

1 STATE OF NEW YORK
2 OFFICE OF RENEWABLE ENERGY SITING

3

4 **ORES DMM Matter Number 21-02480**

5 Application of

6 **HORSESHOE SOLAR ENERGY, LLC**

7 for a Siting Permit for a Major Renewable
8 Energy Facility

9 Pursuant to Section 94-c of the New York State
10 Executive Law to Develop, Design, Construct,
11 Operate, Maintain, and Decommission a
12 180-MW Solar Energy Facility located in the
13 Town of Caledonia, Livingston County, and the
14 Town of Rush, Monroe County.

15

16 **HELD BEFORE: ALJ GREGG SAYRE**

17 **HELD AT:** Avon Inn
Grand Ballroom
18 55 East Main Street,
Avon, New York 14414

19 **DATE:** Wednesday, April 27, 2022

20 **TIME:** 7:00 p.m. to 8:45 p.m.

21

22
23 **REPORTED BY:** SUSAN M. RYCKMAN, CP,
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1 **ALJ SAYRE:** I call Case 21-02480:
2 Application of Horseshoe Solar
3 Energy, LLC, for a permit pursuant to Section 94-c
4 of the Executive Law for the construction of a
5 180-megawatt Solar Facility in the Town of
6 Caledonia, Livingston County, and the Town of
7 Rush, Monroe County.

8 Good evening. My name is Greg Sayre.
9 I am an Administrative Law Judge with the New
10 York State Department of Public Service. I'll
11 be presiding at today's public comment hearing
12 which, for the record, is being held on
13 April 27th, 2022, at the Avon Inn, at 55 East
14 Main Street in Avon, New York.

15 On December 23, 2021, the applicant,
16 Horseshoe Solar Energy, LLC, filed a transfer
17 application with the New York State Office of
18 Renewable Energy Siting -- which I will refer
19 to as ORES, O-R-E-S -- for a permit to
20 construct and operate a 180-megawatt solar
21 energy facility in Caledonia and Rush.

22 This application was previously
23 being reviewed under Article 10 of the Public
24 Service Law. Because an application
25 completeness determination was made in the

1 Article 10 proceeding, as a matter of law, the
2 transfer application was deemed complete upon
3 filing with ORES.

4 On February 22, 2022, a Combined
5 Notice of Availability of Draft Permit
6 Conditions, Public Comment Period, and Public
7 Comment Hearing, and a Commencement of the
8 Issues Determination Procedure for this matter
9 was issued and posted on ORES' -- yes, on
10 ORES' web site. The combined notice included
11 the scheduling of yesterday's public comment
12 hearing through the WebEx platform, and
13 instructions on how to attend that hearing.

14 On March 30th, a Supplemental
15 Combined Notice of Availability of Draft
16 Permit Conditions, Public Comment Period, and
17 Public Comment Hearing, and a Commencement of
18 the Issues Determination Procedure for this
19 matter was issued and posted on the ORES web
20 site. The supplemental combined notice
21 included the scheduling of today's public
22 comment hearing.

23 As noted during yesterday evening's
24 public comment hearing, copies of these
25 notices were published in the Rochester

1 Democrat & Chronicle, the Livingston County
2 News, and the Genesee Valley Pennysaver, and
3 on the ORES web site.

4 Assisting me with the hearing today
5 are quite a few members of ORES, and I thank
6 you very much for your help in setting all
7 this up.

8 The purpose of today's hearing is to
9 solicit public comment on Horseshoe Solar
10 Energy's application and draft permit. This
11 is not a question and answer session, but an
12 opportunity to hear your comments.

13 This is not the only opportunity for
14 public comment. If you do not want to speak
15 at today's hearing, you may submit written
16 comments. The details of filing written
17 comments are on a fact sheet, I have a few of
18 them up here, and there are a few of them back
19 at the table at the corner.

20 You can post comments electronically
21 on the ORES siting, on the ORES web site,
22 which is ores.ny.gov. Once on the site, you
23 can pick permit applications, and DMM Matter
24 21-28 -- 02840, and post your comments
25 electronically.

1 You may also email comments to
2 general@ores.ny.gov.

3 You can also send comments by
4 regular mail to the Office of Renewable Energy
5 Siting, Empire State Plaza, 240 State Street,
6 P-1 South, J Dock, Albany, New York, 12242.
7 And again, the details are here in the fact
8 sheet and also in the combined notices.

9 Written comments will be accepted
10 until 5 p.m. on April 28th of this year.

11 Written and oral comments are given
12 equal consideration.

13 In order to speak at today's
14 hearing, you need to fill out a card. I've
15 got quite a few of them here, which you can
16 find at the table near the entrance. I will
17 keep a stack of cards up here, which will be
18 replenished as new cards are filled in. And I
19 will call speakers in order, which I will sort
20 quickly through to get elected officials
21 first.

22 Some people have already filled out
23 cards, and it's definitely not too late to do
24 so. I am glad to keep this hearing opened
25 until we run out of cards, or we get kicked

1 out of the room by the Avon Inn because we
2 don't have the room for the whole night.

3 If you spoke at yesterday's hearing,
4 there is no need to repeat the same comments
5 this evening.

6 We have enough speakers that I am
7 asking everyone to limit their comments to
8 approximately five minutes. I know the notice
9 said it might be three. I am going to go with
10 five. If you start running much over that
11 time frame, I will interrupt you, and ask you
12 to summarize and finish up.

13 In order not to waste time while
14 people come up to the microphone, I am going
15 to call both the immediately next speaker and
16 the on-deck speaker. I ask the on-deck
17 speaker to hang around reasonably close, maybe
18 in one of these front rows, to the microphone
19 so that you can speak shortly after the
20 preceding speaker finishes.

21 When you start speaking, please
22 state your name and your address. Please
23 spell your name, and if you are speaking on
24 behalf of an organization, please identify who
25 it is that you are representing.

1 All comments this evening are being
2 recorded by our court reporter. So it is
3 important that you speak slowly and clearly so
4 that your statement is recorded correctly.

5 For the courtesy of others wishing
6 to speak, I am asking you to please summarize
7 lengthy statements. You can submit the
8 lengthier written statements by email or mail,
9 as I've described above and as noticed in the
10 notices.

11 The information on how to submit
12 comments is in that first combined notice that
13 I referred to that was issued on February 22nd.
14 It's on the ORES web site at ores.ny.gov.

15 Let me take -- I am going to off and
16 go through the cards that I have so far.

17 Please pardon me if I get your names
18 wrong. First speaker Gerald Kusse, Town of
19 Rush Supervisor. On deck is John Kane from
20 the Mohawk People.

21 Right there at the podium. There is
22 a microphone available to you right there.

23 **MR. KUSSE:** Thank you, Judge Sayre.
24 Good evening. Is it working? I hope.

25 **ALJ SAYRE:** Yes.

1 **MR. KUSSE:** My name is Gerald Kusse,
2 as you've heard the judge correctly pronounce
3 it, or came very, very close. And that's good
4 enough for me.

5 I am the Supervisor of the Town of
6 Rush, New York, which is included in the area
7 that Invenergy with our Horseshoe project want
8 to expand to.

9 I retired from Eastman Kodak Company
10 in December of 1991. I then retired from a
11 wholly owned subsidiary company of Eastman
12 Kodak in 1997, where I had served as the
13 Director of Human Resources for everything
14 from Toronto, Canada, to Mexico City and
15 Mexico, and everything from the Atlantic to
16 the Pacific.

17 In 1992, my wife and I purchased a
18 large parcel of land, large to us, of land in
19 West Rush with the intent to develop the
20 parcel for rural residency.

21 In the following 28 years, the Kusse
22 children were raised on that particular parcel
23 of land, and we always emphasized to them a
24 minimal disturbance of the area's rich and
25 mostly undisturbed natural resources.

1 In 2000 -- the year 2000, I was
2 appointed as the Code Enforcement Officer for
3 the Town of Rush. I didn't know that I
4 couldn't stop work. I had to keep doing
5 something. And I went to work for the Town of
6 Rush as the Code Enforcement Officer. And I
7 served in that capacity for 16 years, making
8 sure that projects proposed for development
9 complied with town laws, land-use regulations,
10 and New York State Building Codes.

11 In 2016, I was elected to serve on
12 the Rush Town Board, where I participated in
13 the development of the first Solar Law. And
14 in 2020 I was elected to serve as the Town
15 Supervisor.

16 A lot of people have said to me, why
17 would you do such a thing? Well, part of it
18 was because I didn't like the way things were
19 going, and especially with the State and their
20 dictatorial process for putting solar
21 facilities in areas that are already committed
22 to residential dwellings.

23 When I first found out that in the
24 Town of Rush there are over 60 properties that
25 have been occupied by residential owners, and

1 over on the Caledonia side, there was a half
2 dozen, that just didn't seem right to me.

3 And I've always felt that it was
4 very important that I, as the representative
5 of the people's election, represent what the
6 people want. And after going around and
7 talking to people, I found out that, wow,
8 something is wrong with this picture. And I
9 apologize, because I thought something was
10 wrong with this from day one.

