



**BROOKSIDE SOLAR, LLC**

**Matter No. 21-00917**

**900-2.25 Exhibit 24**

**Local Laws and Ordinances**

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## Acronym List

AC	Alternating current
AES	The AES Corporation, Inc.
Ag	Agricultural Zoning District
CLCPA	Climate Leadership and Community Protection Act
kW	kilowatt
ORES	Office of Renewable Energy Siting
M	Mixed-Use Zoning District
MW	megawatt
NEC	National Electric Code
NYCRR	New York Codes, Rules and Regulations
R/R	Rural-Residential Zoning District

## Glossary Terms

**Applicant**

Brookside Solar, LLC, a subsidiary of The AES Corporation, Inc. (AES), the entity seeking a siting permit for the Facility from the Office of Renewable Energy Siting (ORES) under Section 94-c of the New York State Executive Law.

**Facility**

The proposed components to be constructed for the collection and distribution of energy for the Brookside Solar Project, which includes solar arrays, inverters, electric collection lines, and the collection substation.

**Facility Site**

The parcels encompassing Facility components which totals 1,471 acres in the Towns of Burke and Chateaugay, Franklin County, New York (Figure 2-1).

## **Exhibit 24: Local Laws and Ordinances**

This Exhibit provides information required in accordance with the requirements of §900-2.25 of the Section 94-c Regulations.

Prior to compiling this exhibit, the Applicant consulted with the local municipalities regarding the local requirements applicable to the Facility. In February 2021, the Applicant sent letters to the Towns of Burke and Chateaugay to consult with the local municipalities providing them with the information required by §900-1.3 of the 94-c Regulations. Following the meeting, the Applicant provided each Town with a list of the applicable local ordinances, laws, resolutions, regulations, standards, and other requirements of a substantive nature required for the construction and operation of the Facility, including a list of those provisions which the Applicant may need to seek waivers for (see Appendix 24-3). The Towns have not indicated to the Applicant that there are any other applicable laws or substantive requirements other than those identified by the Applicant in the attached correspondence and this Exhibit.

### **24(a) Substantive Requirements**

This section identifies the local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the construction or operation of the proposed Facility that are of a substantive nature.

The proposed Facility is located within the Towns of Chateaugay and Burke, Franklin County, New York. The information presented in this exhibit is in accordance with the Town of Burke's Zoning Law (1991) (Appendix 24-1)<sup>1</sup> and Solar Energy Law (2019)<sup>2</sup>, and the Town of Chateaugay's Solar Energy Law (2018)<sup>3</sup> (see Appendix 24-2).

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<sup>1</sup> The Town of Burke adopted the Zoning Law in 1991  
(<https://burkeny.org/wp-content/uploads/2019/11/1991-Law-1-Zoning-Law-1.pdf>)

<sup>2</sup> The Town of Burke adopted the Solar Energy Law in 2019  
(<https://burkeny.org/wp-content/uploads/2019/11/2019-Law-1-Burke-Town-Solar-Law.pdf>)

<sup>3</sup> The Town of Chateaugay adopted the Solar Energy Law in 2018  
([https://locallaws.dos.ny.gov/sites/default/files/drop\\_laws\\_here/ECMMDIS\\_appid\\_DOS20181030060052/Content/090213438022399d.pdf](https://locallaws.dos.ny.gov/sites/default/files/drop_laws_here/ECMMDIS_appid_DOS20181030060052/Content/090213438022399d.pdf))

The Towns of Burke and Chateaugay have identical Solar Energy Laws, which define solar energy systems into three tiers; “Tier 1 Solar Energy Systems are for onsite solar energy consumption or net metering only and includes roof-mounted solar energy systems on residential or farm structures and building-integrated solar energy systems. Tier 2 Solar Energy Systems include ground-mounted solar energy systems with system capacity up to 25 kilowatts (kW) of alternating current (AC) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months for onsite or net-metering use only. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 or Tier 2 Solar Energy Systems. Therefore, since the proposed Facility will generate 100 megawatts (MW) of energy and the energy will be distributed throughout New York State, the proposed Facility is defined as a Tier 3 Solar Energy Facility (Town of Chateaugay, 2018; Town of Burke, 2019).

