

Solar Update
November 2022

We find ourselves waiting for the next shoes to drop.

First, we expect that Hecate Energy Columbia County will soon be filing its third siting application submission to the NYS Office of Renewable Energy Siting (“ORES”). As I reported last month, ORES issued to Hecate a second “Notice of Incomplete Application,” meaning that Hecate had not provided sufficient, detailed information in its Shepherd’s Run application to enable ORES to conclude that Hecate’s siting permit application was “complete”.

Second, together with our co-petitioners, we are awaiting a response from New York State to our appeal in the pending lawsuit in which we are challenging the process that resulted in the regulations under which ORES operates, and the substance of the regulations themselves. The State requested an extension of time to respond, and we now anticipate that our appeal will be argued sometime in early 2023 before a panel of judges from the Appellate Division, Third Department in Albany.

Regarding the first “shoe” (Hecate’s application): Interestingly, one of the areas ORES pointed to as lacking meaningful information has to do with Hecate’s claimed desire to be a “community partner” with the Town. In response to the first Notice of Incomplete Application, Hecate claimed it had made significant changes to its initial siting application in response to recommendations from the *ad hoc* Working Group. In response, ORES has told Hecate to “specifically identify and reference the Working Group’s recommendations” that it has incorporated into its application.

Hecate’s response should reveal to ORES what we already know: Hecate has added the “low-hanging fruit” to its application, such as agreeing to use wildlife-friendly fencing, rather than chain-link (a request initially made by this Town Board). What Hecate has been unwilling to include in its application are Working Group proposed changes that would make real differences in the Shepherd’s Run proposal and its impact on nearby homeowners, but which would require Hecate to invest more money in the project: (1) creation of a 300-acre community accessible green space that would protect view sheds, provide effective screening of much of the utility-scale facility from nearby homes, even as it offers nature walks and bicycling trails to Copake residents and

visitors; and, (2) Hecate remains unwilling to provide financial compensation to homeowners whose properties would be most directly and adversely affected by Shepherd's Run.

Regarding the second "shoe" (the lawsuit): Some quick background: In August, this Board voted unanimously to approve the Taghkanic Headwaters Conservation Plan, which, among other things, calls for measures to protect clean water. Last month, we passed a resolution calling on ORES to continue to deem Hecate's application incomplete unless and until Hecate provides evidence that the construction and operation of Shepherd's Run "will not negatively impact the Taghkanic Creek Watershed or water quality"...in Columbia County. Underscoring the importance of this issue, Supervisor Mettler sent a similar draft resolution to the City of Hudson, to Hillsdale, Taghkanic and Claverack, and to the County Board of Supervisors for their consideration and hopefully, for adoption.

How ORES is handling this issue provides an example of why we are challenging the ORES regulations. On October 25th, Copake's solar attorney sent a letter to ORES presenting information "essential to ORES' review" of Hecate's siting application. The letter provided ORES with a copy of the Taghkanic Headwaters Conservation Plan ("Plan"), which was created by the Columbia Land Conservancy, working with community volunteers, and adopted by this Town Board. The Plan contains important information about the Taghkanic Creek and watershed areas within the proposed site of Shepherd's Run, and our attorney, Ben Wisniewski pointed to elements of the siting application for which the Plan's information is very relevant and should be evaluated by ORES as it considers the "completeness" of Hecate's application. But here's the problem: *ORES has failed to post the letter (and the Plan) as a "filed document", which would make it part of the case record that ORES must review. It hasn't even filed it with the public comments on the State's Shepherd's Run webpage. Publicly, at least, the letter and the Plan seem to have disappeared.*

As our attorney wrote to ORES, "Copake understands that ORES regulations do not provide for Copake's formal participation in the application scoping and completeness phase of an ORES proceeding...But Copake is also barred from challenging the sufficiency of an application after ORES deems it complete...Taken together, [this] means there is no formal process by which local government can force ORES to account for shortcomings in the scope of an application, or submit evidence of

impacts that have not been identified by an applicant or ORES prior to ORES' issuance of a draft siting permit." Mr. Wisnewski concluded, "Continued exclusion of local input during the application scoping and completeness phase of ORES proceedings is not in the public interest, and is likely to result in adverse impacts to local communities."

In other words, by design, ORES' regulations — written by an industry consultant which has Hecate as a client — prevent Copake from having any input whatsoever into the early, crucial phases of ORES' consideration of Hecate's siting application. This is one of the critical reasons why Copake and other upstate, rural towns and public-interest non-profits are asking the Court to declare invalid the regulations promulgation process and the regs themselves.

And it is why later this evening we will pass a Resolution supporting Senate Bill S9546, which would repeal 94-c of the Executive Law, eliminate ORES and its regulations, and return the siting process to Public Service Law Article 10's Siting Board. The latter, unlike ORES, would be required to make express findings regarding the environmental impacts of Shepherd's Run. And the Siting Board process, unlike ORES, would allow Copake to oppose Hecate's planned waivers of Copake's zoning provisions at an adjudicated hearing.

Finally, I'd like to thank the nine members of Sensible Solar for Rural New York for their strong letter of support for the Town Board's position on the Shepherd's Run proposal. We continue to believe that it is too big and poorly sited for our small, rural town. And to be clear: we are not negotiating with Hecate, nor have we authorized anyone to do so on the Board's behalf. In fact, I have not been contacted by anyone from Hecate in months.

Richard Wolf, Deputy Town Supervisor