

NEW YORK STATE OFFICE OF  
RENEWABLE ENERGY SITING

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Application of Hecate Energy Columbia County  
for a 94-c Permit for Major Renewable  
Energy Facility

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Matter No. 21-02553

REQUEST FOR EXPEDITED APPEAL TO EXECUTIVE DIRECTOR AND APPEAL OF  
ALJ RULING ON TOWN OF COPAKE MOTION TO DISMISS APPLICATION OR  
ADJOURN PUBLIC COMMENT HEARING AND ISSUES PROCEDURE PENDING  
MAJOR REVISION TO APPLICATION

Dated: January 4, 2023  
Webster, New York

WISNIEWSKI LAW PLLC  
Benjamin E. Wisniewski, Esq.  
*Attorney for the Town of Copake.*  
1150 Crosspointe Ln Ste 2  
Webster, New York 14580  
Tel. (585) 364-1764  
[bew@bewlawfirm.com](mailto:bew@bewlawfirm.com)

## **REQUEST FOR LEAVE TO APPEAL AND EXPEDITED APPEAL**

The Town of Copake respectfully requests leave to appeal a verbal ruling by the Administrative Law Judge, issued during an off-the-record procedural conference conducted via Webex on January 4, 2023. The Judge’s verbal ruling denied The Town of Copake’s Motion to Dismiss Application or Adjourn Public Comment Hearing and Issues Procedure Pending Major Revision to the Application (the “Motion to Dismiss or Adjourn”), filed on January 2, 2023 (DMM Item No. 127).<sup>1</sup> During the conference, the Town was directed to refile its motion to dismiss as part of an issues statement due on January 16, 2023. The Town now brings this expedited appeal pursuant to Rules 900-8.59(e)(2) and 900-8.7(d)(2)(ii) on the grounds that the Judge’s Ruling would be unduly prejudicial to all potential parties except for the Applicant, and will result in significant inefficiency in the hearing process. The Town of Copake also requests adjournment of this proceeding, including cancelation or postponement of public hearings and issues filing deadlines, pending review of this request for expedited appeal. See Rule 900-8.7(d)(7).

The Motion to Dismiss or Adjourn, with three exhibits, is incorporated herein by reference. The Motion and supporting documentary evidence are available on the DMM docket for this proceeding at DMM Item No. 127. Of particular note, the Motion provides an executed deed of sale dated January 2, 2023, demonstrating that a roughly 60 acre parcel hosting about 20% of the Applicant’s solar panels, the sole access road for multiple parcels, inverters, and one of two project laydown yards, has been sold to a third party. DMM Item No 127.

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<sup>1</sup> The Town filed this motion as soon as practicable--the same day the deed of sale was effective.

Further, the motion includes a signed letter from the buyer's attorney asserting that the Applicant has no property interest in the property, and will never be able to obtain one, as the buyer has plans for use other than as any component of a solar energy facility. *Id.*

Finally, the Motion provides numerous citations to the complete Application demonstrating, in the Applicant's own words, that the loss of the property will require a redesign of the facility at a minimum, and that any such redesign would be fatal to the project.

During the procedural conference on January 4, 2024, the Applicant's legal counsel declined to challenge the authenticity of any exhibits to the Motion. The Applicant's legal counsel did not challenge the Town's assertions that the parcel at issue can no longer be considered part of the project. The Applicant's legal counsel conceded that a redesign would be required, and that the Applicant's engineering team is currently looking at potential changes to the facility, including a reduction in size of the nameplate capacity for the project.<sup>2</sup> **In summary, the facts underlying the Town's motion to Dismiss or Adjourn are not in dispute.**

Nonetheless, without a written ruling, or any explanation beyond direction to resubmit concerns as part of an issues statement, the Motion was denied.

**The Ruling is Unduly Prejudicial to all Prospective Parties**

An expedited appeal is necessary because the Ruling will severely prejudice all potential parties to this proceeding by forcing them to provide public comments and issues statements before the project is redesigned, and before any such redesign is made known to the public. Potential parties and the public will therefore be in the impossible position of determining whether the current draft permit, when applied to a new and completely unknown project

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<sup>2</sup> Reduction in nameplate capacity would not eliminate the need to relocate the other project components planned for the property, meaning additional redesign would still be required.

design, will be sufficient to support all required findings in this proceeding. If left in place the Ruling will unduly prejudice all potential parties, and the public, by depriving them of any meaningful participation in the issues determination and public comment process.

**The Ruling will result in Significant Inefficiency in the Hearing Process**

Furthermore, denial of the Motion will result in significant inefficiency in the Hearing Process, as it will require potential parties, agency staff, and ALJs to review a project that the Applicant acknowledges must now be redesigned. The end result will be additional public comment hearings and issues procedure at a minimum, and potentially an entirely new proceeding if the changes to the project require a new draft siting permit to be issued. It is a waste of resources to continue the siting process for an infeasible project, and to continue down a path including two issues determination procedures where only one could be required.

**Conclusion**

The Town of Copake respectfully requests leave for an expedited appeal. If leave for appeal is granted, and given the short period of time before public comments and issues statements are due, the Town requests that this request for appeal and the underlying Motion, with exhibits (DMM Item No. 127), constitute the Town's papers in support of its appeal.

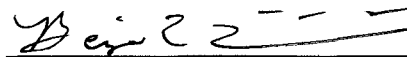
Based upon the forgoing, the Town respectfully requests that the ALJ's ruling be reversed, and the application be dismissed, or in the alternative, at a minimum, that the public hearing and issues determination process be adjourned, the notice of complete application be rescinded, and the Applicant be directed to take the time it needs to redesign the project in a manner that only includes property in which it has, or can obtain, the required interest.

Finally, the Town of Copake requests adjournment of this proceeding, including cancelation or postponement of public hearings and issues filing deadlines, pending review of this appeal. *See* Rule 900-8.7(d)(7).

Dated: January 4, 2024

Webster, New York

Respectfully submitted,



Benjamin E. Wisniewski, Esq.  
Wisniewski Law PLLC  
*Attorney for the Town of Copake*  
1150 Crosspointe Ln Ste 2  
Webster, New York 14580  
Tel. (585) 364-1764  
[bew@bowlawfirm.com](mailto:bew@bowlawfirm.com)