Under §7(b) of the Towns of Burke’s and Chateaugay’s Solar Energy Laws, Tier 3 Solar Energy Systems are an allowable use anywhere in the Town, and therefore, the Facility is a permissible use in all zoning districts in both Towns (Town of Chateaugay, 2018<sup>1</sup>; Town of Burke, 2019).

The substantive provisions of both the Towns laws are listed below:

- The Town of Chateaugay Solar Energy Law as provided by Local Law #3 of 2018, and Town of Burke Solar Energy Law as provided by Local Law #1 of 2019 (see Appendix 24-2):General Requirements Section 7.C.vii.1. Underground requirements
- General Requirements Section 7.C.vii.2. Vehicular paths
- General Requirements Section 7.C.vii.3. Advertising signage
- General Requirements Section 7.C.vii.4. Safety signage
- General Requirements Section 7.C.vii.5. Glare
- General Requirements Section 7.C.vii.6. Lighting
- General Requirements Section 7.C.vii.7. Setback
- General Requirements Section 7.C.vii.8. Fencing requirements
- General Requirements Section 7.C.vii.9. Prime Farmland

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<sup>1</sup> The Town of Chateaugay does not have a Zoning Law.

- General Requirements Section 7.C.vii.10. Vegetation
- General Requirements Section 7.C.vii.11. Electrical and/or building certifications
- General Requirements Section 7.C.vii.12. Site access<sup>2</sup>
- General Requirements Section 7.C.vii.14. Invertors location
- Decommissioning Plan Section 7.E.i. Decommissioning plan guidelines
- Decommissioning Plan Section 7.E.iii. Security

**24(b) Substantive Requirements Applicable to Interconnections in Public Rights-of-Way**

The Applicant has determined that there are no substantive requirements in the local laws or regulations applicable to the interconnection or use of water, sewer, or telecommunication lines in public rights-of-way that are applicable to the Facility.

**24(c) Local Substantive Requirements Applicant Requests ORES Not Apply**

The 94-c Regulation expressly preempts local procedural requirements, such as permits and approvals that would otherwise be required by the host municipalities for construction and operation of the Facility (i.e., special use permit). However, local substantive requirements (i.e., setbacks, height limits, lot coverage requirements) will be applied to the Facility unless ORES finds them to be unreasonably burdensome relative to requirements under 94-c.

Generally, the Applicant has designed the Facility to comply with local laws and has made design changes to the proposed Facility to bring the Facility into compliance with the substantive provisions of the Towns' local laws. For example, the Facility has been designed to comply with Town setbacks, although in some instances, the setback distances are greater than those required under 94-c. For the provisions discussed below the Applicant determined that compliance with these provisions would be impracticable and could result in significant costs for no actual benefit to the community. The Applicant, therefore, requests the waivers listed below because, as applied to the Facility, the provisions would be unreasonably burdensome in view

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<sup>2</sup> General Requirements Section 7.C.vii.13 is related to battery storage and therefore not applicable to the Facility as currently proposed.

of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the proposed Facility. Exhibits 6, 17, and 19 of the Application provide an extensive overview of the Facility's environmental benefits, consistency with state energy policy, and contribution toward the CLCPA mandates; those discussions are incorporated by reference here to support waiver of the below provisions.

The Applicant requests ORES waive one provision in the Town of Burke and one provision in the Town of Chateaugay related to decommissioning. Overall, the Applicant submits that the below provisions are unreasonably burdensome in view of the CLCPA targets and environmental benefits of the proposed Facility, these provisions impose additional costs that are unnecessary and out-of-step with State standards. By contrast, the burdens imposed on the community if a waiver were granted for these provisions are minor to nonexistent, as described more fully below.

