

Clean Energy and Host Community Agreements

Tug Hill Commission
Local Government Conference

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Presented by:
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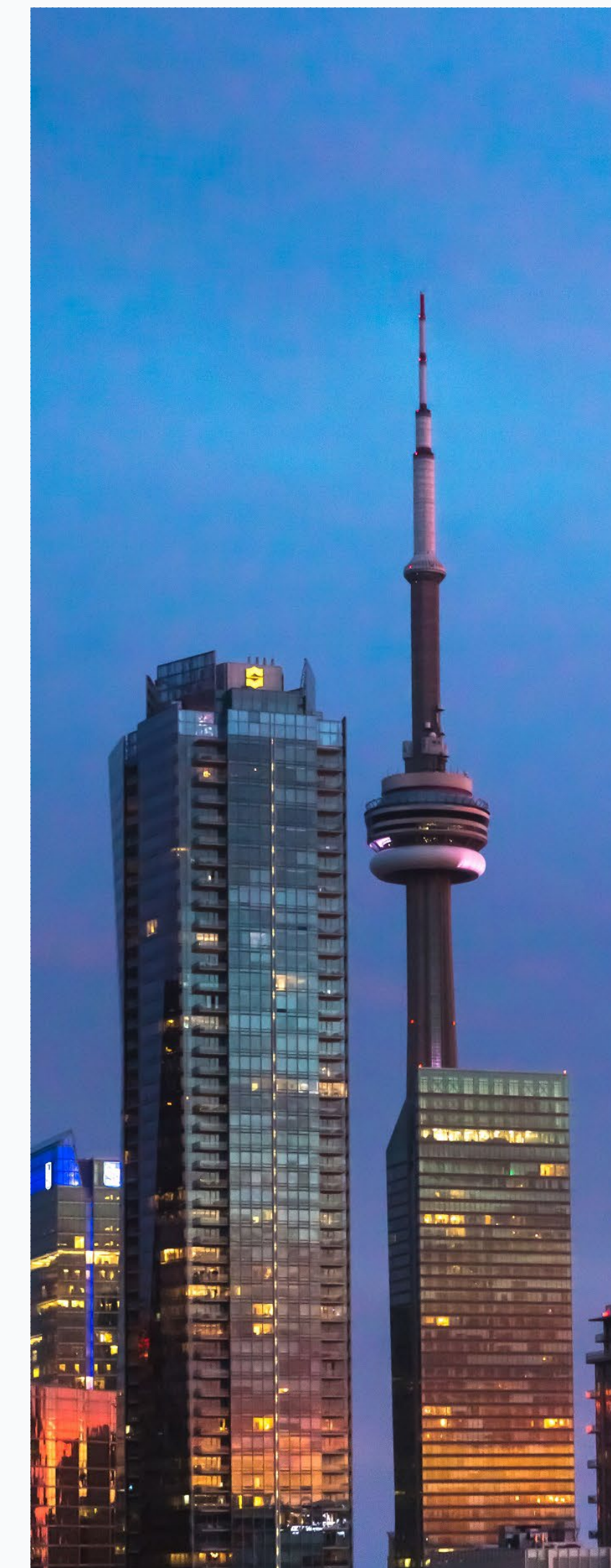
Introduction to Hodgson Russ

