

Solar update

Developments under Article 10

At the March 12th meeting of the Copake Town Board, we reported plans by a Chicago-based energy developer, Hecate Energy, to site a large solar facility in Copake. The “Shepherd’s Run” facility, situated on 500 acres of Copake farmland within a 900-acre project area, would generate 60 Megawatts of electrical power using 200,000 solar panels. The proposed project area is located near the intersection of State Route 23 and County Route 7, with most of the area located south of 23 and adjacent to 7.

Hecate initiated its project in 2017, obtaining lease agreements with several Copake landowners. It is proceeding under Article 10 of the NYS Public Service Law, which allows developers to largely circumvent local zoning laws and approval processes, and to instead obtain authorization to site industrial-scale renewable energy facilities from a State-controlled Siting Board”. The Town first learned about Hecate’s plans in late January, when its representatives told us they had filed preliminary applications with New York State and had obtained unspecified tax credits.

On January 31, pursuant to Article 10 requirements, Hecate filed its preliminary “Public Involvement Program” (“PIP”) plan.

On March 2, Hecate received comments from staff of the NYS Department of Public Service.

On April 1, Hecate filed its required final PIP plan, which lists the following components of the proposed industrial-size solar facility: several solar arrays, with panels seated on steel tracking-mounts that will “follow the sun throughout the day”; a new substation to be constructed next to the existing substation on the north side of Route 23, near County Route 7; a voltage collection system; tie lines connecting to the NYSEG transmission line; a switching station; and, an energy storage system, comprised of lithium-ion battery cells enclosed in modules, stacked in racks inside 53’ shipping containers. The containers would be fixed onto concrete foundation pad/piers, and located directly east of the existing NYSEG Craryville substation, along State Route 23.

The next Article 10 development could occur at the end of June, when Hecate could file its “Preliminary Scoping Statement” (“PSS”). The PSS should provide additional details, including where within the 900-acre project area the solar arrays will be placed.

Town Board actions

At its March 12 meeting, the Town Board adopted a resolution opposing the Governor's then-proposed budget amendment, because it would create streamlined procedures that would further erode municipal Home Rule and drastically limit Copake's ability to affect the industrial-size facility siting decision and eliminate our ability to enforce Copake's zoning law, which limits the size of solar facilities to 10 acres.

On April 2, the Town Board hired Benjamin Wisniewski, a partner in the Loughlin Group law firm, to represent Copake as we respond to the Shepherd's Run project proposal. Mr. Wisniewski has considerable experience protecting the interests of municipalities who confront the prospect of "hosting" an industrial-size renewable energy facility.

Article 10 or Section 94-c?

The Governor's proposal was approved as part of the just-adopted State budget. A new Section 94-c of the Executive Law creates an "Office of Renewable Energy Siting" ("ORES"), and reduces the amount of intervenor funds available to municipalities to conduct studies and retain legal counsel during siting proceedings. It gives ORES one year to establish rules to implement its siting program. Section 94-c contains a variety of elements designed to speed siting approval, including requirements that ORES must determine that a siting application is complete within 60 days and make a final siting determination within one year from then. Under the new law, ORES is authorized to ignore any local law it determines to be unreasonably burdensome to the State's renewable energy goals. Furthermore, Section 94-c severely limits judicial review of ORES decisions.

Next steps

Section 94-c authorizes developers who have begun the Article 10 permitting process to switch to the more truncated Section 94-c procedures if they wish. We assume that Hecate will seek to move forward under whichever procedures it determines will yield the speediest siting decision. As noted above, Section 94-c shortens the process, but the process cannot begin until ORES adopts rules. Section 94-c requires that ORES must conduct four public hearings around New York State before adopting siting approval rules. Of course, hearings may be delayed by the ongoing pandemic crisis.

In the meantime, we are consulting with our attorney who is keeping us abreast of developments. We will continue to report as developments warrant.