

Solar Update

Here is an update on our effort to have ORES dismiss Hecate's application for a permit to site its utility-scale solar factory in Craryville or to grant us "party status" so that we can present evidence and testimony before a judge concerning important, unresolved issues.

The administrative law judge (ALJ) assigned to the Shepherd's Run matter has before her our Issues Statement and my Affirmation supporting our position that a hearing is needed. She also has papers from Sensible Solar for Rural New York (SSNY), Birch Hill Road Neighbors Association (Birch Hill), and Craryville Farms, LLC.

Last month I reported that in Hecate's Issues Statement, it challenged one of the conditions in the draft permit ORES had issued. ORES required Hecate to obtain from Copake a permit indicating that the developer complies with our town code provision concerning flood damage protection. Here's why this matters: portions of the proposed Shepherd's Run site are within the 100-year floodplain. The federal government long has had a flood insurance program. In 1987, Copake adopted its floodplain code to comply with the federal program, which both protects the floodplain area and also makes it possible for the entire town to get flood insurance.

Have you seen pictures of the flooding throughout much of the proposed site and adjacent areas that was caused by this year's snow melt and subsequent rains? It's as if a small lake and several ponds were created, seemingly overnight.

Hecate wants ORES to determine that state law preempts Copake's floodplain code, just as it preempts our solar law, Comprehensive Plan, and Farmland Protection Plan. Our response to that is that if our code is not in force, we could lose access to flood insurance because Copake would be unable to comply with requirements of the Federal Flood Insurance Program. Why is this issue so important to Hecate? Are they afraid they cannot comply with our code provisions?

Then there's the wetlands issue. Depending on how it plays out, this could have enormous consequences for Shepherd's Run, potentially requiring a complete redesign of the project or preventing it from being constructed at all on the proposed Craryville site. In April 2024, ORES issued to Hecate what is called a "Jurisdictional Letter." The letter identified wetlands in or adjacent to the project area that were subject to state regulations and noted that the determination was to be valid for five years. The regulations prohibit construction on wetlands of "unusual importance," and require buffers between such wetlands and construction activities, including drilling. On January 1, 2025 the State Department of Environmental Conservation amended its wetland regulations. Smaller wetlands now are included in the definition of "wetlands of unusual importance." Several of these lie within the project area.

It is the town's position that the DEC regulations now on the books must be complied with. This seems to be DEC's position as well. If our position is upheld by the ALJ, Hecate will need to go back to the drawing board and redesign its layout, avoiding all state-regulated wetlands, including the newly-designated smaller ones. It is possible that this could further limit the size of Shepherd's Run, and reduce its nameplate capacity.

Not surprisingly, Hecate disagrees. It asserts that it must be concerned only with the wetlands listed in the April 2024 jurisdictional determination letter, not the smaller wetlands that now come under the revised state regulations, because the April 2024 letter is “good” for five years.

Both flood protection and wetlands remain major points of contention. We strongly believe that Copake must be granted party status to adjudicate them. But keep in mind: *ORES never has granted party status to a town targeted for a utility-scale solar factory.*

On March 30, the ALJ issued a procedural ruling denying Hecate’s motion to file more papers augmenting the arguments in its Issues Statement. Hecate claimed an additional submission would be “in the interest of promoting a complete record.” The ALJ ruled that Hecate had no “meaningful justification” for its request, and that “(a)ny additional opportunity for Hecate to submit a reply is not in the best interest of the fair and efficient administration of this proceeding.” Any day now we expect the ALJ’s ruling on our request to dismiss Hecate’s siting application or, in the alternative, to grant Copake party status in the proceedings. Finally, two days ago, Republican gubernatorial candidate Bruce Blakeman held a press conference outside of Copake Town Hall to voice opposition to Shepherd’s Run.