determined that FAA review of the Facility would not be required (Appendix 8-A, Attachment 8, Appendix A).

**Table 25-1. Anticipated Federal or Federally Designated Permits, Consents, Approvals, or Licenses for Construction**

Agency	Permit, Consent, Approval, or License	Estimated Timeline for Submittal
United States Army Corps of Engineers	Clean Water Act Nationwide Permit	Approved and Preliminary Jurisdictional Determinations received March 2, 2023 for Project Site wetlands and waterbodies. June 2024
NYS	Section 401 Water Quality Certification	Following final Facility design and consultation with ORES; prior to construction. June 2024
Office of Parks, Recreation and Historic Preservation (OPRHP)	OPRHP Concurrence, Section 106 Review	Initial consultation on February 18, 2021; concurrence on results of Phase IA received November 4, 2021, and Phase IB surveys received November 9, 2022. OPRHP concurrence, with conditions, on Historic Architecture report and proposed mitigation plan for the Babcock House received on February 15, 2023. OPRHP concurrence with proposed mitigation that addresses potentially significant visual impacts to the Babcock House is anticipated to be received from OPRHP in September 2023 Section 106 review will be led and directed by United States Army Corps of Engineers as part of the Nationwide Permit process and Section 106 review process, June 2024
New York State Department of Environmental Conservation	Consistency with Coastal Management Plan	The Facility design was adjusted in July 2023 to remove any infrastructure and work areas that were located within the Structural Hazard Area limit in Area NYSDEC reviewed the revised layout and acknowledged this change on July 21, 2023. As no infrastructure or work will occur within the Coastal Erosion Hazard Area limits mapped along the shoreline with Lake Ontario, a permit or variance from Coastal Erosion Hazard Area permitting requirements is not required from NYSDEC.

Agency	Permit, Consent, Approval, or License	Estimated Timeline for Submittal
New York State Department of Environmental Conservation	State Pollutant Discharge Elimination System Permit (GP-0-20-001)	Submit Notice of Intent approximately 60 days prior to construction, obtain permit prior to construction December 2023
New York State Department of State	Coastal Consistency Determination	Formal submission of materials and request for coastal consistency review August 2023
New York State Department of Transportation	Special Hauling Permit for Oversize/Overweight Vehicles and Highway Work Permit for Non-Utility Work	Prior to construction December 2023
Federal Aviation Administration	None required	Notice of Criteria review was performed for the Facility, and results determined review of the Facility would not be required.

### 25(b) Statement of Other Applications or Filings

The Applicant does not have or know of others who have pending applications or filings for any federal or federally designated, federal or state recognize Indian Nation, state or local permit, consent, approval or license which concerns the Facility. The Applicant will notify ORES of any significant change related to other federal or federally delegated applications or filings related to the Facility.

## REFERENCES

New York State Department of Environmental Conservation (NYSDEC). No date a. Coastal Erosion Management Permits: Regulated Activities and Uses. Available online at: [Coastal Erosion Management Permits: Regulated Activities and Uses - NYS Dept. of Environmental Conservation](#). Accessed August 4, 2023.

NYSDEC. No date b. NYSDEC Coastal Erosion Management Application Checklist. Available online at: [NYSDEC Coastal Erosion Management Application Checklist](#). Accessed August 4, 2023.

NYSDEC. 1988. Coastal Erosion Hazard Area Map: Town of Somerset, Maps 1, 2 and 3 of 8. Available online at: <https://www.dec.ny.gov/fs/projects/coastal/>. Accessed June 27, 2023.