

Solar Update

As reported last month, the decision by the Administrative Law Judges (ALJs) on our “Issues Statement” and application for party status in the Shepherd’s Run case confirmed our position that Hecate must obtain from Copake a permit to place solar facility components in floodplain areas. Hecate had vigorously opposed this requirement, arguing unsuccessfully that ORES could waive compliance with Section 135 of the Copake Town Code, just as it waived compliance with most other town law provisions because they were deemed “unduly burdensome.”

The ALJs granted Copake “limited party status,” ruling that we had raised “significant” issues, but that the issues were legal in nature and could be decided by the ALJs without convening a hearing. We disagree, and on July 24 we appealed portions of the ALJs’ decision to the ORES Executive Director (ED). Hecate appealed portions of the decision that went against the developer.

ORES staff filed a reply to both Copake’s and Hecate’s appeals. Among the points and recommendations staff raised were these:

- the ALJs are correct that Hecate must seek from the town a permit to construct Shepherd’s Run in designated flood zones;
- the ORES ED could request the ALJs to publish a revised draft permit, which would include several new site-specific conditions recommended in the ALJs’ decision, including a novel requirement that the parties must meet to negotiate a host-community benefit agreement according to a strict time line, with possible involvement of ORES in the process; and
- the ED could consider holding “further proceedings” if he finds that, contrary to the ALJs’ conclusion, there *are* issues of fact raised by the parties concerning wetland delineations. The ALJs ruled that Hecate’s wetland delineations from 2020 are too old to provide currently accurate information, so Hecate must complete new delineations. This could affect where facility components could be placed.

On Monday, August 3, our attorney filed a motion seeking permission to respond to ORES staff. We are hoping to point out that if the ED decides to have the draft permit reissued with significant new or changed site-specific conditions, this must trigger a restart of the entire issues-determination procedure, including the opportunity to petition for party status and to raise factual issues requiring hearings. Given that a final decision on a siting permit must be made by October 8, there isn’t enough time to redo the entire process.

Our motion also points out that ORES staff did not rebut our request to dismiss Hecate’s application with prejudice because of the developer’s bad acts, including its failure to tell ORES that it had lost control of a 60-acre parcel critical to its original 60 MW proposal, which resulted in dismissal of Hecate’s original application. Prior to that dismissal, Hecate claimed it would be impossible to reduce the size of its Shepherd’s Run proposal, only to turn around and submit a 42 MW plan. Furthermore, we want to remind the ED that the New York Power Authority had

planned to co-develop Shepherd's Run with Hecate. After conducting its due diligence review, the Authority changed its mind and decided not to partner with Hecate.

Both Senator Michelle Hinchey and Assemblyperson Didi Barrett have called out Hecate as a bad actor. We agree.

The Copake Town Board continues to urge the ORES Executive Director to dismiss the Shepherd's Run application with prejudice.

Richard Wolf
Supervisor