### **Towns of Chateaugay and Burke – Solar Energy Law (2018 and 2019)**

**§ 7.E.iii.** *The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System.*

In general, the decommissioning requirements in the Solar Law are largely procedural in nature, and thus preempted by 94-c. However, the security requirements above appear to contain substantive requirements that could be unworkable as applied to the Facility. Section 7.E.iii. of the Towns' Solar Energy Laws requires "the amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System," this provision is more restrictive than the 94-c requirements (19 NYCRR 900-2.24(c)) and Uniform Standards and Conditions (19 NYCRR 900-6.6(b)) for decommissioning, which imposes a 15% contingency and no escalator. The 15% contingency more than protects the Towns should decommissioning be required. Decommissioning contingencies account for a level of uncertainty that accompanies the calculation of costs to be incurred at some point in the future. Actual costs may be more or less than the estimate prepared depending on the conditions present at the time of decommissioning. A 15% contingency is more than sufficient to cover unexpected costs associated with the decommissioning of a solar facility, and any uncertainty related to inflation and costs increases is already covered by the 94-c regulations (19 NYCRR 900-10.2(b)) which



requires that the security be reviewed every fifth year, thereby eliminating the need for a 2% escalator and increased contingency.

Requiring a 125% estimate with a 2% escalator would cause the decommissioning estimate to overestimate costs, causing additional costs to the Facility in the form of the financial security, which creates a financial disincentive with little to no actual benefit to the community. Given that ORES has already determined that a 15% contingency is appropriate, the benefits of applying this provision are negligible. This is not the type of requirement that could be accommodated by a design change to the Facility, nor is there a particular adverse effect of waiving this requirement on the community. The Applicant will already be required to provide decommissioning financial security to protect the Towns in the unlikely event that the Facility owner does not conduct decommissioning and site restoration on its own. A cost estimate for decommissioning has been provided in Appendix 23-1, Decommissioning and Restoration Plan. There is no basis to impose additional financial burdens on the Facility by requiring more financial security than ORES has already adjudged to be unnecessary. Moreover, applying local laws that conflict with the standards under 94-c creates unnecessary uncertainty for developers of renewable energy facilities and works to undermine the standards and conditions promulgated under the regulations, which is contrary to the goals of the CLCPA and the needs of consumers.

As part of the 94-c process, the Applicant has prepared a Decommissioning and Site Restoration Plan for site restoration. The Plan includes a protocol for removal of panel arrays in the event of abandonment and a net decommissioning/site restoration estimate to be allocated between the Towns based on the estimated costs associated with removal and restoration of facilities within each Town. The Applicant followed the requirements of 94-c when preparing the net decommissioning and site restoration estimate. Because the Applicant is preparing the Decommissioning and Site Restoration Plan based on 94-c requirements, which supplant the Town's local laws, the Applicant requests ORES elect to not strictly apply this regulation considering the benefits of the Facility and the directives of the CLCPA.

## 24(d) List of Applicable Local Substantive Requirements and Compliance Assessment

Table 24-1 below presents a list of all applicable substantive requirements to the Facility and a description of how the Applicant plans to adhere to those requirements.

**Table 24-1 List of Existing Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements**

Local Requirements	Facility Compliance
<b>Local Laws</b>	
<b>Town of Chateaugay Solar Energy Law (2018)</b>	
<b>Town of Burke Solar Energy Law (2019)</b>	
<p>§ 7.C.vii.1. Underground requirements. All onsite utility lines shall be placed 48 inches underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.C.vii.2. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.C.vii.3.a. No advertising signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, said information shall be depicted within an area no more than [8] square feet.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.C.vii.4.a. Safety signage shall include equipment specification information, safety information, and 24-hour emergency contact information including a toll-free phone number.</p> <p>§ 7.C.vii.4.b. As required by the National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.</p> <p>§ 7.C.vii.4.c. The marking shall be placed adjacent to the main service disconnect in a location clearly visible from the location where the lever is operated.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>

