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PETITION TO SUSPEND THE ISSUANCE OF FEDERAL PERMITS AND APPROVALS IN CONNECTION WITH THE AGRICOLA WIND PROJECT IN CENTRAL NEW YORK AND SEEKING INJUNCTIVE RELIEF AGAINST NEW YORK STATE'S ARTICLE VIII PERMITTING PROCESS

Dear Attorney General Bondi, Administrator Zeldin and Rocheleau, Lieutenant Colonel Burnham and Regional Director Marino:

On behalf of the Town of Scipio, please accept this letter Petition requesting that your office(s) seek preliminary and permanent injunctive relief in an appropriate federal court to halt the permitting process for large-scale major renewable energy projects pursuant to New York Public Service Law Article VIII. Article VIII was enacted to facilitate New York State's Climate Leadership and Community Protection Act ("Climate Act"). In 2019, the Climate Act was signed

by former New York Governor Andrew Cuomo. The Climate Act set out ambitious goals, including having 70% of the State's electricity be generated by renewable energy by 2030 and achieving "zero emissions" by 2040. To accomplish these goals, the State enacted the Accelerated Renewable Energy Growth and Community Benefit Act, which established New York State Office of Renewable Energy Siting and Electric Transmission ("ORES"). Through Article VIII, these large-scale facilities are being fast-tracked by ORES in a manner that upsets newly released federal energy policies and disenfranchises local municipal home rule.

Agricola Wind, LLC (the "Applicant") is seeking final approval of a pending application before ORES to construct a 99 megawatt (MW) commercial wind facility (the "Proposed Wind Facility"), consisting of 24 wind turbines within the Towns of Scipio and Venice, Cayuga County, State of New York. As required by New York State's expedited permitting process through Article VIII and the Climate Act, the Applicant has disclosed that it must obtain permits and approvals from the following federal agencies:

1. United States Army Corps of Engineers ("USACE");
2. United States Fish and Wildlife Service ("USFWS"); and
3. Federal Aviation Administration ("FAA").

To date, the Applicant has not secured the necessary permits and approvals from any of the aforementioned federal agencies.

On April 8, 2025, President Donald Trump signed Executive Order No. 14260, titled "Protecting American Energy from State Overreach" ("Executive Order"). In executing the Executive Order, President Trump explained that "American energy dominance is threatened when State and local governments seek to regulate energy beyond their constitutional or statutory authorities." Of note, the Executive Order specifically references New York's "climate change" law as threatening the United States of America's economic and national security. While we cannot be sure that President Trump was specifically referencing Article VIII and the Climate Act, these statutes fit the description set forth in the Executive Order. The President's administration contends that such State and local laws and policies "undermine Federalism by projecting the regulatory preferences of a few States into all States."

As a result, the President, through the Executive Order, directed the United States' Attorney General to "identify all State and local laws, regulations, causes of action, policies, and practices...burdening the identification, development, siting, production, or use of domestic energy resources that are or may be unconstitutional, preempted by Federal law, or otherwise unenforceable," and to prioritize "the identification of any such State laws purporting to address 'climate change' or involving 'environmental, social, and governance initiatives, 'environmental justice,' carbon or 'greenhouse gas' emissions, and funds to collect carbon penalties or carbon taxes." Pursuant to the Executive Order, the Attorney General is required to "expeditiously take

all appropriate action to stop the enforcement of State laws and the continuation of civil actions" the Attorney General deems to be illegal.

New York State's expedited permitting process as set forth in Article VIII of the Public Service Law undermines federal law and the statutory authority establishing and regulating the power exercised by ORES is questionable. As a result, the directives of the Executive Order clearly make it improper for ORES to issue a permit for the Proposed Wind Facility until such time as the Executive Order is terminated or effectively repealed. Indeed, because the Applicant did not secure the requisite federal permits and approvals it needs for the construction and operation of the Proposed Wind Facility prior to the April 8th execution of the Executive Order, it is arguably improper, or at minimum premature, for ORES to even process the Applicant's application for the Proposed Wind Facility unless or until the Executive Order is terminated or repealed.

ORES has failed to acknowledge the Executive Order and the impact the Order has upon pending applications, as it continues to "fast track" applications for large-scale major renewable energy projects. The Agricola Wind application, despite not having the necessary federal approvals, has been deemed "complete" by ORES. Review of the Draft Permit, which was issued by ORES on June 2, 2025, continues unabated. New York State law is clear that the Applicant is "responsible for obtaining all necessary federal and federally-delegated permits" *prior* to the commencement of construction of the Proposed Wind Facility. Further, permits issued by ORES require developers to commence construction of large-scale major renewable energy projects within three (3) years of permit issuance. Again, unless and until the Executive Order is terminated or effectively repealed, there is a strong likelihood that the Applicant will not be able to obtain the federal permits it requires and will not be able to comply with the terms of a permit. Accordingly, approval of the Proposed Wind Facility at this time will conflict with the Executive Order.

SPECIFIC FEDERAL PERMITS AND APPROVALS REQUESTED TO BE WITHHELD PURUSANT TO THE EXECUTIVE ORDER

1. United States Army Corps of Engineers (USACE) - Clean Water Act Section 404 Permit

Section 404 of the Clean Water Act requires that the Applicant obtain a permit from USACE for the discharge of dredged or fill material into Waters of the United States, including wetlands. In its application, the Applicant fails to specify whether they plan to apply for a general or individual permit. The Applicant offers no specific information relating to the permit to be applied for; instead, the Applicant only acknowledges that they "plan" to complete the review process and obtain the necessary permit in quarter 4 of 2025. A review of the USACE website indicates that the Applicant has neither been issued a general permit nor are they listed as awaiting a final or pending individual permit.