11 There are various stories going
12 around about how these projects are funded. I
13 really don't know how they're funded.

14 I do know that in the Town of Rush,
15 the project encroaches upon the people who
16 have lived there for years. Many of them have
17 lived there for years, and I don't think
18 that's appropriate.

19 Not only are the lands occupied by
20 people for years, but the history in those
21 areas goes way back before -- before -- longer
22 than I can remember, and you might be able to
23 tell, I'm pretty old. At 82 years of age,
24 maybe I should be on a beach in Daytona, but
25 I'd rather be here, and trying to make sure

1 that the right thing is done for the people.

2 I leave you with one thought, and
3 that is, at a board meeting in the Town of
4 Rush three years ago, after hearing
5 conflicting and frustrating statements about,
6 oh, it's got to go here, it's got to go there,
7 it's got to go someplace else, I asked in
8 public the representative, why the project
9 couldn't be put on State land down in
10 Industry, State land owned by the State? And
11 the response I got was, oh, gosh, we wouldn't
12 want to do that, the State is too difficult to
13 deal with in their permitting process.

14 Now, you can say that I'm full of
15 bologna, say what you want, but that's
16 recorded. It's on the Town Meeting Notes, and
17 you can hear it. And you can hear that
18 response. And I think that that is terrible,
19 if there is possible development allowed on
20 that land.

21 I've been told very recently, I was
22 asked to join the review committee over at the
23 Industry State School, and I was told that the
24 State is looking to downsize some of that
25 land.

1 So it confuses me. A lot of
2 different opinions, a lot of different ideas,
3 and I suspect that many people who I've tried
4 to talk with it about it really don't know the
5 answers either.

6 I'd like to know the answers, and I
7 hope that those who manage this project in a
8 way that is going to impact the Town of Rush
9 will know what they're talking about also.
10 Thank you very much.

11 **ALJ SAYRE:** Thank you, Mr. Kusse.
12 Our next speaker is John Kane representing the
13 Mohawk People. And on deck is Melissa Smith
14 from the Tonawanda Seneca Nation.

15 **MR. KANE:** Hello. My name is
16 John Kane I am Mohawk, or more accurately
17 Kanienkehaka. I am Onkwe Onweh. That is our
18 word for Native People. That's the loosest
19 translation. Literally, it means, a real
20 human being. And by "real," meaning tied to
21 the lands that we always were associated with.

22 And I say that because it's
23 important that in a world where labels are
24 stuck on Native People so often that don't
25 accurately reflect who we are, I think it's

1 sometimes necessary to use some of our own
2 language.

3 The UN Declaration of the Rights of
4 Indigenous Peoples one of the most prevailing
5 comments or requirements listed there is the
6 requirement for free, prior, and informed
7 consent. And this isn't just for things that
8 happen on our land, but things that impact our
9 people.

10 Now this free, prior, and informed
11 consent. It's not free, prior, and informed
12 five minutes in front of a panel here. It
13 isn't free, prior, and informed consultation.
14 It is free, prior, and informed consent.

15 This is not a seat at the table.
16 This is checking a box. And I think it's
17 important that people realize that by not
18 allowing Native People a real seat at the
19 table, and I mean people who live a Native
20 life, and who live a Native culture, and who a
21 Native history, you are depriving yourselves
22 of insights that you may not necessarily
23 prescribe to, but that are insights that you
24 may not be aware of.

25 We have a concept called Seven

1 Generations. And this concept is about making
2 decisions today with an awareness on how those
3 decisions are going to impact the people that
4 we will never see.

5 We say Seven Generations because we
6 might live to see five generations. And many
7 of us have families that can come together for
8 -- and have five generations in a room
9 together, but rarely will you see six, and
10 almost never will you see seven.

11 So when we say seven generations,
12 we're talking about making decisions that will
13 have impact on those faces we will never see.
14 Not return on investment in a ten-year
15 financial statement. Not whether, what the
16 short-term environmental impacts are going to
17 be, or a short-term solution for a long-term
18 problem.

19 Look, many of us as Native People,
20 we fully support sustainable energy. But the
21 idea of not being considered and not being a
22 part of the conversation when it comes to the
23 placement of these things.

24 The previous speaker suggested, why
25 not State land? Why not the space between the

1 lanes of the thruway? You've already taken
2 all that land, and didn't pay a fair price for
3 that, I guaranty that.

4 But we don't have a seat at the
5 table. We get five minutes here and there.
6 And it allows you to check a box, as I say,
7 because of the regulations that require these
8 kinds of meetings. But we know we're not
9 going to have significant impact. But we come
10 anyway.

11 But even when we don't come, I heard
12 speakers suggest that our silence is approval.
13 I heard speakers from last night suggesting,
14 well, the Senecas and -- from Seneca Nation
15 and Tonawanda never spoke up after we moved
16 some of where the panels will go? Well, that
17 doesn't mean that everybody approves it. And
18 if we don't have a seat at the table, then how
19 can you say that our silence is approval?

20 This is one of the problems with --
21 with what develops in these, again, short-term
22 solutions that are driven by money. That are
23 driven by profitability. Not so much driven
24 by solving an energy crisis. There is a whole
25 lot that a lot of people in this room could do

1 that could impact that.

2 But this is about industrial-size
3 sustainable energy. So whether it's these
4 huge wind farms or these huge solar arrays.
5 It's all about making them large enough to be
6 profitable.

7 And that's -- that's a problem, and
8 that's something that everybody, whether you
9 live here or whether you travel through here,
10 whether you are an elected official, or
11 whether you're a resident, or whether you're a
12 Native person, an Indigenous person, who still
13 feels a connection to these homelands.

14 We're buried here. And even as a
15 Mohawk, a Kanienkehaka, our relationship in
16 terms of eastern door or western door of the
17 Haudenosaunee -- I will spell that one for you
18 later. We are family. Those words that we
19 use to describe Ganataekwyagon or Seneca
20 Onondowaka, those are descriptions of us as
21 the same people living in various places along
22 our ancestral homelands. We are the same
23 people.

24 These -- these guys are family.
25 They may be from Tonawanda, they may be from

1 Cattaraugus, they may be from wherever, but
2 they're family. And we have a shared history.
3 And that history ties us to the land, and
4 that's why we're on Onkwe Onweh.

5 The frustration that many of us have
6 is that we don't feel that we are adequately
7 heard. And when we aren't heard at all, that
8 silence is interpreted as approval. And it's
9 not.

10 I do thank you for the five minutes.

11 **ALJ SAYRE:** Our next speaker is
12 Melissa Smith from the Tonawanda Seneca
13 Nation. On deck is Paul Winnie, also
14 representing the Senecas.

15 **MS. SMITH:** Hello. My name is
16 Melissa Smith. I am from the Tonawanda Seneca
17 Nation.

18 I don't represent any form of
19 Government from there. I just am a member of
20 the Nation. And I want to tell you that
21 Ivenergy and I have clashed right from the
22 beginning.

23 I do not think that this is a good
24 thing for us.

25 In 20 years, Ivenergy will have gone

1 through these solar panels, and they will
2 leave the place junk. The solar panels won't
3 be good to anybody. They will leave the place
4 in nothing. And all of our cultural artifacts
5 will be left in shambles. Everything that
6 they have done will be a cultural genocide for
7 us.

8 And I think that you guys, I just --
9 I feel like when you think of the Seven
10 Generations that we have lived by all of our
11 lives, you should have to live under that,
12 too. You should have to remember that for
13 your children's children and your children's
14 grandchildren, you should have to remember
15 that.

16 When you do things like this to our
17 ancestors, I hope this happens to your
18 ancestors. I hope you can do things like this
19 to your ancestors. Because this is how we
20 feel about ours. You gave us that little
21 patch of Golah, thank you. I really
22 appreciate that.

23 You're no good. No good at all.

24 **ALJ SAYRE:** Our next speaker is
25 Paul Winnie, representing the Senecas. On

1 deck is Joanne Scanlon.

2 **MR. WINNIE:** Paul Winnie, (reporter
3 unable to translate) P-A-U-L, W-I-N-N-I-E. I
4 would like to say, first off, that my
5 connection to this area goes back to my direct
6 great, great grandfather, Joseph Winnie, who
7 lived in this very spot, and lived on the
8 Canawaugus Territory. Along with most of the
9 Senecas, have direct relationships to people
10 that lived here in the 1700s, and then were
11 forced to move to Buffalo Creek and Tonawanda
12 as a result of the Big Tree Treaty of 1797.

13 So I would also, I can speak for
14 myself, but the elders, the women here that
15 are not speaking, I'm assuming are of the same
16 opinion, that when we had the "Protect the
17 Ancestors Rally" on Indigenous Day a year and
18 a half ago, we had 100 people here march from
19 the Genesee River to the Canawaugus line.

20 And in all my dealings over this
21 past almost two years since my awareness of
22 this project, I have yet to find one person
23 that agrees with it. And I've been on radio
24 stations, I've been on podcasts. I've been to
25 a number of meetings.

