

Solar Update February 2023

We have reached a critical juncture in the ongoing Shepherd's Run saga. On January 27th, in response to the New York State Office of Renewable Energy Siting's ("ORES") 2nd Notice of Incomplete Application, Hecate Energy belatedly filed updated Shepherd's Run application materials. The response had been due a month earlier. But the deadline didn't trouble Hecate: it simply declared that it would submit its response when it was ready, not when it was due. Nor did this trouble ORES: it treated Hecate's declaration as a request...and promptly granted it!

So here's where things stand. ORES has 60 days to deem the application "complete" — in which case Hecate would receive a draft siting permit — or "incomplete", which could trigger a third "Notice of Incomplete Application" from ORES. And if ORES fails to reach a determination within 60 days, the ORES regulations deem the application complete by default, and Hecate would receive a draft permit.

About those ORES regulations: Copake, together with 5 other upstate, rural towns and 7 non-profits, has sued to overturn them. *They actually were written by an energy industry consultant which has Hecate as a client.* Not surprisingly, the regulations are biased in favor of developers and against small towns. They facilitate ORES' favoritism towards Hecate and against Copake. Our appeal in the lawsuit will be argued in March.

Copake's solar attorney and our environmental engineering firm are reviewing Hecate's latest, voluminous submissions to ORES. Tonight I will offer some preliminary observations about them.

First, however, for those who may not have been following the Shepherd's Run issue, a brief introduction. Hecate is a Chicago-based energy company, partially owned by a Spanish energy company. Since 2017, its sights have been set on Craryville, with its prime farmland, protected wetlands, the Taghkanic Creek, and a principal gateway to the hamlet of Copake and Copake Lake. Hecate has identified an 880-acre "Project Area" inside of which it hopes to build a 255-acre "inside-the-fence" utility-scale solar energy facility. And make no mistake: this is no solar "farm". Hecate's "Shepherd's Run" proposal is for the construction of a *factory*. Almost 200,000 solar panels, inverters, mostly underground transmission lines, and access roads. Shepherd's Run would look nothing like a farm.

This Board has repeatedly argued that the project, as proposed, is poorly sited and too big for our small, rural town. Nonetheless, Hecate pushes ahead, unwilling to abide by Copake's general zoning and solar facility laws. Instead, it is asking ORES to override our local laws. Hecate wants ORES to declare Copake's laws "unduly burdensome", claiming that they impede

Hecate's efforts to help the State reach its laudable goal of quickly reducing dependence on fossil fuels, and that Hecate would lose money if it had to redesign some of its proposal to comply. That's really what Hecate considers "unduly burdensome." Hecate seeks to cast itself as the "good guy" —an altruistic, multi-national corporation working to save the planet. It has cast Copake as the "bad guy" in this drama, selfishly standing in the way of progress towards clean energy.

We categorically reject Hecate's efforts to define itself or us. We know that climate change is an existential threat. We support renewable energy. But we demand that the State's transition to renewable energy be done sensibly, through collaboration with local towns, not by allowing out-of-state developers to tell us that our rural environment, economy and character must be sacrificed in their quest for corporate profits.

So...why did Craryville become Hecate's location of choice? What is it about the proposed site, running south from State Route 23 alongside County Route 7, with a substantial portion of the would-be project adjacent to the Taconic Hills Central School buildings and athletic fields? Why site a solar energy factory in a hamlet of a small rural town? Why fill fields that are directly across the road from the homes of long-time residents with solar panels?

The answer is simple. Albany has turned upstate New York into a modern-day version of the Wild West. It is aggressively pushing a misguided strategy to try to achieve its laudable carbon emission reduction goals. It has said to developers, "Identify a location with a substation into which you can funnel electricity from your solar factory. Build your factory on nearby land leased or purchased from (oftentimes) absentee landowners. Don't worry about local zoning laws. ORES will waive any local requirements that get in the way. And, the State will provide big financial incentives to build your solar factory." Responsible communities like Copake, who want to do their part to fight climate change, are given no say in where a solar energy factory will be sited or how much land it will gobble up. We are being forced to sacrifice our rural environments and small town character so that clean energy can be supplied to big cities by mega-energy companies whose only guiding principle seems to be: what is the least they need to do to satisfy ORES and generate the biggest profits?

A compelling summary of ORES' apparent favoring of Hecate and disfavoring Copake was recently presented in letters sent by Sensible Solar for Rural New York to the Chairs of the Assembly's Standing Committee on Energy, and the Senate's Energy and Telecommunications Committee. The letters present "serious concerns ... about questionable behavior" by ORES, some of which I've discussed at previous Board meetings. And then there's a January 27th decision by an ORES administrative law judge ("ALJ"), who discourages us from continuing to raise Copake's concerns about Hecate's actions, asserting that "the Town's filings and Hecate CC's responses have unnecessarily required the expenditure of significant resources by ORES

staff, the ALJs, and others.“ In effect, she is saying: How dare Copake press its objections with the very State office that will decide whether Shepherd’s Run gets built in Craryville and, if so, under what conditions? How dare we?

