



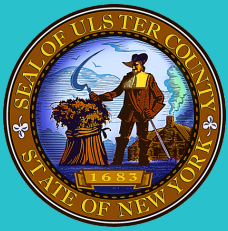
# **ULSTER COUNTY SOLAR PILOT AUDIT – REVIEW OF BILLING AND COLLECTIONS**

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**Office of the  
Ulster County Comptroller  
March S. Gallagher**







# ULSTER COUNTY OFFICE OF THE COMPTROLLER

## Ulster County Solar PILOTs Audit – Review of Billing and Collections

comptroller.ulstercountyny.gov

Released September 2023

### Executive Summary: Why this Audit is Important

The audit identified issues related to inconsistent rates for solar PILOT agreements and the incorrect application of interest and penalties. These issues stem from the absence of standardized policies and guidelines, leading to potential advantages or disadvantages for solar energy companies and a lack of accuracy and equity in PILOT agreements. To address these issues, it is recommended that the Legislature institute a standard policy to establish consistent rates. Additionally, the Department of Finance should document interest and penalty calculations once the 30-day grace period ends. By implementing these recommendations, Ulster County can promote transparency and accountability in the solar PILOT program while fostering a level playing field and equitable tax application for all stakeholders involved.

### Introduction

NYS RPTL §487 grants a 15-year exemption from real property taxes for any increase in property value resulting from the installation of renewable energy systems, such as solar electric systems. This exemption applies only to the added value brought by the renewable energy system and does not exempt landowners from property taxes beyond the value of the improvements. Taxing authorities have the option to decline this exemption by enacting a local law, ordinance, or resolution, thus making the property's value fully taxable. See the chart to the right for a list of Ulster County's taxing authorities that have filed with the New York State Department of Taxation and Finance copies of local laws or resolutions opting out of the real property tax exemption for certain energy systems.

Municipality	Local law/resolution opting out of solar wind and farm waste energy systems
<b>Towns</b>	
Gardiner	92-2, rescinded on 5/16/2007
Marlborough	11/12/2018
Shawangunk	5/17/2018
Wawarsing	6/14/2016, 2/21/2018
<b>School Districts</b>	
Pine Bush	4/20/2016
Valley Central	9/24/2018
Wallkill	10/17/2019

If a taxing authority chooses not to opt-out, they can engage in an agreement with solar developers to receive payments in lieu of taxes (PILOT) to compensate for the reduced tax amount granted by the law. The PILOTs cannot exceed the tax amount that would have been collected if the exemption was declined, and the law does not allow taxing authorities to selectively adopt or partially opt-out of the program.

### Background

The solar industry has witnessed remarkable growth in recent years, becoming a significant player in the renewable energy sector. As concerns about climate change and the need for sustainable energy sources have gained prominence, solar power has emerged as a leading solution to meet the increasing global energy demands while reducing carbon emissions. Since 2000, Ulster County has completed 107.1 Megawatts (MW) of Nameplate Capacity with an additional 38.8 MW in the pipeline for development.<sup>1</sup>

Ulster County has traditionally offered PILOT agreements to solar projects that have submitted a Notice of Intent for plans to build and operate solar energy systems. At the end of 2022, Ulster County had twelve approved Solar PILOT agreements in place. For the 2023 County Taxable year, the total revenue forgone attributable to Solar and Wind Exemptions was \$91,103.<sup>2</sup>

[1] <https://www.nyscrda.ny.gov/All-Programs/NY-Sun/Solar-Data-Maps/NYSERDA-Supported-Solar-Projects>

[2] <https://ulstercountyny.gov/sites/default/files/2022-Real-Property-Data-Report.pdf>

The chart below shows that there is inconsistency in the rate that the County charges per megawatt. This presents an opportunity for local Legislators to establish a policy that promotes fairness among projects and establishes a consistent framework for upcoming developers.

Company Name	Town	Project Megawatts	Rate/ Megawatt	Annual PILOT Payment	Town PILOT	School PILOT
Bluestone Solar LLC	Kingston (T)	2	3,750.00	\$ 7,500.00		
Marlboro Solar LLC	Malborough	2	*608.85	\$ 1,217.70	✓	✓
New Beginning Solar LLC	Marbletown	2	3,500.00	\$ 7,000.00		
RWECE Clean Energy Solar Inc	Marbletown	3	*722.86	\$ 2,168.58	✓	✓
103 Sparling Road LLC	Saugerties	3.5	*755.50	\$ 2,644.25		
Bluestone Solar	Saugerties	20	331.20	\$ 6,624.00	✓	✓
ELP Myer Solar LLC	Saugerties	2	*1900.00	\$ 3,800.00	✓	
ELP Saugerties Solar	Saugerties	2	*950.00	\$ 1,900.00	✓	✓
Landau Solar LLC	Ulster	2	3,500.00	\$ 7,000.00		
Landau Solar II LLC	Ulster	4	3,500.00	\$ 14,000.00		
Frog Hollow Solar LLC	Wawarsing	2	1,166.67	\$ 2,333.34		
Reisender Solar	Wawarsing	2	1,166.67	\$ 2,333.34		
* 2% increase on annual payment						