1 So the vote that's being cast by
2 this panel of so-called judges, in our
3 community, we live in a different way, that no
4 person is any higher than the other. So what
5 I'm saying is that everybody in this room is a
6 judge. Or everybody in this room is a -- is a
7 jury. That we make this decision in that
8 relationship.

9 But I know how this system -- I know
10 how your system works. And I know that the
11 outcome of this is not going to go in our
12 favor. But working backwards, I would say
13 that the genocide that my people, Indigenous
14 People across the country, North and South
15 America, all over the world, we live through
16 genocide every day. It's a slow death. It's
17 like being tortured. Every generation faces
18 it. And it carries on to the next, because
19 generation genocide from this country has
20 never stopped since 1492. Not up until this
21 very minute. And it's not going to stop
22 tomorrow.

23 So what I'm saying is that the
24 protection of this burial ground and this area
25 is very, very sacred to us, and it's

1 spiritual. It's something that lacks in this
2 so-called democracy of yours.

3 Now, I can go on and on about other
4 different things, but if any of these guys
5 would want more time than five minutes, I
6 would be glad to give it to them or anybody
7 else out there.

8 But my position is that I was taught
9 that we picked our parents before we were
10 born. And I'm just born into this. And part
11 of my duty as Onkewehonweh is to help people
12 that are here on this Mother Earth. So that's
13 what I'm doing today. And I hope I'm
14 representing the people in a proper way that
15 feel the same.

16 Now, the Tubiolo report,
17 Justin Tubiolo report on the History of the
18 Genesee Valley, is not being incorporated into
19 this decision.

20 Ivenenergy is trying to fight the
21 report that gives the archeological history of
22 this area, so that that's not sitting in front
23 of these guys, so that they don't have to make
24 a decision because it is not in their
25 possession to read.

1 So I would question, why isn't that?
2 Why would Ivenenergy fight that? Are they
3 afraid of it? Are they afraid of being on the
4 same plane, on a just playing field? So that
5 would be a question why we don't have a
6 Phase II report going on here. There's other
7 vocations within their system that have less
8 archeological findings than this rich
9 territory.

10 If you go on a map of known sites in
11 New York State, you will see black dots,
12 higher concentration than any part of New York
13 State, right here in the Genesee Valley. So
14 this is a highly sensitive area. And wherever
15 they dig, they can't guaranty that they are
16 not going to hit other burials besides what
17 they found at Golah Road.

18 And if you don't know, they found a
19 human bone there, which is a stone's throw
20 away from the substation that they want to
21 link up to. And that doesn't mean that just
22 because they block off 50-square feet, they're
23 not going to hit something else there.

24 So I would close, if you give me a
25 minute, but I heard some comments from

1 yesterday. And when people think that
2 according to our prophecies, Indigenous
3 Prophecies, we're in a change. And nobody's
4 listening.

5 Now, I brought that up to a higher
6 ranking official in the Sierra Club a year
7 ago, so. And when I talked about this project
8 to them, I said where is your comment on this?
9 Where is your environmental protection for the
10 non-humans? Because that's what they're there
11 for. Well, the lady -- I said, so, in
12 reality, renewable energy isn't going to save
13 this planet, right? And she goes, yeah, we're
14 F'd. And that's a direct quote from the
15 Sierra Club. And she said, all I can do is
16 what I can do.

17 So you all have to take a look at
18 yourself. And you all have to make a change
19 on -- in fighting climate change. And the
20 change that can happen can come through him
21 because of the genocide that we go, he can set
22 a precedent, or whoever else is with him, that
23 this project would get changed. So that in
24 the future, it doesn't happen to our people
25 anymore. All we want to do is be left alone.

1 And that's all we've been trying to do for 500
2 years. We're a sovereign nation.

3 **ALJ SAYRE:** If you could wrap up,
4 please.

5 **MR. WINNIE:** Yes, sir. And if you
6 want to know about more, we're under the
7 doctrine of Christian Discovery, which gives
8 them the right to the land. So we don't even
9 have our own homeland, where we come from, is
10 right over here on Bear Hill.

11 So all I can say is, I hope I can
12 give you more information after the meeting,
13 but my comment is that, I am against it, if
14 you haven't figured that out.

15 **ALJ SAYRE:** Thank you. Our next
16 speaker is Joanne Scanlon. On deck is
17 John Morelli.

18 **MS. SCANLON:** Hi, I'm Joanne Scanlon,
19 S-C-A-N-L-O-N. And I live in the Town of
20 Rush.

21 And I just had a few things to say
22 in support of the project. Horseshoe is, once
23 it's fully funded, it's actually going to have
24 the ability to provide service to over 43,000
25 homes annually. And that's really significant

1 to help get us towards that CLCPA goal.

2 I would disagree with some people
3 who say that climate change is going to happen
4 without, you know, whether we try anything or
5 not.

6 We need to get rid of fossil fuels.
7 We need to get rid of diesel, which is killing
8 our kids and causing -- causing harmful
9 effects, when they stand at the bus stop and
10 they breathe in all that diesel. So it's
11 just, you know, we have to get rid of those
12 things.

13 Is solar going to be the answer to
14 everything? Absolutely not. But we have to
15 combine all our efforts and all our energies
16 in different areas in order to get to where we
17 need to be.

18 I want this to be a beautiful Earth
19 in Seven Generations. If we don't do anything
20 to take care of the Earth, then we are not
21 going to have that for our children.

22 So I wanted to also say that because
23 of those 43,000 homes, we're going -- it will
24 result in a reduction of over 125 tons of
25 carbon. So that's significant, okay, for our

1 kids. That's very, very significant.

2 You know, we must consider, you
3 know, the landscape there already. Because
4 it's already mostly farmed, we don't have to
5 have any concerns, really, about, you know,
6 permanent forests or wetlands, et cetera.
7 This is something that is already being
8 tilled. It's being tilled by large equipment
9 that is digging up things as well.

10 So the idea is, that ongoing
11 archeological tests will be happening
12 throughout the project. It is a requirement
13 by ORES that if they find something, they
14 immediately stop, and have to -- have to look
15 into it from an archeological standpoint.

16 And as far as prime farmland, the
17 land in the project site is being used
18 currently to produce ethanol. Another
19 greenhouse gas. So come on, we don't want to
20 do that. Yes, yes, we can plant edible crops
21 or consumables, but we're not right now.

22 And I would suggest to you, who live
23 in the area, to think about growing your own
24 crops. Two percent of all the land in the
25 country are lawns. How big are your lawns?

1 How much can you grow on your lawn to help and
2 do it, you know, do it conscientiously. Do it
3 organically. Don't use pesticides. Don't mow
4 those lawns and throw all that, you know, all
5 those carbons into the air.

6 We have to all think about what we
7 can do individually and collectively to help,
8 you know, fight the climate change.

9 So economically, I am not going to
10 go through all of that. But you know,
11 everyone knows this is going to be an economic
12 boom to our towns. But not just to our towns,
13 to our farmers.

14 I mean, we have farmers out there
15 who have been on their lands for generations,
16 okay. Farming is hard. They have no 401K.
17 They have no pension. They have no stability
18 in how they support themselves.

19 Farmers, small family farms, are
20 disappearing right and left. This gives them
21 the opportunity to continue to live on their
22 farms, which they've had for generations as
23 well, and to have a consistent, reliable
24 income for the duration of the lease. And
25 they can continue to farm. Shade loving

1 plants will be perfect under the solar panels.

2 Sheep grazing would be great. You
3 would start having land 75 -- over 75 percent
4 of our lamb and wool come from Australia and
5 New Zealand.

6 We don't like frozen meat. How
7 about getting it sourced organically locally?
8 Okay. We all like to say we support our local
9 farmers and want to buy locally, here we go.

10 What happens with the sheep, is they
11 actually mow the land. So then you don't have
12 to have tractors that are, again, spewing
13 fossil fuels.

14 And the company, Invenergy, which is
15 the correct pronouncement, I believe, they
16 will be paying farmers to graze that land.

17 So now, even if the farmer who owns
18 the land doesn't want to continue, Ivenergy
19 can pay someone that is interested in getting
20 into the business of farming that can't afford
21 it because of the cost of the land. Imagine
22 being someone who wants to be a farmer,
23 getting paid to farm. That is a wonderful
24 opportunity in an area where, you know, people
25 just aren't able to get into that business.

1 Okay. So other land uses, of
2 course, we're looking at bees, because bees,
3 bee hives are perfect in that open area.

4 **ALJ SAYRE:** Could you please wrap up
5 your comments?

6 **MS. SCANLON:** Oh, sure. Sure, sure.
7 Let me just do a couple of things here.

8 As far as the panels, over
9 90 percent of the site of the solar farm is
10 recyclable. Over 90 percent. Okay.
11 Recycling centers are already operating in the
12 United States for recycling solar panels.

13 So if they are -- Invenergy is
14 required to get rid of everything, and return
15 the land to the way it was before they
16 installed the solar panels.

17 And again, that's required by ORES,
18 and the towns will be holding that bond. So
19 it's not like if Ivenergy goes out of
20 business, that we're going to be stuck.

