Q: Can the pre-development meeting with the municipality or the public be recorded, since there is so much info. being presented?

A: Usually the developer will record the public session and make it available on their website. There is no prohibition on recording the meeting with the municipality if the developer consents.

Q: Will developers be required to study the capacity of local roads to handle the weight of trucks delivering equipment for the project before the pre-development meeting, or will the municipality be expected to know this information?

A: In the application, the developer is required to provide a review of available load bearing and structural rating information for expected facility traffic routes (existing culverts to be traversed by construction vehicles shall also be considered in the analyses). The developer will consult with municipality as part of obtaining the information to perform this review.

Q: Given that it is still early days, do we know what constitutes "substantive and significant" issues? For example, if there are critical environmental areas in the town, do these have to be within a certain distance of the project area to be deemed "substantive and significant" and how and by whom would the impacts on these be determined?

A: “Substantive” and “significant” issues are defined in the regulations, but the practical application of the terms is to be determined. There would not necessary be a fixed distance for a CEA to be considered substantive and significant, though the study area for the facility in rural areas is a minimum of a 5-mile radius from the facility. Where the project impacts to the CEA is substantive and substantial would likely be determined by the potential impacts from the project as opposed to a fixed distance.

Here are the definitions:

(2) An issue is substantive if there is sufficient doubt about the applicant’s ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry. In determining whether such a demonstration has been made, the ALJ shall consider the proposed issue in light of the application and related documents, the standards and conditions, or siting permit, the statement of issues filed by the applicant, the content of any petitions filed for party status, the record of the issues determination and any subsequent written or oral arguments authorized by the ALJ.

(3) An issue is significant if it has the potential to result in the denial of a siting permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit, including uniform standards and conditions.

Q: If there are impacts on critical animal habitats within the project area, can you explain how ORES will determine the ability of the developer to offset such impacts? Will they have
to do so by buying habitat preservation areas within a certain distance of the project area?
Do municipalities have any input into this process?

A: DEC is involved in the proceedings, including developing the draft permit and substantial pre-application consultation. The municipalities have input both in the pre-application meetings, comments, and issues determination phases.

Q: In my experience helping municipalities draft solar zoning laws, the biggest issues are setback, screening, maximum height and maximum lot coverage. Do we know how flexible ORES will be on these issues, given the language about local laws not being "unreasonably burdensome"?

A: Hard to say at this stage. Based on the ORES comments to the regulations, they have signaled that setbacks will be assessed on a case by case basis. The draft permits to date appear to be inclined to deem local laws unreasonably burdensome as compared to Article 10.

Q: Municipalities are struggling with the public safety issues around battery energy storage. Given the 100-foot setbacks in the ORES regulations, could a developer put the storage right at the 100-foot line?

A: Theoretically, yes, but there are other considerations aside from setbacks such as access, code compliance, emergency response, etc.

Q: Are EPA environmental laws part of the review process by the state agency? What if there is a conflict? Would that be significant and substantive? If so, would a town need to prepare a defense of EPA law?

A: The 94-c regulations do not supersede federal law, so if permits are required by EPA or another federal agency they are not granted by ORES and a separate approval from the federal agency would need to be obtained. Note that some federal permitting authority has been delegated to DEC and DEC would granted such permits outside (But usually in parallel with) the 94-c proceeding.

Q: Can a developer just submit a manufacturer's spec sheet regarding ambient noise for inverter or storage equipment to determine the noise generated?

A: The requirements for demonstrating compliance with noise standards are in Section 900-2.8 of the regulations. Noise impact studies are required, which would be informed by manufacturer’s spec among other things.

Q: How does a municipality participate meaningfully in their one meeting w/ the developer if the plan might only be draft and can change? If the plan changes significantly, will the muni get another meeting?
A: The regulations do not require more than one meeting, but ORES encourages, and most developers engage in, more substantial consultation. In addition, there are required consultations with local agencies (highway, emergency response, planning) for informing exhibits.

Q: Who pays for road modifications and EAP needs.

A: Payment for road modifications required by the project would be the obligation of the developer as part of a road use agreement or condition in the permit.

Q: When the emergency plan is developed, are all the local responders approving the plan or is it approved at the state level?

A: At the state level, though there is to be consultation with local responders.

Q: At $1000/MW a 25 MW project only gives $25,000 to the community. At $200/hour that's only 125 hours of consultant support which seems pretty meager, considering that a 25 MW project will need as much review as a 100 MW project.

A: Yes.

Q: If panels catch on fire, do we let them burn or put them out?

Q: The recommended approach would be to include in the emergency response plan developed for the project in consultation with local emergency responders and state agencies. Annual training is required.

Q: Is NYSERDA responsible for standardizing PILOT across the state for these facilities?

A: No. PILOTs are negotiated on a project by project basis, usually at the county level.

Q: Does ORES regulations determine where unusable solar panels and lithium batteries are to be stored during the years of operation? There are millions of panels expected in upstate NYS some will need replacement.

A: The ORES regulations require that waste material be disposed in compliance with applicable federal, state and local regulations. They also encourage waste minimization practices. Approaches for recycling used batteries and solar panels is under development in anticipation of future market and regulatory demands.