BROAD-RANGED, FULL-SERVICE FIRM WITH DEEP CAPABILITIES

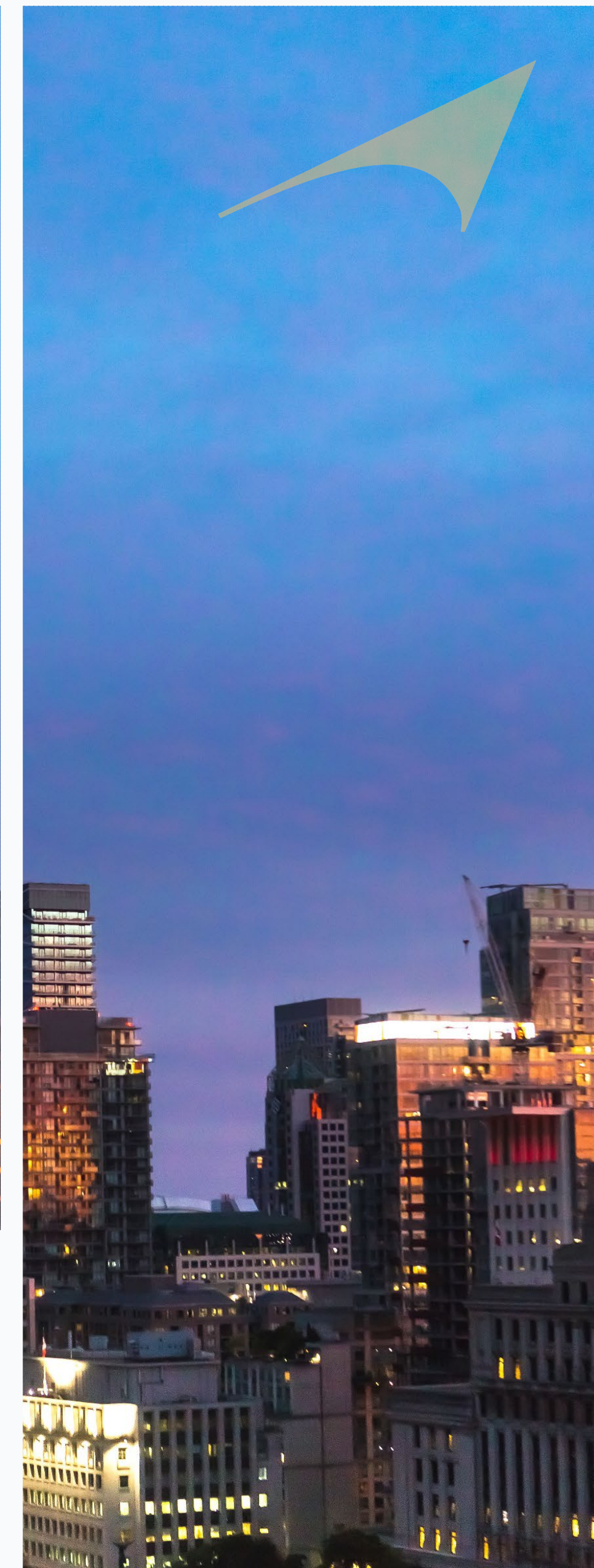
- Founded in 1817, Hodgson Russ has 200+ attorneys practicing in all major areas of U.S. law
- Offices in Toronto, Buffalo, New York City, Albany, Rochester, Saratoga Springs, Hackensack, Greensboro, and Palm Beach
- Experience in markets across North America, Europe and Asia
- Various attorneys are members of the Ontario Bar Association
- Instrumental in completion of the Erie Canal, Robert Moses Niagara Power Plant, Buffalo's City Charter, the founding of Wells Fargo and Citibank, and development of many major industrial, health care, educational and cultural organizations

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- *Best Lawyers*, "Best Lawyers in Canada," "Best Lawyers in America" and "Best Law Firms"
- *American Lawyer's* "2020 AmLaw 200" and the "A-List for Female Equity Partnership"
- *The National Law Journal's* "NLJ 500"
- *Chambers USA: America's Leading Lawyers for Business*
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Toronto, ON*





Introduction to the Real Property Tax Assessment & Eminent Domain Practice



PRACTICE AREAS

Multidisciplinary team cost-effectively guides clients through virtually every aspect of a project's lifecycle:

- Tax planning
- Tax exemption applications
- PILOT arrangements
- Assessment grievance filings
- Administrative and judicial proceedings
- Contaminated properties
- Condemnation claims
- Power generation assets
- Oil and gas facilities
- Pipelines
- Telecommunications towers
- Agricultural properties

REAL PROPERTY TAX ASSESSMENT

Real property tax is a key revenue source for local governments and a notable expense for businesses. Our teams provide practical guidance on these matters, working with appraisers and assessors to resolve disputes and ensure fair treatment for taxpayers and resolve tax disputes.

CONTAMINATED PROPERTIES

We have experience dealing with issues raised by contaminated properties. With efforts to revitalize former industrial lands, these sites offer challenges and opportunities. Our attorneys have managed tax disputes for major contaminated sites nationwide.

EMINENT DOMAIN PROCEEDINGS

We have experience in all aspects of the condemnation process at the federal, state, and local level and have represented both condemning agencies and property owners. We work with appraisers to resolve disputes during negotiations without litigation. Our expertise enables us to efficiently determine fair compensation and navigate necessary judicial processes.

Introduction to the Renewable Energy Practice



Practice Areas

- Multidisciplinary team cost-effectively guides clients through virtually every aspect of a project's lifecycle:
 - Strategic Planning
 - Zoning and State Permitting
 - State and Federal Regulatory
 - Environmental Review
 - Financing
 - Lease and Easement Agreements
 - Title Insurance and Curatives
 - Contracts and Agreements
 - Taxation
 - Litigation
 - Insurance
 - Corporate Structuring and Collaborations
 - Purchase, sale, and related due diligence
- **Projects:** Experienced in wind, solar, energy storage, landfill gas-to-energy, bioenergy projects, electric vehicle infrastructure, energy efficiency, and decarbonization strategies.
- **Clients:** Developers, lenders, acquirers, landowners, permitting agencies, development agencies, parts and service suppliers, manufacturers, contractors, and investors.
- **International Expertise:** Counsel foreign entities participating in United States projects involving cross-border finance, CFIUS, FACTA Compliance, immigration issues, licensing and technology transfer, protection of foreign patents, international taxation and Tax Treaty compliance, multinational mergers and acquisitions, NAFTA, and other trade issues.