21 So rooftop solar, really, is not a
22 lot. Everyone says, oh, just put solar panels
23 on everyone's roof. It's not going to happen.
24 Many, many houses cannot have rooftop solar.
25 It just won't work because of the way they are

1 placed, the direction they're in, et cetera.

2 **ALJ SAYRE:** Please wrap up.

3 **MS. SCANLON:** The last thing I want
4 to say, I heard a lot about how the Town of
5 Rush is very, very supportive of solar. I
6 would disagree.

7 Helios is a project that was
8 proposed four years ago. It's a very small
9 project, 25 acres. The Town has yet to make a
10 decision on whether they're going to approve
11 it or not. Four years for a 25-acre solar
12 project on one person's land. So that, to me,
13 does not show that you are supporting solar.

14 **ALJ SAYRE:** Next speaker is John
15 Morelli. On deck Nancy Goetz.

16 **MR. MORELLI:** Hello my name is
17 John Morelli. I live in Rush. Morelli is
18 M-O-R-E-L-L-I. I started with the idea of
19 saying a few words, but the things I've heard
20 make me want to say more.

21 One, regarding Helios. Helios has
22 continuously changed their plan, changed their
23 strategy. We have a project, Forefront Solar,
24 came up, it was approved, and it's in the
25 process.

1 Helios is not. Helios is on the
2 side of a hill, and it has problems with
3 protecting visual access and so on and so
4 forth. So they've changed the process many
5 times. The problem, the reason that Helios is
6 not permitted, is because of their
7 inconsistencies, their problems, their lack of
8 adherence to the law, and not because the Town
9 has jerked them around. Not at all.

10 I have solar on my house. I have
11 geothermal in my house. I don't pay energy at
12 all. I have two geothermal systems and a
13 solar. We are in favor of solar. And we like
14 it.

15 Okay. That's not what I got up to
16 say. So our second speaker mentioned not
17 being part of the conversation, and that has
18 prompted just another thing on my mind.

19 Before coming to Rochester to
20 start-up the Environmental Management Program
21 at Rochester Institute of Technology, I worked
22 in Albany for four or five years. I worked
23 for the Department of Environmental
24 Conservation. There I was a Senior Project
25 Manager for hazardous waste site remediation.

1 This was a big thing back then. Lots of
2 hazardous waste sites. Many of those
3 hazardous waste sites were in municipalities.
4 Many of those municipalities came upfront and
5 said, hey, we don't want to have a hazardous
6 waste site here. We want to do something
7 about it. Can you help us.

8 Well, as a Senior Project Manager, I
9 tried to work with these folks. I worked for
10 the Department of Environmental Conservation.
11 But it was hard with the system that was in
12 place, to not treat these volunteer people who
13 wanted to correct the problem, as criminals.
14 Because that's the way the State looked at
15 them, and that's the way we treated them.

16 I had to fight with our attorneys.
17 I had to fight the Department of Environmental
18 Conservation to be able to treat them
19 respectfully, because they were voluntarily on
20 our side.

21 What's that have to do with this?
22 Well, in 2016, New York State came up, and
23 NYSERDA came up, with a draft model solar
24 energy law that they said, hey, this is, you
25 know, something that we should do. Well, in

1 2018, the Town of Rush developed a Solar Law
2 based on what the State provided, based on
3 what NYSERTA came out, and we have followed
4 that model ever since. We've made some
5 changes, we've made some improvements, but we
6 have been trying to do our part as a community
7 to support the State's energy goal of 6,000
8 megawatts per year -- gigawatts, I don't even
9 know.

10 But how are we treated? We're
11 treated like criminals. We are treated like
12 criminals. We are told that our laws are
13 invalid, that ORES is going to come and just
14 blow us off the map, and do whatever the hell
15 the company wants to do with regard to solar
16 energy.

17 Okay. Now, this is what I got up to
18 speak about. Regarding Horseshoe Solar's
19 challenges to Rush's Town Law and Horseshoe
20 Solar's claims regarding unreasonable burdens.
21 The question is, why is Horseshoe Solar
22 requesting from the State, from ORES,
23 exemption from laws that it is not planning on
24 violating? It's not planning on violating.
25 It wants exemptions anyway. It's asked for

1 exemptions across the board.

2 In the Town of Rush, we have a
3 limitation, 20 to 50 acres on -- that's the
4 range of size that's allowed for large-scale
5 solar. Horseshoe Solar is proposing two
6 sites. Even combined, they don't exceed 50
7 acres. It is like 44 acres. So they're not
8 violating that law, yet they've asked for the
9 -- for ORES to exempt them from that law.

10 The Town has a law on a 150-acre
11 town-wide maximum of large-scale solar. We
12 just talked about Helios, 25 acres. There is
13 another one, Forefront, that's been approved.
14 Helios is still in process. Similar size.
15 Those two projects, plus everything that
16 Horseshoe Solar has on the board, doesn't
17 equal 150 acres. So why are they asking for
18 an exemption from that law?

19 Our law says that you can't cover
20 more than 50 percent of a lot with solar.
21 Horseshoe Solar does not come close to
22 exceeding this restriction. Why are they
23 asking for this exemption?

24 Horseshoe Solar requests that the
25 siting board not apply the locational

1 restrictions required that, all arrays be
2 installed in excess of a thousand feet from
3 higher density residential areas. This is in
4 spite of the fact that such districts in Rush
5 occupy less than 5 percent of the Town. Very
6 small portion. But Horseshoe Solar has asked
7 to be exempt from all of it.

8 Horseshoe Solar requested the siting
9 board not apply height restrictions, and they
10 say, hey, we could get more energy on 17-foot
11 high panels than we can on 12. Yeah, well,
12 what about 50-foot high? Who's going to draw
13 the line? This is a residential and
14 agricultural land that we're trying to
15 protect.

16 Horseshoe Solar requests that the
17 siting board not apply the 200-foot setback
18 listed in the Town of Rush Zoning Law. This
19 is agriculturally and residentially zoned
20 land. There is an element of trust there in
21 the zoning code. When you buy a home in a
22 residential area, you do not expect or
23 anticipate that in a year's time or two years
24 or ten years it's going to become an
25 industrial site.

1 Finally, the answer. The answer to
2 these questions, why are they doing it?
3 Because Horseshoe Solar doesn't own only 50
4 acres in the Town of Rush. They don't lease
5 only 50 acres in the Town of Rush. They lease
6 somewhere between 600 and 800 acres. They
7 originally had proposed a whole lot more, but
8 when the Town objected, they cut it down to 50
9 acres.

10 Well now they're asking ORES to
11 exempt them from all the laws in the Town, all
12 the solar laws, and as soon as they do that,
13 as soon as ORES does that, they will turn
14 around, and they will put that 800 acres back
15 on the board, and they will build it in the
16 Town of Rush.

17 It's deception. It cannot be
18 allowed. Thank you for your time. I'm sorry
19 for running over.

20 **ALJ SAYRE:** Our next speaker is
21 Nancy Goetz. On deck is Michael -- I'm sorry
22 to say, I can not read your name. I don't
23 know, is it Oberg?

24 **MR. OBERG:** Yeah.

25 **ALJ SAYRE:** Okay. You're on deck.

1 **MS. GOETZ:** Nancy Goetz, G-O-E-T-Z.
2 The siting of this project is akin to building
3 over the top of Arlington Cemetery. Please
4 consider preventing the desecration of Native
5 ancestral grounds. Please respect the human
6 remains that have been found and re-interred
7 here.

8 Not only is much of this project on
9 ancestral grounds, but it is also prime
10 agricultural land. We need to look at climate
11 change from the standpoint of replacing fossil
12 fuels, while maintaining food production, in a
13 sustainable manner.

14 Please respect the land. Please
15 respect the ancestors. Thank you.

16 **ALJ SAYRE:** Mr. Oberg, you are next.
17 On deck is Carol Stevenson.

18 **MR. OBERG:** Hi, my name is
19 Michael Oberg, O-B-E-R-G, with sloppy
20 handwriting. I apologize.

21 I am a history professor. I teach
22 at SUNY Geneseo. I'm also the founder of the
23 Geneseo Center for Local and Municipal
24 History.

25 I've been teaching and writing about

1 the history of the Haudenosaunee people for 28
2 years, and have some strong feelings about
3 this project.

4 Livingston County, Monroe County,
5 the entire Genesee Valley has a very, very
6 deep history going back many, many centuries
7 before the first white settlers, speculators,
8 soldiers, cast covetous eyes on the lands of
9 this region.

10 If Horseshoe Solar has its way and
11 this development goes forward, I worry that
12 some of that important local history will be
13 erased if this corporation wants to build this
14 vast solar array on this town.

15 Horseshoe Solar early in 2020
16 commissioned a study of the proposed project
17 by Panamerican Consultants, a research firm
18 with an office in Buffalo. The study's
19 conclusions diminished Seneca attachment to
20 the region.

21 And historical reality that the site
22 of Canawaugus, just up the road from where we
23 are today, has a history going back farther
24 than that of London and England. Two thousand
25 years of occupation and use in this site.