Information derived from Solar PILOT contracts provided by Ulster County Department of Real Property

## Objective

To evaluate the effectiveness and accuracy of the Department of Finance’s billing and collection processes for Solar PILOT agreements, and to assess whether the Department follows relevant laws, regulations, policies, and contractual obligations.

## Scope

The audit included interviews with Department of Finance and Real Property staff responsible for administering the program and collecting payments. The audit period was from January 2016 through December 2022.

## Findings & Recommendations

### Finding 1 - Inconsistent rates for Solar PILOT agreements and lack of documentation

**Condition:** Our examination revealed that the rates applied to Solar PILOT agreements across various jurisdictions were inconsistent and the County lacked supporting documentation showing how the rates were determined. When asked, Department of Finance staff were unable to explain how rates were determined. Department of Finance staff stated that all rate determinations were made at the sole discretion of the former Ulster County Commissioner of Finance.

**Effect:** Different rates per megawatt were charged to different projects with no supporting documentation maintained by the Department of Finance to justify the rate decisions made. The County Legislative resolutions that we reviewed also did not provide justification for the rate charged. Inconsistently applying rates charged per megawatt for Solar PILOT agreements could lead to unfair advantages or disadvantages for certain solar energy companies.

**Cause:** The inconsistency observed in the rates of Solar PILOT agreements can be primarily attributed to the absence of a standardized County policy or guideline for determining rates. The absence of a standardized policy introduces potential for subjectivity in the rate-setting process.

**Criteria:** In their efforts to provide comprehensive guidance, New York State Energy Research and Development Authority (NYSERDA) developed two Solar PILOT rate calculators as practical tools. The first calculator enabled the establishment of a uniform PILOT rate throughout the jurisdiction, ensuring consistency and equitable treatment for solar projects. The second calculator takes into consideration project-specific data and factors that directly impact the economics of each individual solar project. The calculators that were available at the time that these PILOT agreements were negotiated are no longer available due to changes in legislation. NYSERDA and the New York State Department of Taxation and Finance are currently working to construct a new calculator for solar PILOT rate determination.<sup>3</sup>

**Recommendation:** To address the issue identified, we recommend that the Legislature institute a policy ensuring consistent rates for Solar PILOT agreements. This policy should establish a standardized framework for determining the rates considering relevant factors such as the size of the solar facility, the expected energy generation, and the local economic conditions. By implementing a clear and consistent policy, the Legislature can promote fairness, transparency, and accountability in the taxation of solar energy companies. The Ulster County Legislature may want to consider a policy similar to the one Dutchess County established for solar PILOTs in 2019 that addresses when agreements will be entered into based on the decisions of its other local taxing jurisdictions. Additionally, the policy commits the funds received to “green” county initiatives<sup>4</sup> and requires the use of the NYSERDA toolkit for the purpose of determining rates.

## **Finding 2 – Penalties and interest for late payments were not applied correctly**

**Condition:** Penalties and interest for late Solar PILOT payments do not appear to have been applied correctly.

**Effect:** The failure to apply interest and penalties correctly can give the appearance of favoring certain taxpayers. When penalties and interest are not applied correctly it removes the incentive to make timely payments.

**Cause:** There are no clear guidelines or policies specifying the appropriate calculation methods and parameters of when the penalties will be applied or when they can be forgiven. The former Commissioner of Finance, as the tax collecting officer, was the sole decision-making authority in applying or refunding penalties. One of the entries we reviewed in the County’s financial system reversed a late payment penalty and described that the payment was received during the “interest free period.” This payment was received in February, therefore, should have been subject to interest and penalties. The Department of Finance staff might be interpreting the 30-day grace period to commence after the due date of January 31, but we understand the language printed on the County invoices to mean that the 30-day interest free period refers to the month of January.

**Criteria:** The Solar PILOT contracts provide the terms of the payment and the billing schedule. Payments are due “within 30 days of the postmark of the bill or no later than January 31, 20xx whichever is later.” The bill also references GML § 874 section (5)<sup>5</sup> where delinquent PILOT payments are subject to late payment penalties, and in Ulster County the “late payment penalty shall be 5% of the amount due and, thereafter one additional percent (1%) each month.”