Overview

- Project financial agreements
 - Host Community Agreements (“HCAs”)
 - Sometimes called Community Benefit Agreements or Host Community Benefit Agreements
 - PILOTs
 - Other project-related agreements requiring payment to or bond to locality.
 - Decommissioning
 - Road use
 - Escrow



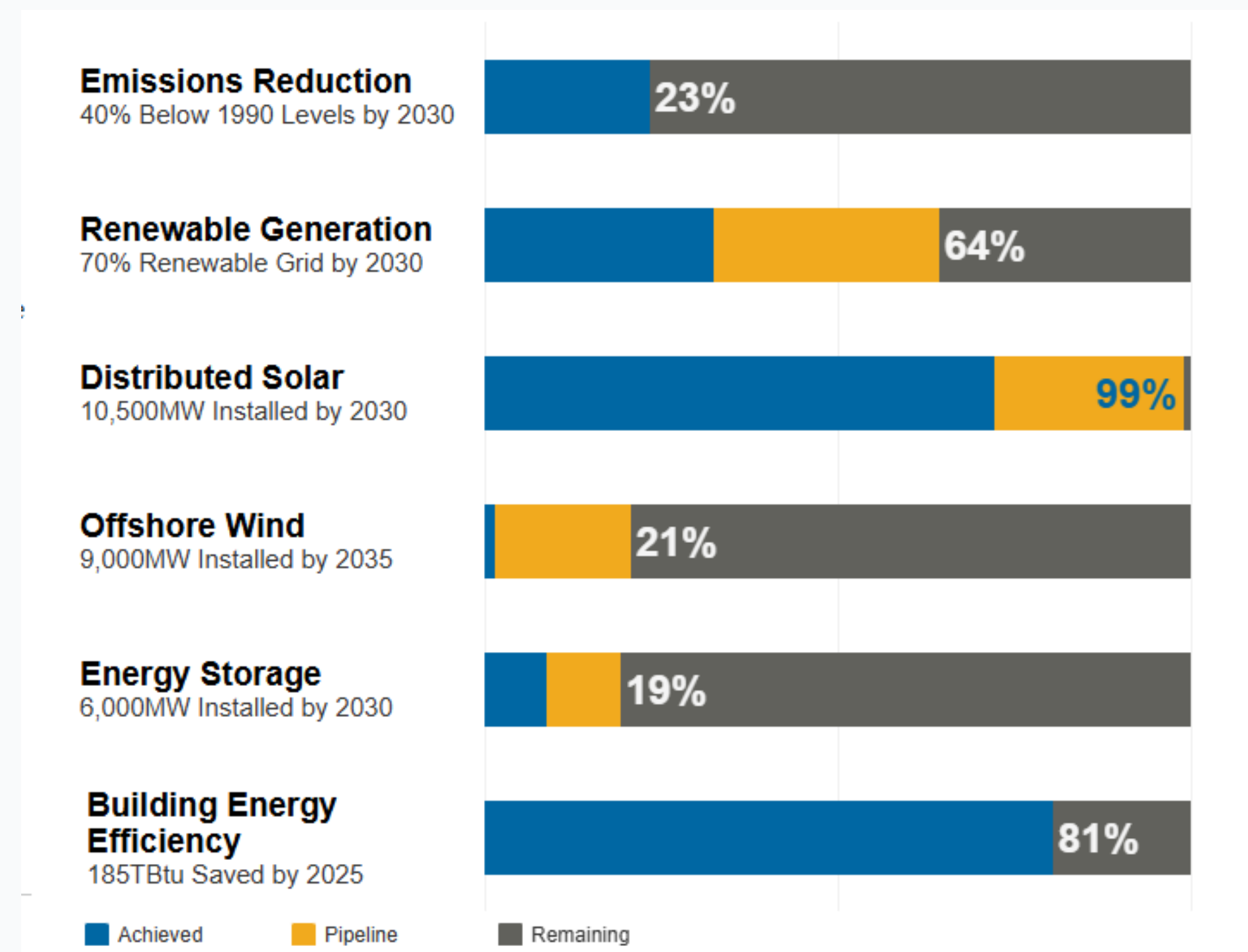


New York Climate Leadership and Community Protection Act (CLCPA)

- Passed 2019 and mandates a 100% zero-emission electricity sector by 2040 and an 85% reduction in total greenhouse gas emissions (of 1990 levels) by 2050. <https://climate.ny.gov/-/media/Project/Climate/Files/CLCPA-Fact-Sheet.ashx>
- It focuses on economic, social, and environmental justice, requiring 35-40% of benefits to aid disadvantaged communities.
- Calls to roll out 6,000MW of distributed solar and 3,000MW of energy storage. As a result, proliferation of clean energy projects (wind, solar, battery) throughout NYS.
- In March 2026, Governor Hochul announced intentions to roll back key provisions, including renewable energy targets and the cap-and-invest program, following industry pressure regarding costs.
- Changes at the federal level concerning timing for interconnection and reduction or elimination of federal incentives.

