

Solar Update
August 2022
Richard Wolf, Deputy Town Supervisor

On July 29th, we received at Town Hall several boxes filled with materials prepared by Hecate Energy to augment its application to the New York State Office of Renewable Energy Siting (“ORES”) for a permit to construct a 60 megawatt solar energy facility on 228 acres in Craryville, much of it on prime farmland. ORES had earlier determined that Hecate’s original filing was “incomplete”.

Under its regulations, which were written for ORES by an energy industry consultant that lists Hecate as one of its clients, ORES has 60 days to determine whether Hecate’s application is now “complete”. If ORES fails to make a completeness determination within 60 days of receiving this latest set of fillings, the application must automatically be deemed “complete” and a draft siting permit will be issued by ORES.

It long has been obvious that the consultant wrote the regulations to benefit developers, and to disadvantage so-called “host communities” which are trying to ensure that renewable energy facilities are developed in harmony with local environments and rural character. This is why Copake is lead petitioner, together with the towns of Malone, Somerset and Yates, and seven citizen groups and bird conservation organizations, in a lawsuit seeking to require ORES to create new, even-handed regulations that respect Home Rule and while helping New York State to achieve its laudable carbon-emission reduction goals and address climate change.

On August 2nd, our attorneys filed an appeal to the Appellate Division, Third Department in Albany because we disagree with a lower court ruling against us. We believe that the appellate court panel, upon a fresh review of the 17,000 page record and our legal arguments, will agree that ORES failed to take a “hard look” at how its regulations could adversely affect the environment. We argue that the industry-friendly regulations allow ORES to waive a town’s local laws if ORES determines them to be “unduly burdensome” to the State’s climate goals, but the regs contain no relevant standards explaining how, when and why a local law is to be deemed “unduly burdensome”.

I need to repeat something I have been saying over and over again: this Town Board gets it. We are not climate change deniers. We will do our fair share. We're just looking for the State, and in Copake's case, Hecate, to treat us fairly. Hecate has reduced the size of the proposed Shepherds Run, eliminated a plan for large battery storage facilities, and agreed to use wildlife-friendly fencing instead of chain link. But this is nowhere near enough!

We all look to the excellent recommendations proposed by the *ad hoc* Copake Solar Working Group, but which Hecate failed to incorporate into its application. I am going to again cite two important recommendations because some of today's attendees (in-person or remotely) at this Saturday morning meeting may not have heard about them. First, a truly visionary recommendation calls for the creation of a 300-acre community-accessible green space to protect view sheds and effectively screen many of the solar arrays from nearby homes. Implementation of this idea could turn Shepherd's Run from an eyesore into a tourist attraction. A second critical recommendation from the Working Group is that Hecate should provide financial compensation for homeowners with properties that would be most directly, adversely impacted by Shepherd's Run.

Three other relevant items.

First, fire safety concerns, which have been expressed throughout our ongoing review of Hecate's plans for Shepherds Run. On July 17th, there was a fire at the 14-acre ELP Community Solar facility in Ghent. The Columbia Paper reported that the Fire Company had to wait until an ELP representative arrived and confirmed that "power to the unit was shut off" before firefighters could extinguish the fire. Shepherds Run is more than 16 times the size of the Ghent facility, and its proposed location close by the Taconic Hills Central School and numerous homes, is very worrisome.

Second, we continue to be amazed at the seeming inconsistencies in the State's approach to farmland. On the one hand, it was recently reported that \$3.5 million has been awarded for farmland preservation in Ghent and Kinderhook. On the other hand, the State has promised approximately \$42 million in Renewable Energy Credits to Hecate as an incentive to build Shepherds Run and take acres of prime farmland out of production.

Third, and finally, the New York State Siting Board has rejected a 180 megawatt solar facility that had been proposed in the towns of Massena and Norfolk in St. Lawrence County. Now this was an Article 10 case, meaning that the towns were parties to the proceedings and were able to present their environmental concerns at adjudicatory hearings. They demonstrated that the proposed facility could adversely affect hundreds of acres of wetlands.

Article 10 procedures are fundamentally different from ORES procedures. Under the ORES regs we are challenging, ORES can deny us party status. ORES could waive Copake's local laws without allowing us to explain what harms could result from doing so. It could prevent us from presenting on the record specific environmental concerns, such as Shepherds Run's potential negative impact on Tagkhanic Creek, an important source of Hudson's drinking water.

Even though the Article 10 decision is likely very fact-specific, it does offer some hope. The administrative law judge expressly ruled that denial of the application was not inconsistent with New York's Climate Leadership and *Community Protection* Act ("CLCPA", emphasis added).

It remains to be seen how this reasoning might apply to renewable energy project proposals before ORES.

Thank you.