

## Solar Update April 2023

A lot has happened since my last report. Here are three important developments, in chronological order:

First, on March 27th our appeal in *Town of Copake et al v. NYS Office of Renewable Energy et al* was argued before a panel of justices of the Third Judicial Department in Albany. Attorney Ben Wisniewski's colleague Gary Abraham presented the appellants' arguments in this case, which you will recall, Copake has brought with five other upstate rural towns and seven non-profit organizations. We are challenging and seeking to overturn the regulations under which ORES operates — regulations that were written by an energy industry consultant which has Hecate as one of its clients — because the ORES regulations tilt clearly in favor of developers and against “host communities”, which is how the regulations euphemistically refer to towns like Copake whose environment and character are threatened by often multi-national, deep-pocketed energy corporations. The justices will review the oral arguments and excellent briefs submitted by our attorneys, and we await a decision.

Second, on March 28th the NYS Office of Renewable Energy Siting (“ORES”) issued to Hecate a Third “Notice of Incomplete Application” (“NOIA”) containing a 20-page list of deficiencies. More than three years after Hecate representatives announced their intention to construct a 60 Megawatt, utility-scale solar energy factory with 200,000 solar panels, inverters, transmission lines, other components, and access roads, the company has been told — for the third time — that its application for a permit to site “Shepherd's Run” on approximately 265 acres in Craryville is “incomplete”.

As you know, Hecate wants to put its factory on mostly farmland running south from State Route 23 on both sides of County Route 7, the gateway road into the hamlet of Copake and Copake Lake. Much of the land is prime farmland; the proposed site would be close to designated wetlands; and, the Taghkanic Creek, an important source of Hudson's drinking water, runs through the proposed site.

For more than three years, this Town Board has been united in its position, supported by most Copakeans, that Shepherd's Run is too big for our small town and is very poorly sited. We have urged Hecate to make good on its claim that it wants to be a "community partner". Hecate has met with the *ad hoc* Working Group, which many months ago presented a thoughtful set of recommendations to improve the Shepherd's Run proposal. We have publicly urged Hecate to adopt them, including creation of a 300-acre green space that would run south along the east side of County Route 7, provide nature trails and bike paths and potentially turn Shepherd's Run from an eyesore into a tourist attraction. We have called for financial compensation for the homeowners whose properties are across the road from the proposed site and who stand to suffer substantial loss of home property values. We've urged Hecate not to cut down acres of carbon-capturing trees.

In this third NOIA, Hecate has been told that it must complete an extensive "To-Do" list before ORES will determine whether the project siting application is "complete". Among other things, Hecate must: provide additional screening; address — not ignore — the Taghkanic Headwaters Conservation Plan; present scientific studies supporting its claim that the design of the proposed project supposedly improves the functioning of the wetlands, even as Hecate claims it cannot abide by the 100-foot buffer requirement to keep the factory away from wetlands and waterbodies; fully explain, in detail, how the project has been designed and sited to minimize encroachment on prime farmland; and, respond to the NYS Office of Historic Preservation's letter concluding that the project, as designed and sited, would have an Adverse Impact on some Craryville historical properties.

And one more thing, which I reported on two months ago, regarding why the Hecate proposal is called "Shepherd's Run". We had been told that the project would employ "agricvoltaics", namely that farming — sheep grazing — would take place under solar panels. But in its third updated application, Hecate wrote, "no active agricultural practices will occur within the fenced area containing the solar arrays during the operation of the Project." Given that sheep grazing is unquestionably a "farming

practice”, this inconsistency also caught the attention of ORES. Hecate must update its Agricultural Plan to explain this.

The ORES regulations require Hecate to resubmit within 90 days, but it took longer last time, and the newest ORES list looks to involve lots of research, analysis, and maybe even some redesign of the proposed site location. Once it receives Hecate’s fourth submission, ORES has 60 days to make a “completeness” determination. So, on this goes...

The third and most recent development came two days ago. We received some very welcome news from the administrative law judge (“ALJ”) assigned to the Shepherd’s Run matter. Hecate is supposed to provide Copake with copies of all the materials it submits to ORES as part of its siting permit application. But our “community partner” has withheld from us important digital data information, contained in what are called “shapefiles”, that would enable our environmental engineering firm to identify, among other things, precisely where wetlands, streams and underground waterbodies are located in relation to where Hecate wants to put its factory components and where it wants to drill down and place underground transmission lines. So our attorney made a motion to compel production of the shapefiles. The ALJ granted our motion, and strongly criticized both Hecate *and ORES’ staff*. She wrote that Hecate’s refusal to provide us with the shapefiles was “unacceptable” as was ORES staff’s agreement with Hecate’s intention to delay turning over the shapefiles. The ALJ wrote that “the position advanced by both Hecate and ORES staff that the Town must now wait until Hecate responds to the Third NOIA in order to get the digital GIS shapefiles, which ORES staff has had since the filing of the initial Application...” would prevent Copake from conducting a thorough review of Hecate’s siting permit application for many months. And the ALJ further admonished Hecate:

Hecate should have asked the Town - and all parties - whether the digital GIS shapefiles should be provided. Instead, Hecate unilaterally decided not to serve this information even when the Town expressly requested it.

...Hecate is cautioned to be more responsive to the Town's legitimate requests for information to which it is clearly entitled as the host municipality. The Town's interest in this proceeding and its participation to date cannot be disputed. Hecate's failure to comply with the ORES regulations... is of concern at this juncture in the proceeding, as is Hecate CC's position in failing to comply with the Town's request for the shapefiles.

At this point, it is reasonable to ask: what is Hecate hiding? Why has it withheld information needed to accurately determine the potential impacts of Shepherd's Run on the environment — the wetlands, Taghkanic Creek, underground waterbodies? And why did ORES staff support Hecate's position that we should not be able to see this data until it might be too late to use it to support Copake's argument that Shepherd's Run should not be sited where Hecate wants to put it?

A review of the shapefiles may provide answers.

Thank you.

Richard Wolf  
Copake Deputy Supervisor

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