New York Climate Leadership and Community Protection Act (CLCPA)

- Progress as of April 2026:



<https://climate.ny.gov/dashboard>



Project Benefits

- Added real property tax benefits to communities
 - Special District taxes, like fire district taxes, are not exempt under RPTL 487 or IDA exemptions.
 - Land taxes are not exempt either.
- Conversion from agricultural land to renewable energy use typically results in a rollback penalty to capture the taxes that would have been paid but for the agricultural exemption.
- In these cases, this is new revenue to the community.
- Additionally, financial agreements also provide revenue (*e.g.*, PILOTs, HCA, escrow, etc.).



Host Community Agreements

- Intended to compensate the town for any identified impacts brought about by the project or offset the consumption of certain town services.
- Often in addition to a PILOT.
- Not mandated by statute.
- Methodology and valuation dealt with on a case-by-case basis through negotiations.
- Payments could be over a term and track a PILOT (15 years or longer if through an IDA), the project's anticipated life (25+ years), or be an upfront lump-sum payment.



Host Community Agreements

- Receipt of funds, like a host community agreement, cannot be a condition of land use approvals.
- A state court has now confirmed that municipalities cannot base zoning decisions on the execution of a PILOT and/or HCA.
- In *CSG-Gutami LLC v. Town Board of the Town of Chemung* (Sup. Ct. Chemung Cnty. Index No. 2023-5505), the Supreme Court overturned a permit denial in part due to the town's finding that the amount of HCA was "inadequate", as "a mandatory HCBA would have been unlawful."



CSG-Gutami LLC v. Town Board of the Town of Chemung

- The town discussed entering into an HCA with the solar developer. The first offer was \$1,000 per megawatt produced on the condition that payment obligations under the PILOT could be reduced.
- The town sought a higher amount based on their research of other projects in the state with the parties agreeing to \$1,500 per megawatt of produced energy for 20 years.
- Yet, the special permit application was denied partially due to the town's position that the agreed upon amount was "inadequate."



CSG-Gutami LLC v. Town Board of the Town of Chemung

- “In general, towns have only the lawmaking powers the legislature confers on them.”
- The court found no authority vested in the Town Board to require the petitioners pay the Town via an HCA.
- There is no language in connection with special use permits or NYS Town Law to allow this.
- The court reviewed the language of Executive Law § 94-c concerning large utility-scale renewable projects, which does provide for HCAs. But this does not apply in the community solar context.



CSG-Gutami LLC v. Town Board of the Town of Chemung

- Bottom line: municipalities cannot promise an expedited or favorable outcome on the condition or expectation of “extorting” funds or a pre-determined sum.
- See holding below:

Similarly, where a petitioner’s use of a property complies with the conditions or standards for the issuance of a special use permit, the municipality exceeds its authority by “extorting” a payment from petitioners before issuing the permit. See Matter of PACER, Inc. v. Planning Bd. of City of Middletown, 217 A.D.2d 47, 51-52 (3d Dept. 1995). While it is evident from the parties’ submissions that HCBA’s have become *customary* between new solar energy development projects and their host communities, they are by no means *mandatory* under the circumstances presented herein. Respondents erred in essentially creating an additional, extra-statutory condition for approval of this special use permit.



Host Community Agreements

- Though HCAs may be customary, they are “by no means mandatory” in the community solar context
- Compare to Executive Law § 94-c which is different when siting a “major renewable energy facility” which contemplates an HCA.
- Important clarification:
 - A community may require a PILOT if an RPTL § 487 exemption is sought.



Host Community Agreements

- Sometimes a local municipality may have a very low or \$0 tax rate. A PILOT based on a pro-rata tax share would therefore not work out. In these instances, the locality would typically request an HCA.
- More often, however, municipalities seek HCAs on the basis that the renewable project has certain impacts that the HCA is intended to mitigate. For example:
 - Use of prime agricultural land.
 - Not providing long-term labor opportunities for the local community.
- But what if the lead agency issued a negative declaration under SEQRA. Then what significant impacts?
- Remember underlying land and special district taxes are not exempt under RPTL § 487 resulting in increase in revenue, not a drain of resources.



Host Community Agreements

- Negotiations
 - Where there is a PILOT, work to finalize the PILOT first so you control known variables.
 - Avoids inquiry from other jurisdictions who may be seeking more.
 - Get a sense of what community is looking for
 - Specific lump sum (net present value with discount)
 - Payment over years with escalator
 - Community project focus
 - Playground
 - Park
 - Certain town equipment *e.g.*, fire company

Project Financial Agreements

- PILOT Agreement
- HCA
- Escrow Agreement
- Decommissioning Agreement
- Road Use Agreement



Project Assessments and Taxes





Why RPTL § 575-b?