1 The report relies on published
2 sources, and borrows too uncritically from the
3 ethnocentric and racist language of 19th and
4 early 20th century archeology.

5 The report's authors spoke to no
6 Seneca People that I know of.

7 Nor did they do any research in the
8 archive.

9 And according to their report,
10 scattered across the site were quote, unquote,
11 camps and multi-use sites. And Seneca People
12 and their ancestors, they weren't confined to
13 camps and the village sites and burial
14 grounds.

15 If you look at the archival record,
16 which is what I do for a living, the Geneseo
17 Senecas, the Senecas who occupied sites along
18 the Genesee Valley, including Canawaugus, were
19 major players in the histories of three
20 American empires; the French, the English, and
21 the United States.

22 The Genesee Valley flowed through
23 the heart of Seneca culture for centuries.
24 They made use of this valley to hunt, fish,
25 and grow crops. This was a world of towns and

1 villages of diplomacy and warfare peace and
2 violence and trade-in commerce.

3 Canawaugus was the birth place of
4 two of the most important figures in Seneca
5 history. Cornplanter and his half brother,
6 the prophet, Handsome Lake, but even more it
7 was home to many Senecas. Thousands and
8 thousands and thousands of Senecas over many
9 centuries. Men and women who had a major
10 impact on Haudenosaunee history into the
11 1800s.

12 The Seneca sold these lands, sold in
13 air quotes, in an 1826 Treaty that even
14 Horseshoe Solar's historians concede was,
15 quote, arguably fraudulent.

16 Had they bothered to look at the
17 primary sources, they would have seen that
18 there is no doubt about the despicable
19 practices engaged in by the US Treaty
20 Commissioner. And his malfeasance is one
21 reason why the Senate never ratified the
22 treaty as required under American law.

23 President John Quincy Adams never
24 resubmitted it to the Senate after an
25 investigation was very, very easy to smell the

1 very, very large rats involved in that treaty.

2 Federal law requires all land
3 transactions be ratified by a two-third vote
4 of the United States Senate. That's the
5 Constitution. That has been the case since
6 its beginning.

7 Because the 1826 Agreement never
8 received that ratification, the Senecas
9 justifiably view this site of Canawaugus as
10 unseated reservation land protected by earlier
11 treaties. Its Native ground to which they
12 still assert a powerful historical claim. And
13 like Standing Rock or Barabrute, or sites
14 across the country that some of the other
15 speakers have mentioned, it's a site of
16 enormous significance to Indigenous Peoples
17 offered up to corporate energy involvement.
18 This should matter to us all.

19 New York State could not have
20 emerged as the Empire State without a
21 systemic, and at times, illegal program of
22 Haudenosaunee dispossession. That's just a
23 simple fact. It's black and white in history.

24 Canawaugus is one of the sites where
25 this sorted tale of despoliation and deception

1 played out. It's a vital part of this
2 county's history, two counties' history, but
3 it's a history of violence, exploitation, and
4 appropriation. It would be a true tragedy to
5 destroy this site in such a cavalier manner
6 for corporate profit. Thanks.

7 **ALJ SAYRE:** Thank you. Our next
8 speaker is Carol Stevenson. And on deck is
9 Janet Glocker.

10 **MS. STEVENSON:** My name is
11 Carol Stevenson, with a V, 7740 East River
12 Road, Rush, and I've lived there for 35 years.

13 My husband and I raised our three
14 children there, and I remember the first time
15 he brought me to the five acres. He said, oh,
16 I found a great spot. It had woods, it had a
17 hill, it had a field, it had a creek, and we
18 fell in love with it. And it's been such a
19 wonderful place. I am a retired teacher as
20 well.

21 So thank you for allowing my input
22 on an industrial solar project that has
23 long-lasting impacts on my life, my home, my
24 property, and my Town of Rush.

25 If you open my front door, stand on

1 my deck, sit by my pond, or walk out the barn,
2 you see Golah Road. I'm the first driveway
3 across from Golah.

4 Twenty-five years ago my daughter
5 and I were sitting on the stoop, and we saw
6 smoke and flames licking the sky, and we were
7 the first to call 9-1-1 to report the fire at
8 Golah.

9 With regards to Golah, I feel the
10 constructing of the second substation, which
11 would be ten times the size of the current
12 substation, along with the operation and
13 maintenance building, should not be on Golah
14 in Rush.

15 Horseshoe originally planned for it
16 to be in Caledonia, and they should plan on
17 keeping it in Caledonia. The only ones who
18 would benefit from this monstrous substation
19 and maintenance building would be Horseshoe
20 and the three businessmen, Farmer Moore,
21 Farmer Howlett, and Farmer Stokoe. And they
22 don't even live in Rush.

23 Besides, this would be an industrial
24 eyesore and inappropriate for our rural
25 setting.

1 I'll also just mention that my --
2 many people walk their dogs down there. I do
3 as well. And my husband and I have fished in
4 the river there. We've launched the kayak.
5 He's had his fishing boat and pontoon boat
6 we've enjoyed, as well, down there.

7 My second concern is placing
8 industrial-sized solar arrays on fertile
9 agricultural land which borders residential
10 land. Talk about shooting yourself in the
11 foot.

12 Horseshoe should not be sited on
13 prime crop land. Think of the food production
14 issue, using good land for solar panels, and
15 think what's involved in farming poor land.
16 Think of the lack of open space and its effect
17 on nature.

18 Think of how the Town of Rush has
19 proactively planned and codified the wishes of
20 the residents for over 50 years. The
21 Conservation Plan, the Farmland Plan, the
22 Agricultural Plan, the Energy Plan. And there
23 is a recent document, the Preservation of
24 Environmentally Sensitive Areas, Where a Site
25 by Industry and the Genesee River is

1 Threatened by Horseshoe Solar.

2 I walk this area by way of Lehigh
3 Valley Trail, and it Ts into the green way.
4 You start in Rush, you go through Avon, and
5 you end up in Caledonia. And I walk it
6 numerous times a week, six and a half miles,
7 and it is gorgeous, replenishing, and full of
8 wildlife.

9 If Horseshoe installed its panels,
10 it would be ugly, not gorgeous. Depleting,
11 not replenishing. And dead, not full of
12 wildlife. Dead panels, dead fences, dead.

13 Think of the 65 homeowners, I being
14 one, that would have property bordering
15 industrial-sized solar arrays.

16 So I ask, would you help us keep the
17 long history of success in Rush, its rural,
18 residential, agricultural, and not allow
19 industrial and commercial ventures to be
20 foisted on the 3,000 people of Rush.

21 Horseshoe Solar needs to leave Rush,
22 and take the panels and the substation times
23 ten, and the O&M building, and they need to
24 install it on an industrial and commercial
25 land outside of Rush.

1 **ALJ SAYRE:** Our next speaker is
2 Janet Glocker. And on deck is Judy Falzoi.

3 **MS. GLOCKER:** Good evening. My name
4 is Janet Glocker, G-L-O-C-K-E-R.

5 Welcome to Western New York, Judge's
6 Caruso and Sayre. Thank you for the
7 opportunity to speak.

8 I want to talk about cultural
9 genocide. I want to talk about 500
10 generations of human habitation along the
11 Genesee River.

12 ORES asked individuals in groups in
13 New York State to draft regulations in 2020.
14 Christine Abrams of the Tonawanda Seneca
15 Nation did so on December 7th, 2020. I will
16 read a few of the ten items she submitted.
17 Her submission is found on Pages 476 to 478 of
18 approximately 900 pages that were submitted to
19 ORES.

20 Her first request, to be recognized
21 as a person, is stunning. Somehow when ORES
22 was promulgating regulations, they did not
23 include the Indigenous People who formed our
24 country. ORES' Draft Regulation didn't think
25 to include those, here for thousands of years

1 before us.

2 Her second request, had it been
3 included, would have obviated the need for me
4 to be here to speak, because it was seeking
5 relief from the bulldozers, pile drivers,
6 trenching machines, cement trucks. Since the
7 Genesee River flows through the disputed
8 Canawaugus Territory, her requests about
9 rivers and waters are important.

10 Let me read you her request,
11 Section 901.2. The definition of person
12 should include Federal, State recognized
13 Indian Nations.

14 Her second request, Section 901.3.
15 Where a proposed project lies within the
16 original Aboriginal Territory of a Federal
17 State recognized Indian Nation, the
18 pre-application should require pre-application
19 meetings with that Indian Nation to determine
20 whether the proposed site may affect a tribal
21 historical site or the cultural resources of
22 that Indian Nation.

23 The Seneca Tribal Historical
24 Preservation Office, THPO, T-H-P-O, was
25 established in 2000, after the Nation received

1 a recognition letter from the National Parks
2 Service. The THPO is charged with
3 facilitating the Nation's involvement within
4 Section 106 of the National Historical
5 Preservation Act of 1966, and the Native
6 American Graves Protection and Registration
7 Act. These Acts mandate that any ground
8 disturbing, Federally-funded project, must
9 first consider the potential impacts to
10 historic properties -- I live in one, I'm on
11 the list -- cultural resources -- you've heard
12 from our Native American friends -- and/or
13 funerary sites.

