

Request For Local Agency Account Funding


Instructions: Provide all applicable information by filling in the text boxes as indicated. If necessary, attach additional information in a separate document.

This request shall be submitted by first class mail to the address below or electronically via e-mail to: general@ores.ny.gov.

Office of Renewable Energy Siting (ORES)
c/o: OGS Mailroom
Empire State Plaza
240 State Street
P-1 South, J Dock
Albany, NY 12242

Copies must also be submitted to the assigned Administrative Law Judge and other parties to the proceeding.

I hereby provide a request for intervenor funds in the following Executive Law Section 94-c application before the Office of Renewable Energy Siting (ORES):

DMM Matter Number:	21-02553
Title of Application:	Application of Hecate Energy Columbia County 1, LLC for a 
Name of Party:	Town of Copake
Contact Person:	Benjamin E. Wisniewski, Esq.
Firm Name:	Wisniewski Law PLLC
Contact Address:	66 East Main Street, Webster, New York 14580
Contact Telephone Number:	585-364-1764
Contact E-mail Address:	bew@bowlawfirm.com
Amount of Funds Requested:	\$60,000.00

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

The basis of eligibility for intervenor funds is as follows: (select one)

Eligible **Local Agency**

Eligible **Potential Community Intervenor**

1(a). For a **Local Agency**, provide a statement that the facility falls within the local agency's jurisdiction or that a permit or approval from the local agency would have been required in the absence of Section 94-c of the Executive Law:

The proposed Shepherd's Run Solar facility, including solar panel arrays, a substation, an operations and maintenance facility, and a lay-down area, falls within the municipal boundaries of the Town of Copake, New York, and would be subject to local siting approval but for Section 94-c of the Executive law and Article 10 of the Public Service Law.

1(b). For an **Individual Potential Community Intervenor**, provide a statement of the number of persons the requesting party represents, the nature of the interests the requesting person represents, and proof of residency:

NA

1(c). For a **Non-Profit Organization Potential Community Intervenor**, provide a statement of concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to its mission:

NA

2(a). For a **Local Agency** or **Non-Profit Organization Potential Community Intervenor**, provide a statement of the availability of funds from the resources of the requesting party:

The Town is a municipal entity with limited resources to fund its participation in the 94-c proceeding.

2(b). For a **Local Agency** or **Non-Profit Organization Potential Community Intervenor**, provide a statement of the efforts that have been made to obtain funds from other sources:

The Town is not aware of any source of funds other than the Town's general fund.

3. State the amount of funds being requested:

\$60,000.00

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

4(a). If any experts are to be employed, provide to the extent possible, the name and qualifications of each person to be employed:

1. Attorney: Wisniewski Law PLLC is a municipal, energy siting, and environmental law firm located in Webster, New York. Attorney Benjamin E. Wisniewski, Esq. is the sole member of Wisniewski Law PLLC. The law firm currently represents municipalities and public stakeholder groups in Article 10, Article VII, and Section 94-c proceedings throughout New York State. Please see Exhibit 1 for an additional statement of the qualifications for Wisniewski Law PLLC and attorney Benjamin E. Wisniewski.

2. Engineering and environmental impact consultant: Barton & Loguidice (B&L) is a full-service consulting firm that provides services in practice areas that include engineering, environmental science, planning and landscape architecture. Exhibit 2 includes information about B&L's qualifications. B&L's staff includes a suite of professional engineers, land use planners, environmental scientists, and hydrogeologists with extensive experience in site design, stormwater management, landscape architecture, and environmental impact assessment. The B&L staff proposed for this review have between 5 and 34 years of experience conducting field studies and environmental reviews for development projects throughout New York, including numerous large scale solar projects. B&L has assisted several municipalities in review of solar projects proposed under Article 10 and Section 94-c, including the Towns of Minden, Canajoharie, Sharon, Florida, Conquest, Massena, Norfolk, Brasher, Homer, Solon, Cortlandville, and the Town and Village of Coxsackie.

4(b). If it is not possible to provide the name of each expert to be employed, provide for each expert a statement of the necessary professional qualifications for the expert(s):

The town may wish to retain an expert on the impact of conversion of farmland to non-agricultural uses. The possible expert should be capable of performing an economic analysis of the issue, at a minimum.

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

5. Provide, if known, the name of any other local agency, potential community intervenor or entity who may, or is intending to, employ any such expert(s):

The Town of Copake is not aware of any other local agency, potential community intervenor, or entity who may, or is intending to, employ such experts.

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

6(a). For all experts to be employed, provide a detailed statement of the services to be provided:

1. Wisniewski Law PLLC. Please see Exhibit 1 for a signed engagement letter setting forth the scope of services to be provided by Wisniewski Law PLLC. In summary, the law firm will provide comprehensive legal representation throughout the 94-c proceeding. The firm will advise the Town on 94-c rules and procedures, provide legal counsel related to the proceeding, identify and retain experts and compile a funding request, coordinate review of application document, draft an issues statement and party status request, engage in discovery if permitted, assist in drafting commentary or direct and rebuttal testimony, seek negotiated resolution of concerns if appropriate, represent the Town in conferences, hearings, and negotiations, draft briefs, and engage in motion practice as required. In general, the town intends to show, using both technical and legal arguments, that substantive provisions of the local solar energy zoning law should not be waived.