- Up until the law, local assessors set assessment values for wind and solar projects.
- Assessors used different methods to value the projects, including the costs method, which tends to overvalue. So values differed by jurisdiction.
- Before the law, developers lacked certainty about the tax costs of their projects, particularly where a payment-in-lieu-of-taxes (“PILOT”) agreement was not being negotiated.
- Assessors are not required to establish values until after projects are constructed or at least partially constructed, as of the taxable status date.
- Few projects have come before the courts, although virtually every appraisal submitted into court or in support or opposition to project assessments by independent appraisers, was prepared on the income capitalization basis.
- The Legislature wanted to bring more uniformity and certainty to these projects, particularly given climate goals under the CLCPA.



Why not the Cost Method?

- Some assessors argued that the cost basis was the required methodology, but the New York Court of Appeals disfavors the use of cost because “the reproduction cost less depreciation formula ... is the one most likely to result in overvaluation and, thus, its use is generally limited to properties deemed “specialties.” *Saratoga Harness Racing Inc. v. Williams*, 91 N.Y.2d 639, 646 (1998).
- For solar and wind projects, the income and expenses, and market-based expectations related to discount rates, are available both for the industry and for specific projects. As such, they do not qualify as specialty properties.

The Issue is Real Property Value

- It's about the value of the real property, not the value of the project.
- A significant misconception has been that the purpose of the valuation is what a willing buyer would pay a willing seller for the project, but the only issue is the real property valuation.
- Like any business, a significant portion of the value is not in the real property. Taxation is concerned with only real property values.





What does RPTL § 575-b do?

- First, it resolves the issue of how the assessed value for solar and wind projects will be determined by requiring discounted cash flow (“DCF”) be used.
- Second, it establishes both the Model and the applicable discount rates to be used.
- The law also requires the Department of Taxation and Finance (“DOTF”) consult with the New York State Assessors Association and New York State Energy Research and Development Authority (“NYSERDA”) in carrying out the legal mandates.
- Additionally, there is a public comment period to allow input on the Model and the rates, each of which will be updated each year.
- Only wind and solar projects equal to or greater than one MW nameplate capacity are covered by the law.
- All projects as of the 2022 taxable status date will be assessed using the model, not just new projects. But since the Model and rates are to be updated each year, the Model is limited to the applicable tax year (even though it shows a 25-year depreciation).



How does the Model work?

- The Model utilizes earnings before interest, taxes, depreciation, and amortization (“EBITDA”).
- DOTF has published three variations of the DCF Model and associated discount rates: Large-scale solar (5 megawatts and larger), Value of Distributed Energy Resources (“VDER”) Solar 1-5 megawatts, and Wind 1 megawatt and larger.
- As required by the legislation, DOTF included regional differences by incorporating the different New York Independent System Operator (“NYISO”) zones, as well as the local utility.



About the Discount Rates

- The discount rates are pre-tax Weighted Average Cost of Capital (“WACC”) calculations with different ratios between debt and equity for each of the three project types.
- The Models follow New York law by using the “assessor’s formula,” where the local full-value property tax rate is added to the DOTF-established discount rate to determine the rate to be used in valuing the property.
- It is not clear where DOTF obtained its discount rates, as they have not disclosed the source. Neither assessors (too high!) nor the industry (too low!) think DOTF’s rates are appropriate.



Using the Model

- NYISO Zone
- Project type: Solar (fixed or tracker) or land-based wind
- Project size in ac (MW converted to KW (multiple MW by 1000) *i.e.*, 5 MWac = 5,000 KWac).
- Applicable tax rates and equalization rate to calculate tax load.
- Annual land lease and escalator if applicable.
- Value of Distributed Energy Resources (“VDER”) inputs if applicable.

Using the Model



2026 Solar and Wind Appraisal Model Blue cells require user input

April 8, 2026

Inputs for All Project Revenue Types			
Project Revenue Type	VDER - Value of Distributed Energy Resources		
Plant Type	Solar - Tracking		
Solar/Wind System Size	5,000	kW AC	

Start Date of Plant Operation	1/1/2026		
Taxable Status Year	2026		
System Age at Taxable Status Date	0	Year(s)	
Before Tax Discount Rate - Real WACC	6.59%		
Tax Load	1.92%		
Loaded Nominal Discount Rate	11.35%		
Annual Ground Lease Payment (if applicable)	\$50,000		
Annual Ground Lease Escalator (if applicable)	2.00%		

Additional Required Inputs for VDER Projects			
NYISO Zone	A - West		
Utility Company	NYSEG		
DRV Rate	\$0.0890	\$/kWh	
Community Adder Replaces MTC/CC	\$0.0000	\$/kWh	

Additional Optional Inputs for VDER Projects			
Actual Market Transition or Community Credit or Community Adder/ICSA		\$/kWh	
	\$0	\$	

Note: The model assumes that VDER projects receive the maximum possible Market Transition Credit (MTC) by default, but allows a lower MTC or Community Credit (CC) or a Community Adder (CA) to be entered to override the default assumption. VDER projects may receive either a MTC, a CC or a CA. No VDER project can receive more than one of these credits, and some VDER projects receive none of them. VDER projects may also receive the Inclusive Community Solar Adder (ICSA). If applicable, the ICSA should be added to the CA (if any) and the combined CA and ICSA value should be entered into cell C24.

