

Solar Update
July 2021

Last month, I reported that Hecate, moving ahead with its plan to seek expedited approval from the State's new Office of Renewable Energy Siting ("ORES") to site its proposed industrial-size solar power plant, Shepherd's Run, in Craryville, had issued a "Notice of Intent to File an Application" on or about July 15th. As you know, Hecate had earlier transferred out of the longstanding State siting approval process, known as Article 10, into the new, streamlined "Section 94-c" process.

94-c requires that before a developer files an application for a solar power plant with a capacity of 25 MWs or more, it must participate in two mandatory meetings, in the following order: First, Hecate is required to meet with the chief executive of the "host community", Copake's Supervisor Jeanne Mettler. Thereafter, Hecate must meet with "the community", specifically "community members who may be adversely impacted by the siting of the facility".

But here's the catch: both meetings must occur at least 60 days *before* Hecate is allowed to file its Shepherd's Run siting application with ORES. July 15th is eight days from today, so Hecate's announced intention to file on or about July 15th will not be met.

At this point, we have no idea when Hecate *will* file. Since our June Town Board meeting, two important developments have occurred which may well affect the timing: a meeting we had with senior Hecate people, and a lawsuit.

On June 17th, Supervisor Mettler and I met with Hecate Partner and Chief Strategy Officer David Wilhelm, Senior Vice President of

Environmental and Permitting Diane Sullivan, and Shepherd's Run Project Manager Alex Campbell. It was agreed by all that this meeting was *not* the first meeting required by the 94-c process. Supervisor Mettler and I reiterated the Town's two primary objections to the project as currently proposed: (1) it is too big for Copake, and (2) the proposed siting is no good. Although the meeting failed to produce new ideas or tangible progress, we have been told that Hecate is in the process of revising its plan for Shepherd's Run, and that it will present a new plan to us when it is ready. We do not know when that will be, but we look forward to seeing the revised plan, and to further discussions with Hecate representatives.

The second development is a lawsuit that was filed against the Office of Renewable Energy Siting (ORES) on June 29th. The lawsuit, known as an "Article 78 petition", has been brought by Copake and five other upstate, rural towns (Cambria, Farmersville, Malone, Somerset and Yates), as well as seven non-profit avian interest groups and community grass-roots organizations. Copake is a lead petitioner, but no town funds will be spent on this litigation. ORES must respond within 30 days. The lawsuit was filed by Copake's solar attorneys, the Zoghlin Group, together with two other prominent attorneys.

The lawsuit challenges regulations promulgated on March 3rd, pursuant to Section 94-c by ORES. Without going too deep into the weeds, suffice it to say that the plaintiffs challenge the ORES regulations on three major grounds:

First, the regs violate the State Environmental Quality Review Act ("SEQRA") because ORES mischaracterized them and then issued what is called a "negative declaration of environmental significance," in effect saying that their new regulations will have no effect the environment.

Second, the regs violate the Home Rule provisions in Article 9 of the New York State Constitution because they do not set standards governing when ORES may override (another term is “ignore”) local laws, including Copake’s zoning law, as well as our Comprehensive Plan and Farmland Protection Plan and years of planning to be effective, forward-looking stewards of Copake’s lands.

Third, ORES violated the State Administrative Procedure Act (“SAPA”) because when it issued uniform standards and conditions it will apply to all industrial-size renewable energy power plant applications anywhere in New York State, it failed to consider alternatives, as SAPA requires. ORES ignored over 5000 comments on its draft regulations before finalizing the regs, without making substantive changes in response. Further, ORES outsourced the drafting of the regulations to a company called Tetra Tech, which just happens to be a consultant to several large-project energy developers working on New York State projects, including Hecate.

What Copake and the other plaintiffs are asking the courts to do is: invalidate the ORES regulations; require ORES to go back to the drawing board and draft regulations that abide by the requirements of SEQRA, the Home Rule provisions of the State Constitution, and SAPA; issue an injunction enjoining ORES from acting on any 94-c applications using the existing regulations; and, authorize developers who have already filed siting applications under 94-c to transfer them to the “old” Article 10 siting board process so that their projects aren’t stopped cold.

Just to be clear: this lawsuit is not directed at Hecate, but at ORES. That’s it for now. Thank you.