14 Additionally, the THPO is consulted
15 for all such Off-Reservation Aboriginal
16 Territorial projects.

17 The THPO responsibilities include
18 government-to-government consultations,
19 project review and assessment for historic
20 properties, project-specific mitigation
21 efforts, on-site monitoring.

22 As you can see, the THPO office is
23 really the analog of New York States SHPO
24 office. So what has Dr. Joe Stahlman, the
25 Seneca Nation THPO, written about the

1 Horseshoe Solar Project?

2 Dr. Stahlman wrote to Andrew Davis
3 of the Department of Public Service. The
4 Seneca Nation THPO offers the following
5 comments:

6 There are 46 known archeological
7 sites within 500 feet of the checkerboard
8 project. There are numerous known, little
9 known, and/or forgotten burial locations in
10 the demarcated area.

11 Seneca Nation suggested moving
12 forward with a Phase II, with a focus on
13 ground-penetrating radar and other
14 nonintrusive methods and limited ground
15 disturbance.

16 Seneca Nation does not support any
17 Phase II for testing for areas for panel
18 arrays, perimeter fencing, utility poles, if
19 their associated posts are driven into the
20 ground and grubbing or grading is involved.

21 The SHPO has spoken. It is
22 analogous to -- I'm sorry, the THPO has
23 spoken. It is analogous to SHPO.

24 These documents and others that I
25 referenced last night, are to make you aware

1 of the repeated concerns for ground
2 disturbances in this incredibly rich
3 archeologically distinctive area. These
4 documents put ORES on notice that officials at
5 the DEC, the PSC, and SHPO have been notified
6 by the Nations in the Tubiolo Report that
7 irreparable harm will be done if Horseshoe
8 defiles these leased lands in Rush.

9 Please, in any place where there is
10 to be a ground disturbance, the area must be
11 investigated with ground-penetrating radar and
12 Phase II investigations.

13 My Seneca teacher, Mr. Paul Winnie,
14 will tell you that his people did not bury
15 their ancestors as we do. In his words, this
16 is not Forest Lawn with graves laid out in
17 nice straight rows. Burials occur everywhere
18 and anywhere.

19 If you're going to dig and grub and
20 trench, and bulldoze, and pile drive, you've
21 got to know what's under it. Thank you.

22 **ALJ SAYRE:** Thank you. Next speaker
23 is Judy Falzoi. On deck is Carl Ast.

24 **MS. FALZOI:** Hi. I'm not as
25 polished as the last speaker with talking to

1 you, but I do have some things to communicate.
2 Judy Falzoi, I live in Avon. F-A-L-Z-O-I.

3 Before I actually read what I have,
4 I do want to tell you three things. I've been
5 really involved in renewable energy things for
6 a long time. Being retired, I've had time to
7 do it. With COVID here, I've had nobody else
8 to look at except my computer, and I could
9 really learn a lot.

10 First of all, I want you to know
11 that not all land that goes for solar is
12 actually helping that small farmer.

13 And industrial investment agency
14 called Series bought some land in Avon, maybe
15 around 2014/15, I am not going to get the
16 dates right. And they farmed. They farm.
17 But also, they invest in renewable energy. So
18 they farm until renewable energy.

19 Series was the one that bought an
20 awful lot of the land in Caledonia. That land
21 was owned by, I believe it was the Logsworth
22 family, for years and years. They leased the
23 land to smaller farmers, and that land grew.
24 They could just throw a seed down on it, and
25 it would grow.

1 So Caledonia's part of Horseshoe
2 Farm or Horseshoe Solar Farm is not going to
3 benefit the small farm. Maybe some in other
4 places, but not that one.

5 And that was around 2015 that Series
6 bought the land and caused me to look at it,
7 because the acreage, the price they paid for
8 acreage, it was way more than any other acres
9 were getting in Avon. It must have been gold
10 under there.

11 In New York -- and then New York
12 State had already had an energy law, and the
13 energy law in place right there said, no solar
14 development on prime quality soil. And I
15 thought, well, that's good. The farms will
16 grow, the soil will grow, the cows will graze,
17 and we'll still have rural vistas.

18 That didn't work out. The only
19 reason why ORES is here today is because it
20 became so difficult to try and build on
21 valuable farmland. New York State Department
22 of Agricultural was warning about that, too.

23 As I understand it, ORES has only
24 one -- one reason for how it operates and how
25 it will permit this, and that is by megawatts

1 produced. If it produces the megawatts that
2 it says it is going to, nothing else matters.

3 Now my statement. Thank you for
4 providing in-person public hearings. The
5 Pennysaver announcements said my statements
6 should not be burdensome, and must be
7 substantive and significant. And I'm limited
8 to two and three minutes. That's what the
9 Pennysaver said.

10 I can provide substantive and
11 significant data to support my recommendation
12 to require the Applicant to provide verifiable
13 material specification data specific to per-
14 and Polyfluoroalkyl chemicals, we know them as
15 PFAS, that are used to manufacture some solar
16 panels as well as in chemicals used for the
17 external anti-reflective anti-soil coating.

18 I can't give you that in two or
19 three minutes. You can contact me. I've been
20 contacting State agencies. They've not called
21 back. Some other agencies, Federal agencies,
22 have. I can provide it.

23 Since learning about Invenergy's
24 intent to build a massive 600,000-solar panel,
25 180-megawatt solar facility, I've been

1 alerting State and local agencies to the risk
2 of Per-Polyfluoroalkyl contamination due to
3 the enormous number of solar panels expected
4 in New York State.

5 There is much being reported in the
6 media about PFAS' water and health. It is an
7 issue that should not be ignored. The
8 precautionary principle should apply to ORES'
9 final deliberation before permitting Horseshoe
10 to be built.

11 I do not think the ORES process
12 requires the Applicant to submit materials,
13 specification information about the solar
14 panel, its back sheet, or its anti-reflective
15 anti-soil coating.

16 I suggest you follow the
17 precautionary principle to prevent possible
18 harm to the environment or people, and require
19 this information now.

20 Require this Applicant to submit
21 verifiable material specification information
22 from the manufacturer's of solar panels, back
23 sheets, and coatings, to prove no PFAS
24 contamination is possible from any of the
25 materials permitted in the energy system.

1 This should be required when components are
2 replaced, too.

3 An alternative would be to have the
4 Applicant sign a legal paper attesting to his
5 acceptance of all responsibility for restoring
6 anything harmed due to PFAS. Require New York
7 State DEC testing of the soil and groundwater
8 to identify PFAS before harm occurs.

9 I have no difficulty finding
10 information about panels and back sheet
11 manufacturers worldwide. I use a Chinese
12 database, so I don't think this will be
13 burdensome or difficult for the Applicant. I
14 can find it.

15 PVEL is a renewable energy industry
16 testing and research company that ranks panels
17 for energy production and durability. It also
18 says, panel quality has declined along with
19 cost. There is research that shows the
20 external panel erodes and degradation from
21 inside out causes panels to break.

22 New York State DEC, in partnership
23 with the Department of Health, have been
24 working since 2016 to identify, remove, and
25 restore sites contaminated with PFOS and PFAS

1 chemicals. Why take a chance for further
2 contamination just because the Applicant has
3 not provided information?

4 Federal EPA is investigating and
5 classifying thousands of these forever PFAS
6 chemicals, according to use and harm to human
7 health. It is ongoing today, and will be
8 complete in a couple years.

9 The fact that solar panel imports
10 are on the EPAs Significant New-Use Regulation
11 List, says there is suspected harm to the
12 environment from solar panels manufactured
13 outside the regulatory process of the United
14 States.

15 The New York State Attorney General
16 wrote comment in support of EPA's actions.

17 **ALJ SAYRE:** If you could wrap up,
18 please.

19 **MS. FALZOI:** Yep, I will. Just one
20 more comment. I'm getting older. I want to
21 know if solar panels will be on my cemetery
22 plot.

23 **ALJ SAYRE:** Thank you for your
24 comments. Our next speaker is Carl Ast. On
25 deck is Jason core win.

1 **MR. AST:** My name is Carl Ast,
2 A-S-T, Carl with a C. I am a life-long
3 resident of New York. And also a resident of
4 Rush. I have lived there for 36 years.

5 I'm also a professional engineer,
6 licensed in New York. And my work is in
7 infrastructure, all the way from traffic,
8 highways, to utilities, electric, gas, water.

9 Thank you for this opportunity to
10 speak, and here are some thoughts for
11 consideration.

12 The American Planning Association
13 put out guidelines for solar siting, and their
14 recommendation is that solar should be sited
15 on grazing land, not on tillable farmland.

16 And, as you all know, before
17 Mount Morris Dam was built, much of this land
18 was flooded in history, creating some prime
19 bottom-land farmland. So this tillable
20 farmland that we're talking about for building
21 an industrial solar facility, a lot of it is
22 prime farmland.