Additional Inputs for VDER Projects			
Estimated Annual Real Price		\$/kWh	

Additional Inputs for Tax 1 Projects			
Estimated Annual Real Price		\$/kWh	
Estimated Annual Real Price		\$/kWh	

Model Cash Flow Viewing Option			
Cash Flow Type	Nominal Dollars		
			1

Note: The model can display cash flows either in Nominal Dollars or in Real 2025 Dollars. Nominal Dollars include inflation while Real 2025 Dollars do not. The present value of cash flows is not affected by this selection.



Using the Model

Calendar/Tax Year	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Year of Plant Operation	1	2	3	4	5	6	7	8	9	10
Energy Production (kWh)	9,202,905	9,156,891	9,135,838	9,064,862	9,018,847	8,972,833	8,951,275	8,880,804	8,834,789	8,788,775
VDER Revenues:										
Energy	425,580	415,944	405,619	393,406	369,695	389,068	404,796	407,466	410,545	406,196
Capacity	28,780	30,178	31,554	28,883	28,181	30,019	31,599	32,110	27,566	29,716
DRV Rate	74,749	74,196	72,234	72,365	72,174	71,491	72,332	70,410	70,045	70,161
MTC or CC	-	-	-	-	-	-	-	-	-	-
Community Adder/ICSA	-	-	-	-	-	-	-	-	-	-
VDER Revenues Total	529,109	520,318	509,408	494,653	470,050	490,578	508,727	509,986	508,156	506,073
Net Revenue Available:										
Net Revenue Available	239,211	236,211	235,209	237,074	231,242	233,159	235,293	236,490	237,645	237,349
Net Revenue Available Total	239,211	236,211	235,209	237,074	231,242	233,159	235,293	236,490	237,645	237,349
Net Revenue Available:										
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Net Revenue Available Total	425,580	415,944	405,619	393,406	369,695	389,068	404,796	407,466	410,545	406,196
Income	\$ 529,109	\$ 520,318	\$ 509,408	\$ 494,653	\$ 470,050	\$ 490,578	\$ 508,727	\$ 509,986	\$ 508,156	\$ 506,073
Expense*	\$ 191,241	\$ 196,022	\$ 200,922	\$ 205,946	\$ 211,094	\$ 216,372	\$ 221,781	\$ 227,325	\$ 233,008	\$ 238,834
Lease	\$ 50,000	\$ 51,000	\$ 52,020	\$ 53,060	\$ 54,122	\$ 55,204	\$ 56,308	\$ 57,434	\$ 58,583	\$ 59,755
Decommissioning	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584
Inverter (Solar Only)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Expenses	\$ 250,825	\$ 256,606	\$ 262,526	\$ 268,590	\$ 274,800	\$ 281,159	\$ 287,673	\$ 294,343	\$ 301,175	\$ 308,172
EBITDA	\$ 278,284	\$ 263,712	\$ 246,881	\$ 226,063	\$ 195,250	\$ 209,418	\$ 221,054	\$ 215,643	\$ 206,981	\$ 197,901
Discount Factor	0.8981	0.8065	0.7243	0.6505	0.5842	0.5246	0.4712	0.4231	0.3800	0.3413
Discounted Cash Flow	\$ 249,919	\$ 212,692	\$ 178,821	\$ 147,052	\$ 114,062	\$ 109,869	\$ 104,153	\$ 91,246	\$ 78,654	\$ 67,538

Present Value of Cash Flows:

\$ 1,571,900 Value for Improvements Only
 \$ 314 / kW AC

Note the model will show depreciation for 25 years.
 For illustrative purposes, the snapshot above shows only ten years.

