



January 5, 2024

Mr. Houtan Moaveni, Executive Director
New York State Office of Renewable Energy Siting
c/o OGS Mailroom
240 State Street, P-1 South, J Dock
Albany, NY 12242
general@ores.ny.gov

Hon. Maureen F. Leary
Administrative Law Judge
Department of Public Service
Office of Hearings and Dispute Resolution Maureen.leary@dps.ny.gov

Hon. James T. McClymonds
Chief Administrative Law Judge Office of Renewable Energy Siting
James.McClymonds@ores.ny.gov

RE: SSRNY Brief in Support of Town of Copake Expedited Appeal

Dear Executive Director, Office of Renewable Energy Siting, Administrative Law Judges, and Service List,

This letter is submitted in support of the Town of Copake's Request for Expedited Appeal filed on 1/4/24 (not yet listed on DMM).

It has become public knowledge that a key 60 acre parcel at the corner of Cambridge Road and County Route 7 is now no longer part of the Shepherd's Run solar facility. This turn of events demonstrates that Hecate's current project proposal is impossible, yet the Judge's ruling on 1/4/24 requires SSRNY and all other parties to continue providing public comments on a project that no longer exists. The loss of the 60 acre parcel by Hecate shows that they are incompetent, and that they should not be allowed to play any role in NY State's energy plans going forward.

According to the Motion filed by the Town of Copake, Hecate had an option to lease this parcel which expired in September 2023. That was more than THREE months ago, and ONE month AFTER ORES granted a draft permit for the project.

Since then, Hecate mailed a brochure to residents showing the project, inclusive of the parcel that was sold. Hecate never bothered to tell the Town, the community, or ORES that the renewal of this key parcel was not secured when the option expired, or since then.

I participated in a procedural conference yesterday with Hecate, ORES, the Administrative Law Judges (“ALJs”), the Town of Copake and their attorney, and other parties. During that conference, Hecate claimed that the first they knew of the sale was when the Town’s attorney filed a Motion with ORES on January 2, 2024 to dismiss their application.

How is this possible? What were they doing since the time the option expired in September? Were they in touch with Main Farm (owner of property until Jan 2 when it was sold to Craryville Farms)? Were they not concerned that the option wasn’t promptly renewed? Did they not think they had an obligation to inform all interested parties, including the Town, ORES, and the community, that the application they submitted was in jeopardy? Are they so certain that a permit will be issued regardless of any potential roadblocks that they just chose to move forward as if nothing was amiss?

Unfortunately, the ALJs dismissed the Town’s Motion, and made the decision that the issues raised in the Motion be included in the Town’s issues statement which will be considered for adjudication. This was done without even requiring Hecate to respond to the Motion. The Town filed a Motion to Appeal yesterday, and I certainly hope the ALJs seriously reconsider their decision.

What is even more unsettling is that neither the ALJs nor ORES have admonished Hecate for their serious lapse in not only losing the key 60 acre parcel, but also keeping that material information from everyone. Hecate’s excuse that they didn’t know about the sale is unacceptable. They SHOULD HAVE KNOWN, if indeed they didn’t. And if they didn’t, it reflects badly on them and confirms our belief that they’re an incompetent organization that should have NO ROLE whatsoever in carrying out NY’s energy plan.

In addition, the ALJs didn’t even impose a time limit for when Hecate must present a revised plan without the lost 60 acre parcel, saying only that it should be “sooner rather than later”. Yet the public comment sessions scheduled for Jan 9 and 10 will be held, with people commenting on a project that is NO LONGER A VALID PROJECT. This makes no sense.

This is an exceptional circumstance wherein the project that was granted a draft permit no longer exists. Hecate has said repeatedly in their own application that the current project layout represents the smallest possible project footprint that avoids, minimizes, and mitigates, to the maximum extent practicable, impacts on sensitive resources and

was developed through a multi-year iterative process... In Hecate's own words, a redesign like the one now required, "would prohibit the construction of the project altogether."

By the way, regarding Bear Ridge Solar (which was cited by the ALJs as precedent for their decision to deny the Town's Motion to Dismiss), here are the facts: a parcel in a much larger project was eliminated by the final permit because ORES declined to waive a local law.

The key distinctions follow:

1. In Bear Ridge ORES had the power to allow construction on the parcel at issue by waiving a local law. Here, with Shepherd's Run, ORES has no power at all to allow construction on the Craryville Farm property.
2. In Bear Ridge the parcel hosted 12 mw of a 100 mw project (roughly 10% of the facility versus 20% here)
3. In Bear Ridge ORES denied the waiver request on a technicality—the applicant misinterpreted the local law and failed to request waiver.
4. In Bear Ridge ORES has given the developer the opportunity to submit a petition for modification of the permit that would waive the applicable local law and allow construction on the parcel. Again, that remedy is NOT POSSIBLE here.

SSRNY supports the Town of Copake's 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. SSRNY also supports the Town of Copake's requests for adjournment of this proceeding, including cancelation or postponement of public hearings and issues filing deadlines, pending review of this request for expedited appeal.

Sincerely,

Sensible Solar for Rural New York

A handwritten signature in black ink, appearing to read "Sara Traberman", written over a horizontal line.

By: Sara Traberman

CC: Official Party List (attached)