23 So the Genesee Valley, and this is
24 something I can't get my head around, is a
25 beautiful resource in the State of New York,

1 and why anybody would propose putting solar
2 panels to take away that beauty of the Genesee
3 Valley -- Genesee River Valley, is beyond
4 comprehension.

5 Now, the panels may be theoretically
6 recyclable, but who's doing it now, and how
7 much does it cost? And how much will it cost
8 in 25, 30 years? And what happens in 25 to 30
9 years when all these facilities that they're
10 building now, are being removed? All of a
11 sudden, where does the energy vacuum go?
12 Who's bringing that energy behind all this?
13 Are we going to rebuild? How much will it
14 cost?

15 This is a financial -- that's why I
16 don't think this is sustainable. It's
17 renewable, it's not sustainable.

18 And why solar at this scale in
19 New York, where sunny days are about 20
20 percent of the time, how much energy would we
21 produce on a day like today? Then we lose 20
22 percent capacity over the life of the solar
23 facilities.

24 We already have Niagara Falls, the
25 power authority, we have nuclear, which is on

1 the verge of some renewing or decommissioning.
2 And these are power sources that are
3 renewable, but also at a constant level.

4 Solar and wind are not constant.
5 Batteries do not provide the gap to provide
6 energy. I don't feel we are looking properly
7 ahead.

8 North Carolina and California, which
9 does get more sunny days, they are investing
10 in co-generation facilities, natural gas to
11 steam, to bridge that gap. But New York is
12 not. In fact, they want to decrease the
13 amount of natural gas.

14 And I go back to about 10/15 years
15 ago when the discussion was on clean coal
16 technology. Well, that's gone. Now, anything
17 that's considered natural gas, diesel, any
18 petroleum-type product, is evil. And I think
19 that's wrong. That is part of our process,
20 and it needs to be in the equation.

21 So bottom line is, I don't see this
22 as being reliable or sustainable. Ivenergy is
23 headquartered in Illinois, which is not -- and
24 just has a New York storefront. And as a
25 previous speaker noted, the largest landowner

1 in Livingston County is from Indiana. They're
2 not local.

3 The majority of the panels are
4 imported from China or outside of the United
5 States, outside of New York. So none of this,
6 to me, is a major investing in New York.

7 And part of my job looks at risk.
8 So risk is the looking at the possibility of
9 something happening and the consequence of
10 something happening.

11 So getting back to Mount Morris Dam.
12 What happens if all these panels are
13 installed, and we have a huge event of
14 rainfall, and Mount Morris Dam fails? We now
15 have a flooded Genesee River Valley and
16 flooded solar panels. It is a risk. Small
17 probability, but a major consequence. Thank
18 you.

19 **ALJ SAYRE:** Thank you. Our next
20 speaker is Jason Corwin.

21 **MR. CORWIN:** Thank you. Good
22 evening. Jason Corwin, C-O-R-W-I-N.
23 Hopefully everyone can hear me fine through
24 the mask. I'm used to projecting with my
25 students every day through a mask.

1 So I don't have a prepared comments,
2 but I have some -- some thoughts I want to
3 share about this issue.

4 So I am a citizen of the Seneca
5 Nation. I've been a proponent for renewable
6 energy for over two decades, both myself and
7 Paul Winnie. We're probably the first two
8 Senecas to use solar on our own homes. I
9 built the system that powers my house. And so
10 I am not at all against renewable energy on
11 principal.

12 However, a project like this is very
13 concerning because as you've heard over and
14 over, this area is loaded with the grave sites
15 of our ancestors.

16 And I think a lot of people, a lot
17 of Americans, would find it distasteful if a
18 giant oil drilling operation or a mine was put
19 next to Arlington National Cemetery, or the
20 place where your parents or grandparents or
21 loved ones, maybe a child that died at birth,
22 you know, people that you loved and cared for,
23 your ancestors. You know, that's -- that's a
24 very strong concern.

25 We've also heard about, you know,

1 the displacement of prime agricultural land
2 for solar panels. I mean, there are so many
3 places that are brown fields, that are old
4 industrial centers with huge warehouses. You
5 know, those are the kind of places that should
6 be looked at for large-scale solar.

7 Yeah, the panels, they only last
8 25/30 years, they lose capacity, they're being
9 made cheaper nowadays, they're not as robust
10 as they once were. Just like pretty much
11 everything. I have a 1968 record player that
12 was my parents, a KOH, with real oak wood, the
13 thing still works. But if you buy anything
14 like that nowadays, and it's not going to last
15 you, probably, five years.

16 So you know, we're in a real
17 conundrum about what to do because we've all
18 gotten used to the conveniences of the modern
19 world of electricity and the ease of
20 transportation. And so we as a species, have
21 to figure out, how do we get to where we need
22 to be?

23 And I've been saying for years, we
24 need to invest heavily in renewable energies,
25 but it needs to be done in a way that's

1 sustainable and intelligent and that has some
2 kind of end goal.

3 And it's great that there are big
4 companies that want to do projects that will
5 address some of the large-scale issues, but
6 because for them as multi-nationals, the
7 bottom line is the dollar. Sustainability
8 isn't always going to be the picture.

9 I mean, the bottom-line dollar
10 equation got us leaded gasoline and people's
11 intelligence and soil being poisoned for
12 generations. You know, it got us CFCs, freon,
13 to destroy our ozone layer and a whole bunch
14 of other things.

15 So we really have to think hard
16 about what we're doing, and things might sound
17 good on the surface. It's like, yeah, we all
18 wanted to see that climate change gets
19 addressed, that there's greener energy, but a
20 lot of these big -- these large-scale
21 renewable energy projects are not taking into
22 account the ecology that's being impacted.
23 It's not taking into account the local
24 economies. Like was pointed out, these are
25 out-of-state companies. How many local

1 workers, how many jobs are really going to
2 take place when -- when a big company comes
3 from out of town?

4 It would be much nicer to see that
5 local renewable energy contractors are engaged
6 to do projects that make sense and that take
7 advantage of already existing spaces that are
8 degraded. Brown fields, old mines, old
9 transportation hubs, whatever.

10 So that's pretty much the point I
11 wanted to make, is just think about the simple
12 issue of respect for somebody's loved ones and
13 ancestors, final resting places, and to really
14 think about what are we doing intelligently to
15 address our energy needs and issues into the
16 future. So that we can say to our
17 grandchildren and great-grandchildren, future
18 generations, that we really truly did all that
19 we could to look out for them to inherit a
20 world that is sustainable. Thank you.

21 **ALJ SAYRE:** Thank you. I've gone
22 through all the cards that I have. Are there
23 anymore cards at the table or anyone who wants
24 to fill out a card to speak? Or have I
25 overlooked anyone?

1 **MR. MOORE:** I've got one here.

2 **ALJ SAYRE:** Go ahead.

3 **MR. MOORE:** Thank you. My name's
4 Jack Moore, M-O-O-R-E. I have to take my
5 glasses off to read.

6 I just want to give you the
7 perspective of one family farm. I come from a
8 fifth generation family farm that farms in the
9 Towns of Rush and Henrietta.

10 Solar use enables our family to take
11 one farm out of production for solar use.
12 Actually, it's only, I think, about 60 acres,
13 which will enable the next generation to
14 continue to pay the taxes on all the other
15 farmland, at least for the duration of the
16 lease.

17 Which is a community benefit, with
18 the rest of our farmland being able to stay in
19 production. Which is a form of farmland
20 preservation, along with it being very good
21 for our environment. Thank you.

22 **ALJ SAYRE:** Is there anyone else who
23 has signed up or would like to sign up to
24 speak?

25 We went through our list a little

1 faster than I expected. I don't think I
2 really needed to hold you quite as strictly as
3 I did, although it wasn't very strictly, to
4 five minutes.

5 Is there anyone who would like a few
6 more minutes to speak that I had to cut-off
7 after six or seven minutes, and would like to
8 make just a few more minutes of additional
9 remarks?

10 Go ahead. State your name again,
11 and make your additional statement.

12 **MR. WINNIE:** Joweis, J-O-W-E-I-S,
13 that's Seneca for Chirping Bird. My culture
14 that that name comes from is what we're also
15 trying to project onto you people. That the
16 connection to the land that's in our
17 ceremonies and our way of life is completely
18 different than your world.

19 Everything we see is probably
20 through different eyes, and the relationship
21 of having generations to fall back on. This
22 country was conquered by the Europeans that
23 didn't have that background to fall back on,
24 and doesn't know it now.

25 But what I did want to clarify, I

1 guess, with a few extra words. It's not only
2 the connection to the burial grounds, per se,
3 it's the protection of the non-humans, the
4 plants, and the animals, the things that
5 nobody's really been talking about so far
6 tonight.

7 I don't think -- the comment about
8 solar panels, having solar projects, I
9 wouldn't call them a farm because that's just
10 a disguise. Just like the word Horseshoe or
11 the word bear, bear paths, or any little fancy
12 name that they want to use describing these
13 panels, these projects. They don't call them
14 what they are. They want to make it sound all
15 nice and fairy tale like.