Using the Model

Calendar/Tax Year	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Year of Plant Operation	1	2	3	4	5	6	7	8	9	10
Energy Production (kWh)	9,202,905	9,156,891	9,135,838	9,064,862	9,018,847	8,972,833	8,951,275	8,880,804	8,834,789	8,788,775
VDER Revenues:										
Energy	425,580	415,944	405,619	393,406	369,695	389,068	404,796	407,466	410,545	406,196
Capacity	28,780	30,178	31,554	28,883	28,181	30,019	31,599	32,110	27,566	29,716
DRV Rate	74,749	74,196	72,234	72,365	72,174	71,491	72,332	70,410	70,045	70,161
MTC or CC	-	-	-	-	-	-	-	-	-	-
Community Adder/ICSA	-	-	-	-	-	-	-	-	-	-
VDER Revenues Total	529,109	520,318	509,408	494,653	470,050	490,578	508,727	509,986	508,156	506,073
Net Income:										
Net Operating Profit	294,822	253,825	216,500	181,567	145,679	138,831	130,683	115,549	100,916	87,931
Net Revenue Total	294,822	253,825	216,500	181,567	145,679	138,831	130,683	115,549	100,916	87,931
Net Income:										
Net Operating Profit	294,822	253,825	216,500	181,567	145,679	138,831	130,683	115,549	100,916	87,931
Net Revenue Total	294,822	253,825	216,500	181,567	145,679	138,831	130,683	115,549	100,916	87,931
Income	\$ 529,109	\$ 520,318	\$ 509,408	\$ 494,653	\$ 470,050	\$ 490,578	\$ 508,727	\$ 509,986	\$ 508,156	\$ 506,073
Expense*	\$ 191,241	\$ 196,022	\$ 200,922	\$ 205,946	\$ 211,094	\$ 216,372	\$ 221,781	\$ 227,325	\$ 233,008	\$ 238,834
Lease	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Decommissioning	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584	\$ 9,584
Inverter (Solar Only)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Expenses	\$ 200,825	\$ 205,606	\$ 210,506	\$ 215,529	\$ 220,678	\$ 225,955	\$ 231,365	\$ 236,909	\$ 242,592	\$ 248,417
EBITDA	\$ 328,284	\$ 314,712	\$ 298,901	\$ 279,124	\$ 249,372	\$ 264,622	\$ 277,362	\$ 273,077	\$ 265,564	\$ 257,656
Discount Factor	0.8981	0.8065	0.7243	0.6505	0.5842	0.5246	0.4712	0.4231	0.3800	0.3413
Discounted Cash Flow	\$ 294,822	\$ 253,825	\$ 216,500	\$ 181,567	\$ 145,679	\$ 138,831	\$ 130,683	\$ 115,549	\$ 100,916	\$ 87,931

Present Value of Cash Flows:

\$ 2,046,972 Value for Improvements and Land Necessary for Plant Operations
 \$ 409 / kW AC

Same inputs without land lease



Where do Assessors get the Inputs?

- Requests have gone out to developers and owners of projects:

Beginning with 2022 assessment rolls, Real Property Tax Law Section 575-b requires local assessors to use the methodology prescribed by the New York State Department of Taxation and Finance to value and place assessments on solar and wind energy systems with a nameplate capacity equal to or greater than one megawatt.

The Tax Department's appraisal model requires a few pieces of information from the developers of affected energy systems. Within 30 days, please complete the information below and return this letter to my office.

Thank you.

Assessor Name, Title _____
Town/City of _____
Address _____
Municipality, NY Zip _____
Telephone number _____
Email (optional) _____

System size: _____

NYISO zone (circle one): A.West B.Genesee C.Central D.North E.Mohawk Valley
F. Capital G.Hudson Valley H.Millwood I.Dunwoodie J.New York City K.Long
Island

Date of operation: _____

Annual ground lease payment (if none, enter 0): \$ _____

Annual ground lease escalator (if none, enter 0): _____ %

Utility Company (circle one): Central Hudson ConEd (11:00 a.m. – 3:00 p.m.)
ConEd (2:00 p.m. – 6:00 p.m.) ConEd (4:00 p.m. – 8:00 p.m.) ConEd (7:00 p.m. –
11:00 p.m.) National Grid NYSEG Orange and Rockland PSEG Long Island RGE

Community or Market Transition Credit (if none, enter 0): \$ _____

Community Adder (if none, enter 0): \$ _____


Signature: _____ **Date:** _____

Printed name: _____

Title: _____

Telephone: _____

Email: _____



What Happens if Developers do not Respond to the Assessor's Request for Information?

S5. If the developer falls or refuses to provide the necessary information for the model may the assessor use other valuation methods to develop a value?

You should make every effort to contact the developer for the necessary information. You may wish to use the [Information request letter template](#).

If you have exhausted all avenues to collect the information from the developer, you may email renewables.model.questions@tax.ny.gov for help in determining typical estimates for the type of plant in your area.

Information from annual reporting under RPTL 575-a?

https://www.tax.ny.gov/pdf/current_forms/property/rp575.pdf

But what if protection sought from disclosure of annual reporting information under FOIL?



What does RPTL § 575-b *not* do?

- RPTL § 575-b does not change the basics of New York assessment law. It changes only the methodology required and the discount rate to be employed.
- Assessments still cannot exceed fair market value, a limitation in the State Constitution, art. XVI, § 2 (“Assessments shall in no case exceed full value.”).
- Per the Court of Appeals, the “concept of ‘full value’ is typically equated with market value, or what ‘a seller under no compulsion to sell and a buyer under no compulsion to buy’ would agree to as the subject property’s price.” *Matter of Allied Corp. v. Town of Camillus*, 80 N.Y.2d 351, 356 (1992).