Despite being aware of its obligations under federal law to obtain permit approval from the USACE, its representations in the permitting process to ORES, and the issuance of a Draft Permit, it appears that the Applicant has made no effort to even begin the permitting process. Any issuance

of a final permit for the construction of the Proposed Wind Facility by ORES without the requisite USACE permit having been obtained will be inconsistent with the unequivocal directives of the Executive Order.

2. United States Fish and Wildlife Service (USFWS) - General Permit for Wind Energy Incidental Take Pursuant to Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) prohibits anyone, from "taking" bald or golden eagles without first securing a permit issued by the Secretary of the Interior. Because the construction and operation of the Proposed Wind Facility will result in the taking (death) of protected eagles, the Applicant is required to obtain a General Permit for Wind Energy Incidental Take from the USFWS. According to the application materials submitted to ORES, the Applicant "anticipates" applying for this permit in 2025. Again, a review of the list of "General Permits Issued to Date," maintained by the USFWS indicates that the Applicant has not received the requisite general permit so as to allow for the construction and operation of the Proposed Wind Facility. Given the ambiguity of the information provided by the Applicant relative to the permitting process and its apparent failure to have applied for a Clean Water Act Section 404 Permit, it is certainly possible that the Applicant has not yet filed its application for this permit.

Pursuant to another Executive Order signed by President Trump on January 20, 2025, titled "Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects," the USFWS has ceased to issue any new permits for the incidental taking of eagles for wind energy facilities. As a result, unless and until the Executive Order issued on January 20, 2025, is terminated or effectively repealed, the Applicant will not be able to secure the general permit it requires for the construction and operation of the Proposed Wind Facility. Any issuance of a final permit for the construction of the Proposed Wind Facility by ORES without the requisite USFWS permit having been obtained will be inconsistent and in direct conflict with the Executive Order.

3. Federal Aviation Administration (FAA) - "No Hazard" Determination for Wind Turbines

On May 10, 2024,, the Applicant filed a "Notice of Proposed Construction or Alteration" with the FAA, as required by 14 CFR Part 77. The Notice is required to be filed prior to any construction or alterations that may affect navigable airspace. For safety reasons, in order to proceed with construction of the Proposed Wind Facility, the Applicant is legally obligated to receive a Determination of No Hazard from the FAA. To date, no such determination has been issued at this time with respect to any of the 24 turbines. All known Aeronautical Study Numbers (ASNs) associated with the Agricola Wind Project are as follows: 2024-WTE-3989-OE, 2024-WTE-5215-OE, 2024-WTE-3990-OE, 2024-WTE-3995-OE, 2024-WTE-3994-OE, 2024-WTE-

3992-OE, 2024-WTE-3993-OE, 2024-WTE-3986-OE, 2024-WTE-3996-OE, 2024-WTE-3987-OE, 2024-WTE-3988-OE, 2024-WTE-3984-OE and 2024-WTE-3991-OE.

In the absence of a determination from the FAA, ORES should be prohibited from issuing a final permit for the Proposed Wind Facility. As set forth above, unless and until the Executive Order is terminated or effectively repealed, the Applicant cannot obtain the No Hazard Determination and cannot commence construction activities. Ultimately, the existence of the Executive Order effectively prevents the Applicant from complying with its obligation to commence construction within three (3) years of permit issuance by ORES. Pursuant to the Executive Order, it is improper and potentially a violation of the federal law for the Applicant to be permitted to proceed with construction of the Proposed Wind Facility.

ARTICLE VIII OF THE NEW YORK STATE PUBLIC SERVICE LAW USURPS THE FEDERAL PERMITTING PROCESS

In furtherance of the Climate Act, New York State enacted the Renewable Action Through Project Interconnection and Deployment Act (the "RAPID Act"), to even *further* expedite the environmental review and permitting process for large-scale major renewable energy facilities and major electric transmission facilities. The RAPID Act created a new Article VIII of the Public Service Law (replacing the former Executive Law "94-c" process), which includes the requirements related to ORES' review of applications and the issuance of siting permits for proposed facilities. As a result of these New York State laws, ORES is in charge of a consolidated and expedited environmental review and permitting process with the goal of speeding up the development of proposed large-scale major renewable energy facilities.

The Climate Act, and subsequent laws creating a fast-tracked permitting process for large-scale renewable energy facilities, are in direct conflict with the April 8th Executive Order. The language of the Executive Order specifically singles out New York's "climate change" laws as "burdensome and ideologically motivated" policies. Collectively, these laws allow New York State to flaunt the authority of the federal government and to issue final permits (and presumably authorize the commencement of construction) for projects which have yet to obtain the requisite federal permits and allow applicants to proceed without satisfying the obligations under federal law.

CONCLUSION

It is clear that the aforementioned Executive Orders issued by President Trump on April 8, 2025, and January 20, 2025, challenge the legal authority for the New York State Office of Renewable Energy Siting to process applications for large-scale renewable energy facilities and issue applicants, such as Agricola Wind LLC, final permits allowing the construction and operation of proposed wind facilities. As such, it is respectfully requested that the federal government seek injunctive relief and intervene to prohibit the State of New York from allowing large-scale

renewable energy facilities, such as the Proposed Wind Facility, to be built and operated without having satisfied their legal obligations to securing necessary permits required under federal law.

The federal government should utilize any and all legal means to prevent ORES from issuing a final permit to allow for the construction of this Proposed Wind Facility because such an approval would be in direct conflict with two separate Executive Orders issued by the President.

Very truly yours,

COSTELLO, COONEY & FEARON, PLLC

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JDE/RAB