2. B&L will conduct a thorough review of the Application, as well as corresponding studies undertaken by the Applicant. B&L staff will review documents for completeness and appropriateness, particularly with regard to the Applicant's evaluation, and will make specific recommendations, if necessary, regarding methodology and adequacy of the studies; potential impacts identified by the studies; and possible mitigation measures. B&L will provide expert testimony necessary to develop a complete record on behalf of the Town. B&L will also make specific recommendations, where appropriate, regarding additional, independent studies to be undertaken by the Town for impacts of particular concern. Given the large footprint of the Project, there exists potential for significant adverse impacts. B&L will ensure that these impacts have been thoroughly and properly analyzed in accordance with federal and state guidelines and/or standard accepted procedures. B&L will also attend meetings, conferences, hearings, and discussions as needed to ensure the Town's concerns have been addressed. The funding will cover B&L's technical consultant costs associated with application review and recommendations; attendance and participation at meetings, conferences, hearings, and discussions; and any additional studies should they be necessary. A full scope of services is included in Exhibit 2.

6(b). For all experts to be employed, provide a detailed basis for the fees requested, including hourly fee, wage rate, and expenses:

1. Attorney - The rates and fees of Wisniewski Law PLLC are set forth in the engagement letter included in Exhibit 1. In summary, Mr. Wisniewski's time will be charged at a rate of \$225/hr. If a contract attorney is retained (such as Kenneth M. Smith, Esq), the contract attorney will bill at a rate of \$190/hr. A proposed legal budget for this proceeding is included in Exhibit 1. The estimated budget for legal services is \$51,750.00.

2. The Town's technical consultant in this proceeding, Barton & Loguidice, D.P.C. charges a rate of between \$140/hr to \$183/hr depending on the staff required for the specific task. It is anticipated that the average hourly billing rate for B&L on this project will be \$160/hour. B&L proposed budget for the proceeding is included in Exhibit 2. The estimated budget for B&L's professional services is \$25,000.00, but additional services may be necessary depending on the number of issues B&L identifies that may require adjudication.

TOTAL ESTIMATED BUDGET: \$76,750.00

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

6(c). For all experts to be employed, provide a detailed statement specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility:

1. Attorney Benjamin E. Wisniewski has extensive experience in representing municipalities and community stakeholder groups in Article 10 and Section 94-c proceedings. Mr. Wisniewski's legal services will help the Town meaningfully participate in the 94-c process. He will assist the Town in reviewing the application and draft permit, and in differentiating between mere concerns and the substantive and significant issues that may warrant potential adjudication. Mr. Wisniewski will help the Town more effectively raise their concerns about the proposed project and contribute to the record, while helping maintain an orderly and efficient proceeding. Although other issues may be raised, Mr. Wisniewski will assist the Town in explaining why full application of Copake's local laws is essential, and why the unique setting of Copake, New York requires extensive modification of the project to avoid or mitigate impacts on local resources.

2. B&L will facilitate the compilation of a complete a record as possible for the Office of Renewable Energy Siting (ORES) by analyzing and commenting on the issues that will affect the Town, with an emphasis on issues of unique local importance. B&L will help the Town and legal counsel to understand and comment upon technical issues related to solar power development and infrastructure. As a full-service engineering and planning firm, B&L will be able to provide the Town with the necessary expertise in multiple disciplines to provide input on specific issues of concern. Specifically, B&L will focus on the primary issues of concern to local residents including: compliance with local law, visual impacts, land use, public health and safety, noise, cultural resources, geology, seismology, and soil, wetlands and terrestrial ecology, water resources and aquatic ecology, agricultural resources, recreation, socioeconomic, transportation, utilities and infrastructure, residence classification (participant vs. non-participant), emergency services and related training and communications, blasting, water well Impacts, and historic preservation concerns.

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

7(a). For any study to be performed, a description of the purpose of the study:

Not applicable.

7(b). For any study to be performed, a description of the methodology and a statement of the rationale supporting the methodology:

Not applicable.

7(c). For any study to be performed pursuant to any proposed methodology that is new or original, an explanation of why pre-existing methodologies are insufficient or inappropriate:

Not applicable.

7(d). For any study to be performed, provide a description of the timing for completion of the study and a statement of the rationale supporting the timing proposed:

Not applicable.

IF NECESSARY, ATTACH ADDITIONAL INFORMATION IN A SEPARATE DOCUMENT.

8. For all experts to be employed, provide a copy of any contract or agreement or proposed contract or agreement with any such expert(s):

An executed contract for legal services between Wisniewski Law PLLC and the Town of Copake is included in Exhibit 1 of this application.

A executed contract between B&L and the Town of Copake is included in Exhibit 2 of the application.

9. Provide a statement of any additional justification for the funding request not already addressed above:

The Town of Copake has consistently demanded Hecate design a project that conforms fully with local laws and planning objectives. Copake's local solar zoning law, adopted in 2017 (before any large solar development approached the town), and amended in 2020, was thoughtfully designed to promote New York State's renewable energy goals while also protecting the town's unique agricultural, scenic, and environmental resources. Unfortunately, Hecate has consistently refused to present a project that complies with local law. In its 94-c Application, Hecate seeks approval for a project that is facially incompatible with the Town of Copake's Comprehensive Plan 2011, Agricultural and Farmland Protection Plan 2014, and zoning code. These local plans and laws are firmly rooted in Article 1, Article 9, and Article 14 of the New York State Constitution. The Town of Copake makes this request for Local Agency Account Funds largely to offset the cost of demonstrating why waiver of Copake's local laws is inappropriate given the facts of this case.

In addition, the Town seeks funding to retain the technical experts necessary to engage in a broader review of the 94-c application, which is necessary to identify issues of concern, and determine whether draft permit conditions are sufficient to avoid or mitigate social, economic, and environmental impacts.

Funding will also be used to support the community's demands for specific changes to the application as set forth by the Craryville Gateway working group. Hecate largely ignored these demands, but as each recommendation is tied to unique local impacts, the Town intends to seek implementation of the Working Group's recommendations via permit condition.

Finally, the town requests discretion to allocate any award between attorneys and experts, as actual fees and costs may deviate from estimates.