RPTL § 575-b and PILOTs

- The Model does not address the financial viability of projects where a PILOT agreement is not available from one or more jurisdictions or through the industrial development agency.
- Few if any energy-generating plants of any type in the state can afford to pay full taxes. Setting fair valuations will not address this situation, which presents a significant impediment to achieving New York's climate change goals.
- The Model will also not inform municipalities as to what is a fair PILOT. Though NYSERDA previously produced a PILOT tool which helped numerous communities and developers reach agreement based on an understanding of what projects can afford.
- At most, the Model establishes the outer limit of RPTL § 487 PILOT agreements, which cannot exceed full taxation.



Unanswered Questions

- As assessors are required to provide both a total valuation and the land valuation in establishing the assessment rolls, it is not clear how the Model is to be implemented in this regard. DOTF guidance is inconsistent and unclear. For example:

Land value —

L1. How does the model handle the value of the land, and how should assessors value the land if it is leased or very large?

The user has the opportunity to enter the annual amount of a land lease into the model.

- **If a value is entered in the Annual Ground Lease Payment field**, then the model output does not include a land value. In that case, the assessor should use a standard appraisal methodology to value the land and add it to the value produced by the model.
- **If the property is not leased or the annual amount of the land lease is not known**, the user should leave the annual ground lease payment set to \$0. The model will then value the land in conjunction with the plant itself. The present value of cash flow produced by the model, in this case, will be the full market value of the plant and land combined. To apportion the model output between land and improvements for placement on the assessment roll, the assessor should use standard appraisal methodology to determine the value of the land.



Unanswered Questions

- The Model is not a Uniform Standards of Appraisal Practice-compliant appraisal. How will the courts handle challenges?
- Can assessors and assessment review boards still settle cases via RPTL Article 5 grievance procedures?
- For projects involved in assessment challenge litigation, does the annual use of the Model constitute an update for purposes of the three-year freeze under RPTL § 727?



The RPTL § 487 Exemption

- Applicants file exemption form with local assessor by taxable status date (usually March 1 in most jurisdictions).
- Provides a 15-year real property tax exemption for certain renewable energy systems, including wind and solar.
- Amount of the exemption is equal to the increase in value of the property caused by adding the system i.e., the improvement value.



Overview of the RPTL § 487 Exemption (cont'd)

- Does not exempt these systems from special assessments or ad valorem levies.
- Municipalities and School Districts may opt out of the exemption.
 - To opt out, a local law, ordinance, or resolutions must be filed with the commissioner of the NYS Department of Taxation and Finance and the president of NYSERDA. Make assessor aware, too.
 - A local government that does not opt out can still benefit financially through payment-in-lieu-of-taxes ("PILOT") agreements.



PILOT Agreements

- “A county, city, town, village or school district, [] that has *not* acted to remove the exemption under this section may require the owner of a property which includes a solar or wind energy system which meets the requirements of subdivision four of this section, to enter into a contract for payments in lieu of taxes. Such contract may require annual payments in an amount *not to exceed* the amounts which would otherwise be payable but for the exemption under this section. If the owner or developer of such a system provides written notification to a taxing jurisdiction of its intent to construct such a system, then in order to require the owner or developer of such system to enter into a contract for payments in lieu of taxes, such taxing jurisdiction must notify such owner or developer of its intent to require a contract for payments in lieu of taxes *within sixty days of receiving the written notification.*” RPTL § 487(9)(a) (emphases and brackets added).
- No PILOT mandated for standalone storage systems.



Demanding a PILOT Agreement

- For jurisdictions that have not opted out of the RPTL § 487 exemption, they can demand a PILOT Agreement up to, but not to exceed, full taxes.
- 60-day window upon receiving RPTL § 487 notice from developer.
- Strict deadline. Failure to make a timely demand waives right to PILOT Agreement, so project will be exempt for 15 years.
- Act promptly upon receipt of notice.



Typical PILOT Agreements

1. Payment per megawatt, not assessed value or actual production.
2. Terms of payment.
3. Adjustments for system changes.
4. Assignment clause.
5. Defense/indemnification provisions.
6. Remedies on default.
7. Termination conditions.
8. Payment of school district costs to negotiate PILOT.



Industrial Development Agencies and the RPTL § 487 Exemption Alternative

- Industrial Development Agencies (“IDAs”) can provide an alternative route to an exemption.
 - Opt out irrelevant; an IDA does not need local permission to grant a PILOT, but many IDAs have policies that require local approval.
 - No time limit; can be longer than 15 years.
 - Can also provide sales tax and mortgage recording tax exemptions.
 - Charge a fee 1%-2% of total project cost.
 - IDA PILOTs have become less advantageous with the dawn of the RPTL § 575-b Model since taxes can now be projected.

Questions?





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Thank You!

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