A February 5th letter presented to both ORES and the U.S. Environmental Protection Agency some concerns Sensible Solar identified in its preliminary review of Hecate’s updated application materials. Among their concerns are: planned tree cutting near State regulated Wetlands; planned siting of buried collection lines in violation of Copake’s setback requirements from wetlands and water bodies; Hecate’s minimizing the project’s risks of potential visual impacts on recognized historical properties; intrusion of the project on wildlife habitats; and, Hecate’s failure to respond to either the Taghkanic Headwaters Conservation Plan or Town Historian Howard Blue’s January 10th letter regarding the 1859 occupation of the Niver Farm by members of the Stockbridge-Munsee Community Band of Mohican Indians.

Sensible Solar also noted that recommendations made by the *ad hoc* Working Group were not incorporated into Hecate’s updated application materials. This is an important observation, because it confirms what we have suspected all along about Hecate’s discussions with the Working Group. Hecate’s talks with the Working Group are no substitutes for the lack of ongoing discussions with the Town. Last month, I reported that at a January 10th meeting, Hecate told us it was having “fruitful negotiations” with the Group; we had heard otherwise. And if there was any doubt about whether those talks had been productive, we now have some concrete proof.

Here’s an example: one of the Working Group’s key recommendations was the creation of a 300-acre green space, which would run south with the project along County Route 7, and have bike paths, hiking trails, and nature walks. Not only did this concept have the potential to turn the proposed project from an eyesore into a tourist attraction, it also would effectively have screened the solar arrays from the homes across the road. Well, we can see what became of the green space idea. Look at the pictures Hecate just submitted to ORES: one is a “representative simulation” from the west side of CR 7, looking east. Lots and lots of solar panels — no green space, and virtually no screening! A picture looking east from Freuh Road gives a sense of the vastness of the project, but another, from Connolly Road more realistically presents what the solar panels, and their mounts, would actually look like.

Hecate created these pictures to convince ORES that Shepherd’s Run would have little to no negative visual impact on the project site or the surrounding area. To support this claim, Hecate was required to conduct a “Visual Impact Assessment”. So Hecate’s consultant — not ORES —hired three evaluators, all of whom “have successfully completed ratings on previous solar project applications.” I don’t know why these individuals were picked to perform this assessment. Are they impartial? How could they possibly conclude that almost 200,000 solar

panels and equipment would have only a minimal visual impact on the area? Did they even bother to come to Craryville to observe the proposed site and surrounding area? Apparently not: the submission explains that each was given the “representative simulations” and a Google Earth file “to better understand and visualize the environment around the viewpoint that might not have been captured in the photo itself. Using the terrain features as well as Street View provided the reviewer with the ability to discern if there were other residences or vegetation behind the viewer...”

This is astounding! ORES is being asked to accept the conclusions of Hecate’s hired evaluators who, it seems, never even came to the area they blithely conclude will suffer only minimal adverse visual impact from the proposed solar energy factory.

Two more observations about Hecate’s application update:

First, Hecate writes that “From the outset, (its) priority has been to work in a spirit of collaboration with the host community to gain input on Project development.” This is absurd. Hecate has known all along that Copakeans overwhelmingly agree that its proposal is too big and poorly sited. Webster’s defines “collaboration” as “the act of working together”. There can be no collaboration when one party dictates terms and conditions to the other. And there’s this: Hecate chose to carry on negotiations with the Working Group instead of attempting to engage in discussions with the Town of Copake. They met with us at Town Hall in November, 2021, but never in 2022, except for a brief chat I had over coffee at Alex Campbell’s invitation last April. Hecate and the Town did not meet again until the January Zoom meeting. Hecate’s own updated meeting log confirms this. But presenting accurate information isn’t always important, especially if misinformation better suits one’s purposes. Perhaps that explains why Hecate falsely reported to ORES, “The Applicant met with Town officials to discuss the Project at least nine (9) times during the course of 2022...” Unbelievable!

Second, and finally, whatever happened to “agrivoltaics”? Hecate had been touting a plan to graze sheep (hence the name “Shepherd’s Run”) and plant crops under solar panels on at least 10 acres of Shepherd’s Run. And, if successful, farmed acreage could be increased. So why does the following statement appear in Hecate’s updated submission? “There are 197.69 acres of active agricultural land in the Project Footprint...no active agricultural practices will occur within the fenced area containing the solar arrays during the operation of the Project.”

This is getting more and more interesting.

We will continue to keep you posted.

Thank you.