16 But so the part about us being
17 connected to the land and it goes way, way,
18 way deep. And I just can't emphasize how --
19 how badly I feel that this area of sensitivity
20 is going to be covered with solar panels.

21 And I guess reemphasizing what I
22 said before, that the -- what I didn't talk
23 about and other people did, was the farmland.
24 Now this farmland is the richest in New York
25 State, and always has been. So that's why you

1 saw all these archeological site findings on
2 this valley on the map, because this is where
3 you would want to live and grow your crops.

4 And this goes back 10,000 years.
5 That's before the Pyramids of Giza were built.
6 That's how much history is right here
7 underneath your feet.

8 And right underneath your feet right
9 here is where the original Seneca village was.
10 And that was in a time when there was no ORES
11 to protect what was dug up around here.

12 When they developed this town, they
13 moved us over there so they could keep
14 possession of the sulphur springs. So they
15 can make money on the sulphur springs, until
16 that went.

17 So I guess you guys know all that
18 kind of stuff. But I'm just -- it's not going
19 to stop me from fighting after today is over
20 with. John and myself are on this campaign,
21 and we're in it for life. So is Jason.

22 I will go on fighting for the
23 removal of the Medals of Honor for the people
24 that massacred -- the soldiers that massacred
25 our people at Wounded Knee. That's a bill in

1 congress right now, To Remove the Stain Act.
2 So I will still be fighting that. Whatever I
3 can do to fight this.

4 I will be -- I am in a committee in
5 the City of Rochester to change C day into
6 Indigenous People's Day. I've done that
7 before in the Town of Newstead.

8 So that's what I -- that's where all
9 of this is taking our people. That we're not
10 going to give up fighting any of these things
11 in New York State, or in the United States, or
12 in South America. Because the Indigenous
13 people have to all fight all these things all
14 the time. And I will be there to support
15 them. Now a.

16 **A SPEAKER:** Thank you, Paul. We're
17 with you.

18 **ALJ SAYRE:** Yes, sir, go ahead.

19 **MR. KANE:** I don't shy away from
20 microphones. Again my name is John Kane.

21 Look, I do radio advocacy for Native
22 People in New York and in Washington, DC. And
23 I do podcasts and videos about so many of the
24 struggles that we have.

25 I mention the UN Declaration of the

1 Rights of Indigenous Peoples. Most of you
2 don't even know what that is. Even though it
3 is an international declaration that included
4 in its language, calls it the minimum standard
5 by which nation states should recognize the
6 rights of Indigenous Peoples for dignity and
7 survival. The minimum standard. And most of
8 you making decisions like this don't even know
9 it. Don't even know that it exists.

10 I mention that it requires free,
11 prior, and informed consent for policies,
12 practices, activities that will impact Native
13 People.

14 The fact that it is not known
15 predominantly by Americans is somewhat
16 associated with the fact that only four
17 nations in the -- a part of the general
18 assembly voted against it in 2007. The United
19 States, Canada, New Zealand, and Australia.

20 Now since then, all four nations
21 have suggested that they endorse the
22 aspirations of the declaration, provided it
23 doesn't conflict with their laws. Well, if
24 you're not providing free, prior, and informed
25 consent on activities that impact Native

1 People's lives, history, culture, and future,
2 then -- then you're violating it.

3 I encourage everybody in this room,
4 especially those who will make decisions on
5 this, to read the damn thing. Find it online,
6 the UN Declaration of the Rights of Indigenous
7 People.

8 See free, prior, and informed
9 consent mentioned, I think, five or six times
10 throughout the document.

11 See what it rejects in its -- in its
12 initial language of the document.

13 One of the things that it rejects is
14 racism. And I gotta tell you, the failure for
15 Native People to have a seat at the table, to
16 be recognized as persons in these
17 conversations, is racist.

18 And let me define racism, since so
19 many people don't understand what racism is.
20 Racism is the -- is when you have a power
21 vacuum. Where one group of people has a sense
22 of superiority over another group of people.
23 Where they have the power to make decisions
24 here, and these people have none.

25 Native People have been -- have been

1 the victims of racism longer than anyone at
2 the hands of European colonists. The first
3 slaves weren't black people, and I'm certainly
4 not trying to diminish the atrocities
5 committed against black people. The first
6 slaves were native.

7 George Washington said, let the
8 Senecas and Cayugas know the terror of their
9 chastisement, when he launched the Sullivan
10 Campaigns to dispossess Native People of their
11 lands.

12 A hundred years of residential
13 schools, paid for by the United States, and
14 operated by the churches, many of them,
15 several of them. A hundred years.

16 The largest period of land loss took
17 place during that hundred years of residential
18 schools. That the United States hasn't even
19 begun to reckon with. Oh, yeah, they'll cite
20 the unmarked graves being discovered in
21 Canada, but nobody's even begun to count the
22 bodies that were buried at schools.

23 I don't know how many of you went to
24 a school that required a graveyard. I suspect
25 none. But our ancestors did.

1 We also experienced the largest
2 period of identity loss. Hollywood called us
3 indians and red skins and warriors and savages
4 and braves, and then you call your team names
5 by the same thing. Your schools get to mock
6 us. That isn't just mockery, it's erasure.

7 And look, I can appreciate how many
8 years some of you have made homes in what was
9 the ancestral lands of the Senecas, but it
10 hasn't been thousands of years. This is -- I
11 mean, how do you ask for respect? I mean, do
12 you beg for it?

13 This project is wrong. Many of you
14 know it, and you're only trying to justify it
15 with dollars and cents, and that makes it more
16 wrong.

17 Again, I appreciate your attention
18 and the opportunity to speak, but again, I've
19 got to say, this is not a seat at the table.
20 This is checking a box for a process. It's
21 not the same thing.

22 **ALJ SAYRE:** Thank you for your
23 comments. I think we've gone through the list
24 of speakers.

25 I want to remind everyone, if you're

1 interested in filing written comments or
2 electronic comments, take one of these
3 information sheets. There is a stack of them
4 here, there is a stack of them on the table
5 back there.

6 This process is coming swiftly to a
7 close. The deadline for those comments is
8 tomorrow. So if you want to get those filed,
9 please get them filed timely.

10 **MR. CORWIN:** I would like to make
11 one more comment.

12 **ALJ SAYRE:** Can you make it very
13 brief, please?

14 **MR. CORWIN:** Yes. Just one comment.
15 Again, Jason Corwin, C-O-R-W-I-N. I would
16 like to address the point that was made in the
17 virtual meeting last night that said that both
18 the Seneca Nation Government for the Senecas
19 of Cattaraugus and Allegany, and the Tonawanda
20 Council of Chiefs have not issued any further
21 objections to the project.

22 Now, that may very well be true, but
23 the vast majority of Seneca citizens, if not
24 all Seneca citizens, are adamantly opposed to
25 this project.

1 It is a pragmatic decision that
2 these smaller governments that are strapped in
3 resources and juggling all kinds of battles
4 coming from every single which way, everything
5 from fracking wastewater in our rivers, to the
6 Governor trying to extort half a billion
7 dollars to fund the new Bills' stadium, I
8 mean, there are all kinds of issues that are
9 being dealt with. And so unfortunately, they
10 may make decisions to say, okay, we're going
11 to let this one go.

12 But I just want it for the record,
13 that I, through the communications that I'm
14 regularly in with the members of our
15 community, everyone is -- I mean, people were
16 messaging me right now, I wish I could be
17 there tonight. What's going on? How's it
18 going? What's going to happen with this?

19 So I just want you to know there
20 might be only a few of us that made it here in
21 person, but there is many, many, and as well
22 as many, many non-natives that understand the
23 moral and ethical significance of what's going
24 on here, the ecological significance, and are
25 opposed. Thank you.

1 **ALJ SAYRE:** Thank you, sir. Having
2 heard from all those individuals wishing to
3 comment, I will proceed to close this public
4 comment hearing.

5 I give my special thanks to the
6 Office of Renewable Energy Siting staff for
7 administering this session, to our court
8 reporter, Susan Ryckman.

9 The hearing is now concluded. We
10 will go off the record.

11 (The proceeding concluded at
12 a time of 6:48 p.m.)

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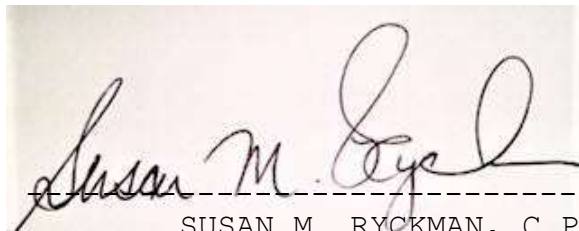
STATE OF NEW YORK)

ss:

COUNTY OF GENESEE)

I DO HEREBY CERTIFY as a Notary Public in and for the State of New York, that I did attend and report the foregoing proceeding, which was taken down by me in a verbatim manner by means of machine shorthand.

Further, that the proceeding was then reduced to writing in my presence and under my direction. That the proceeding was taken to be used in the foregoing entitled action.



SUSAN M. RYCKMAN, C.P.,
Notary Public.