**Table 24-1 List of Existing Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements**

Local Requirements	Facility Compliance
<b>Local Laws</b>	
<b>Town of Chateaugay Solar Energy Law (2018)</b>	
<b>Town of Burke Solar Energy Law (2019)</b>	
§ 7.C.vii.5. Glare. All Solar Panels shall have anti-reflective characteristics.	The Facility will comply with the substantive standards as identified in this Section.
§ 7.C.vii.6. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.	The Facility will comply with the substantive standards as identified in this Section.
§ 7.C.vii.7. There is a setback requirement of 500 feet from any residential structure and 50 feet from the right-of-way of any public road or private right-of-way. An affected homeowner may irrevocably waive the residential setback requirement, in writing, which must be signed and notarized and filed with the application.	The Facility will comply with the substantive standards as identified in this Section.
§ 7.C.vii.8. All mechanical equipment shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.	The Facility will comply with the substantive standards as identified in this Section.
§ 7.C.vii.9. All Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction guidelines of the New York State Department of Agriculture and Markets.	The Facility will comply with the substantive standards as identified in this Section.
§ 7.C.vii.10. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.	The Facility will comply with the substantive standards as identified in this Section.
§ 7.C.vii.11. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.	The Facility will comply with the substantive standards as identified in this Section.

**Table 24-1 List of Existing Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements**

Local Requirements	Facility Compliance
<b>Local Laws</b>	
<b>Town of Chateaugay Solar Energy Law (2018)</b>	
<b>Town of Burke Solar Energy Law (2019)</b>	
<p>§ 7.C.vii.12. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal, at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.</p>	<p>The Facility will work with local emergency responders to ensure access is maintained at an acceptable level.</p>
<p>§ 7.C.vii.14. Invertors shall be located or installed in such a manner as to minimize or eliminate any possible noise as measured at the nearest lot line.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.E.i. Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the Owner and Operators' expense. The Owner and Operators shall be jointly and severally liable for this expense. The cost of decommissioning may come from any security held by the Town, in the Town's sole discretion.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.E.iii. (1). The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. The decommissioning amount shall be reduced by the amount of the estimated salvage value of the Solar Energy System. A deposit equal to 2 years' premium for the surety bond shall be deposited in a special Town escrow account to be set up by and maintained by the Town for the term of the Solar Energy System.</p>	<p>Brookside requests the Office elect to not apply this local requirement. The Facility decommissioning provisions will comply with the Section 94-c regulations, which include the amount of the bond or security being 115% the cost of removal of the Tier 3 Solar Energy System and the restoration of the property being under a 5-year review for inflation.</p>

**Table 24-1 List of Existing Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements**

Local Requirements	Facility Compliance
<b>Local Laws</b>	
<b>Town of Chateaugay Solar Energy Law (2018)</b>	
<b>Town of Burke Solar Energy Law (2019)</b>	
<p>§ 7.E.iii. (2). Any surety bond must be provided by a surety bond company licensed and authorized to do business in the State of New York with an AM Best rating of A or better (or equivalent). In any event, the bond and the surety bond company must be acceptable to the Town Attorney, in their sole discretion.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.E.iii. (3). The Surety Bond shall continue to secure the decommissioning plan despite any subsequent changes in ownership or management of the facility.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.E.iii. (4). In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the Decommissioning Plan is completed.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.E.iii. (5). Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of the Solar Energy System to implement the Decommissioning Plan. The Decommissioning Plan must be completed within 360 days of notification.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>
<p>§ 7.E.iii. (6). If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, use the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the Decommissioning Plan.</p>	<p>The Facility will comply with the substantive standards as identified in this Section.</p>

**24(e) Agencies with Review, Inspection, or Certification Responsibilities**

The New York State Uniform Fire Preservation and Building Code and the Energy Conservation Construction Code of New York State (Uniform Code) has limited applicability to solar facilities.

Solar facilities that are not associated with a building or other structure regulated by the Uniform Code do not meet the definition of a “building” provided in Article 18 of the New York State Executive Law (§372 and §378). Connection through a utility company’s power grid is not considered a direct connection between a solar panel and a building. Therefore, the applicability of the Uniform Code to the Facility is limited and does not extend to installation or assembly of panels and power collection components of the Facility.

