

Solar Update

On June 25, the Administrative Law Judges (ALJs) issued their decision on our “Issues Statement” and application for party status in the Shepherd’s Run case. The 226-page decision is a mixed bag of rulings, some of which support Copake’s positions and others that go against us.

We initially were given 5 days to appeal. Given the size and scope of the decision, we requested additional time. Without opposition, our motion for additional time was granted. Copake’s appeal was filed on July 10.

In their decision, the ALJs granted Copake “limited party status.” This is an ORES first – never before has a “host community” been granted party status of any kind! I’m not sure what is meant by “limited” party status, but it may be tied to the ALJs’ ruling that there will be no adjudicatory hearings to allow the parties to have discovery, present evidence and cross-examine witnesses regarding the issues that we have raised. They decided although the issues are “significant” – which is the test for whether party status should be granted – each issue is purely legal in nature; there are no fact questions to be resolved. Legal issues are decided by judges.

Simply put, we disagree. Our arguments will be presented in our appeal to the ORES executive director. (You may recall that the last time we appealed an issue to the ORES executive director, Hecate’s original 60-megawatt Shepherd’s Run application was dismissed.)

The ALJs’ decision does support several of our positions: ORES cannot waive compliance with Section 135 of the Town Code, which requires Hecate to obtain from Copake a permit to place solar facility components in floodplain areas; wetland delineations from 2020 are too old to provide currently accurate information, so Hecate must complete new delineations (which could affect where facility components could be placed); the projected salvage value of facility components cannot be used to reduce the value of required decommissioning security; additional traffic studies must be completed to determine the impact of construction on traffic near the Taconic Hills School campus; and Hecate’s failure to engage in meaningful consultation with us violates the spirit of ORES regulations.

Unfortunately, however, the ALJs upheld ORES’ decision in the draft siting permit to waive almost all of Copake’s local laws and regulations as being “unduly burdensome.” The judges also decided that, should ORES grant Hecate a final permit, several deficiencies in Hecate’s application could be “cured” thereafter. This is a notion with which we strongly disagree, because it suggests that Hecate’s application is “incomplete.” If it is incomplete, the “Notice of Complete Application” was issued by ORES in error.

In sum, the ALJs’ decision raises many issues that we are pursuing in our appeal. Responses to our appeal, and to any other appeals that may be filed, including Hecate’s, are due on July 24.

Richard Wolf
Supervisor