**Recommendation:** The Department of Finance should implement the penalty calculations to automatically be applied with the County’s financial management system once the thirty-day grace period has ended. The automatic calculation will ensure that once payment is received, the County can bill for the outstanding penalty and ensure its collection. If the County cannot automate this process we recommend that any penalty and interest calculation supporting documentation be maintained by the Department of Finance. We also recommend that the penalty be applied once the 30-day grace period from date of billing ends. Ensuring the implementation of the penalty for late payments will reinforce the importance of adhering to the designated due date as well as ensuring equity amongst PILOT recipients.



[3] since the draft edition of this report NYSERDA calculator has been updated and continually changes as key factors affecting solar are considered. The latest edition can be found here, <https://www.nyserda.ny.gov/-/media/3E86D87D49CB4A638FC6B582D1688905.ashx> which provides two calculators. One provides PILOT rate guidance for solar projects based on the local cost of electricity and the second provides guidance based on the minimum revenue a project needs to be financially viable.

[4] <https://www.dutchessny.gov/Departments/Planning/Solar-PILOTs-Policy.htm>

[5] <https://www.nysenate.gov/legislation/laws/GMU/874>



# ULSTER COUNTY DEPARTMENT OF FINANCE

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August 31, 2023

March Gallagher  
Ulster County Comptroller  
244 Fair Street  
PO Box 1800  
Kingston, NY 12402-1800

## **Re: Audit of Ulster County Solar PILOT Audit**

Dear Comptroller Gallagher:

Thank you for the opportunity to comment on your findings in the "Ulster County Solar PILOTs Audit – Review of Billing and Collections," provided to me on July 5, 2023. Constructive feedback about our department's processes is always valuable as we strive for better stewardship of public funds.

My staff and I are dedicated to enhancing internal controls and we recognize the need for standardization and transparency. Since taking office in late June 2023, I have prioritized establishing robust policies to foster trust with the legislature, constituents, and the finance team. While the audit period and the audit interviews predated my tenure, I have addressed your findings with relevant staff where we proactively sought improvements. I have full confidence in the Finance Department's team members, as they and I, continually seek improvements in all areas, including to our Solar PILOT billing and collections practices.

In response to your finding of inconsistent rates for Solar PILOT agreements and lack of documentation, I agree that a standardized framework adopted by the legislature for determining rates would promote fairness, transparency, and accountability. I have searched for supporting documentation for how historic PILOT rates were determined and have not succeeded in finding any specific calculations. We await the formulation from NYSERDA and NYSDTF of a new calculator for solar PILOT rate determination which could serve as the basis for a new policy for rate determination. Any rate determinations in the future would also require agreement by the other taxing jurisdictions in multi-jurisdiction PILOT agreements.

Of the twelve PILOT agreements reviewed by your department, five involved multiple taxing jurisdictions. Retrospectively, the distinction between single jurisdiction and multiple jurisdiction PILOT agreements appears to account for some of the significant disparity in Rate/Megawatt as presented in your report. As an example, in one of the multiple jurisdiction agreements, "Marlboro

Solar LLC”, the county’s Rate/Megawatt is \$608.85, which is lower than all but one of the other agreements, but the total Rate/Megawatt payable by the property owner to all jurisdictions equals \$5,500, which is the highest total Rate/Megawatt from the property owner’s perspective of all the agreements.

We look forward to working with the Legislature in developing a standardized County policy or guideline for determining consistent and fair rates, at such time as they deem appropriate to begin that process.

In response to your finding that penalties and interest for late payments were not applied correctly, we acknowledge that payment terms need to be clearer. The staff member responsible for issuing bills had already identified this issue and amended bill language in January 2023. The 2023 invoices no longer refer to the invoices’ postmarks in determining payment due dates. In the future, we plan to implement a policy of sending invoices before the end of December, with payment due dates of January 31, in line with town and county tax due dates in New York State, or of February 15, where that date is stipulated in four of the current PILOT agreements and also, eliminating any reference to a “30-day (interest free) period” which would avoid confusion as to when interest and penalties begin to accrue. While the generation of a new bill in the department’s financial management system requires manual user input and approval for each individual bill, and therefore cannot be fully automated, we are able to apply predetermined interest and penalty calculations in the process of generating each new bill, thereby limiting the possibility of user error.

As you mention in your report, my predecessor was the sole decision-making authority in applying or refunding penalties. It is unclear why the late fees for a payment received in February would have been reversed for being received in “the interest free period”, but I assure you we will apply uniform standards to any payments going forward.

In conclusion, I want to thank you and your staff for the hard work in being the fiscal watchdog for Ulster County taxpayers. This exercise has caused us to re-evaluate our procedures in a helpful way, and I look forward to working on future projects together. Your insight is much appreciated.

Sincerely,



Roseann Daw  
Commissioner of Finance