In 2006, the Towns of Burke and Chateaugay each adopted a local law titled Providing for the Administration and Enforcement of the State Building Code (Town of Burke, 2006; Town of Chateaugay, 2006). These local laws established the Code of Enforcement Officer role within the Towns of Burke and Chateaugay (see Appendix 24-3).

The Towns of Burke and Chateaugay’s Code Enforcement Officer is qualified by the Secretary of State to review and approve building plans, inspect construction work, and certify compliance with the New York State Uniform Fire Preservation and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of local applicable electrical, plumbing, and building codes.

The Town of Burke’s website lays out a building permit application process, which requests information for the proposed facility regarding the type of building, construction details, and information on the proposed facilities engineers, architects, and contractors. Additionally, the Town of Burke’s website identifies the building permit application fees. The website can be found here <https://www.burkeny.org/code-officer/>. The Town of Chateaugay’s website did not identify the building permit application process.

The Applicant has not yet entered into agreements or made arrangements to pay costs with the Town of Burke or Chateaugay for review or approval of review, inspection, or certification at the time of this filing. Costs paid to these entities are anticipated to be through application fees and host community agreements; an estimate of local permitting fees is included in Exhibit 18.

Alternately, the Applicant may request to submit the building plans to the Department of State, in order to obtain compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing, or building code. In that case, the Applicant would arrange for the Department’s review, approval, inspection, and compliance

certification, including any arrangements to pay for the costs for any necessary consultant services to the extent such fees are not paid through the Applicant's application fee.

## 24(f) Zoning

The Facility Site within the Town of Burke is located in the Agricultural (Ag), Rural/Residential (R/R), and Mixed Use (M) (which is defined as a combination of residential, agricultural, and commercial/industrial) zoning districts (Town of Burke, 1991). The Town of Chateaugay does not have zoning, and therefore, does not have a zoning district map. Under §7(b) of the Towns of Burke's and Chateaugay's Solar Energy Laws, Tier 3 Solar Energy Systems are an allowable use anywhere in the Town, and therefore, the Facility is a permissible use in all zoning districts (Town of Chateaugay, 2018; Town of Burke, 2019).

See Table 24-2 below for a breakdown of each parcel ID in the Facility Site and its zoning district designation.

**Table 24-2 Brookside Solar Energy Center Parcels and Associated Zoning District Designation**

Parcel ID	Zoning District
<b>Town of Burke</b>	
59.-3-2.100	Ag
59.-3-3	Ag
59.-3-6.100	Ag
59.-3-16.100	Ag
59.-3-16.200	Ag
59.-4-9	R/R
59.-4-12	R/R
73.-3-2	M

## Conclusions

The Applicant has generally designed the Facility to comply with local laws and has made design changes to the proposed Facility to bring it into compliance with the substantive provisions of the Towns' local laws. The Applicant requests ORES waive only one provision in

the Towns regarding the Decommissioning and Site Restoration Plan, since the Applicant is preparing the Decommissioning and Site Restoration Plan based on 94-c requirements, which supplant the Town's local laws, the Applicant requests ORES elect to not apply this regulation. Under the Towns' Solar Energy Laws, Tier 3 Solar Energy Systems are an allowable use anywhere in the Towns. The Facility has been designed to comply with 19 New York Codes, Rules and Regulations (NYCRR) §900-2.25 and the uniform standards and conditions and consistency with the local laws and ordinances has been achieved to the maximum extent practicable.



## References

- Development Authority of the North Country. (2021). Franklin County Internet Mapping Application. Publicly Available Tax Parcel ID Data. Available at: <https://maps.dancgis.org/ima/>. Accessed February 2021.
- Town of Burke. (1991). Town of Burke Zoning Law. Available at: <https://burkeny.org/wp-content/uploads/2019/11/1991-Law-1-Zoning-Law-1.pdf>. Accessed February 2021.
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