

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE
OFFICE OF RENEWABLE ENERGY SITING
AND ELECTRIC TRANSMISSION

ORES Permit Application Number 24-00103 - Application of HECATE ENERGY COLUMBIA COUNTY 1 LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 42-Megawatt (MW) Solar Energy Facility Known as the Shepherd's Run Solar Farm Located in the Town of Copake, Columbia County.

RULING DENYING TOWN OF COPAKE'S MOTION TO REJECT APPLICATION

(Issued January 6, 2025)

MAUREEN F. LEARY, Administrative Law Judge:

This ruling denies the Town of Copake's (Town's) motion to reject Hecate Energy Columbia County I LLC's (Hecate CC) application filed with the Office of Renewable Energy Siting and Electric Transmission (ORES) for a major renewable energy facility siting permit pursuant to Article VIII of the Public Service Law (PSL) for a 42-megawatt solar energy facility project known as Shepherd's Run Solar Farm (Shepherd's Run) located in the Town of Copake, Columbia County.

I. FACTUAL AND PROCEDURAL BACKGROUND

In a prior and related case, on March 8, 2022, Hecate CC submitted an ORES siting permit application for a similar solar project located in the Town.¹ On August 23, 2023, ORES issued a notice of complete application and on October 24, 2023,

¹ See ORES DMM Matter No. 21-02553, Application of HECATE ENERGY COLUMBIA COUNTY 1 LLC for a Major Renewable Energy Facility Siting Permit Pursuant to Section 94-c of the New York State Executive Law to Develop, Design, Construct, Operate, Maintain, and Decommission a 60 Megawatt (MW) Solar Energy Facility Known As the Shepherd's Run Solar Farm Located in the Town of Copake, Columbia County.

issued a draft siting permit with conditions. In a February 6, 2024, decision, the Executive Director dismissed Hecate CC's prior application and otherwise denied it without prejudice to the submission of a new application for a modified facility.² The factual and procedural background underlying the application's dismissal and denial without prejudice are detailed in the Executive Director's decision.

Following the Executive Director's decision, Hecate CC initiated the process to file a new application for the Shepherd's Run project and made several pre-application submissions to ORES beginning on February 27, 2024.³ On March 28, 2024, Hecate CC filed a combined notice of In Person Community Meeting/Open House and Notice of Intent to File an Application for a revised Shepherd's Run project siting permit (60-Day Notice).⁴ The filed and published 60-Day Notice both state that it "is being provided pursuant to [former] 19 NYCRR §§ 900-1.3(b), (d) and 900-1.6(c) [now 16 NYCRR 1100-1.3(b), (d) and 1100-1.6(c)],"⁵ that the application filing date would be on

² ORES DMM Matter No. 21-02553, Matter of Hecate Energy Columbia County 1 LLC, Decision of the Executive Director, February 6, 2024.

³ Portal Item Nos. 1-17, 20-29.

⁴ Portal Item No. 18. On April 15, 2024, Hecate CC filed a letter indicating that the 60-Day Notice had been "[p]ublished in the Register Star and Columbia Paper in accordance with 16 NYCRR § 1100-1.6(c)(2)" on March 13, 2024 and March 14, 2024 and "[m]ailed to ORES, all local agencies attending pre-application the meeting, and all persons residing within one (1) mile of the proposed Project," and to members of the New York Legislature whose district is located near the project. Portal Item No. 19.

⁵ The Renewable Action through Project Interconnection and Deployment (RAPID) Act (L 2024, ch 58, part O) in part repealed Executive Law § 94-c and enacted a new Public Service Law article VIII entitled "Siting of Renewable Energy and Electric Transmission" (see RAPID Act §§ 2, 11). The RAPID Act also retitled ORES as the Office of Renewable Energy Siting and

or about June 3, 2024, and that two community meeting/open house sessions would be held on April 3, 2024.⁶

On April 3, 2024, Hecate CC held a community meeting and open house pursuant to the 60-Day Notice at which representations provided a power point presentation containing information about the Shepherd's Run project and again identifying the June 3, 2024, application filing date.

On December 19, 2024, Hecate CC filed a "Notice of Intent to File an Application" (3-Day Notice), stating that "on or about December 23, 2024 the Applicant will file its Application" with ORES and that the notice was being filed pursuant to 16 NYCRR 1100-1.6(c).⁷ On December 23, 2024, Hecate

Electric Transmission, transferred it from the Department of State to the Department of Public Service, and continued its existing authority under Executive Law former § 94-c, while adding new authority related to permitting major electric transmission siting (see RAPID Act §§ 3, 4). ORES's regulations at 19 NYCRR part 900 were transferred to 16 NYCRR chapter XI (see 16 NYCRR part 1100), subject to certain non-substantive changes (see RAPID Act § 7). Based on the continuation of ORES's authority, all administrative precedent issued under Executive Law former § 94-c remains applicable to proceedings under Article VIII.

⁶ The ORES regulations require an applicant to meet with members of the community in which the project is located and notice of the meeting shall be provided no sooner than 30 days and no later than 14 days before the meeting. 16 NYCRR 1100-1.3(b). One of the expressly stated purposes of the meeting is to identify the anticipated application date. An applicant is required to include in its application transcripts of the community meeting, if any, presentation materials, and a summary of questions raised and responses provided at the meeting. 16 NYCRR 1100-1.3(c).

⁷ Portal Item No. 30. On December 30, 2024, Hecate CC filed affidavits of publication and service of the Notice of Intent. Portal Item No. 105. The affidavits indicate that Notice of Intent was timely published in the Register Star daily newspaper and the Columbia Paper weekly newspaper and was served on the appropriate persons and entities on December 19, 2024.

CC filed its extensive application for a siting permit after having submitted the required local agency account fee of \$42,000 for use by eligible municipal agencies and community intervenors for purposes of contributing to the development of a complete record and an informed ORES decision.⁸

On December 24, 2024, ORES issued a Notice of Application Filing and Availability of Local Agency Account Funding, establishing a January 23, 2025, deadline to apply for funding.⁹

The Town's Motion

In response to Hecate CC's 3-Day Notice, on December 23, 2024, the Town filed and served a motion requesting that ORES reject Hecate CC's application "prior to [Hecate CC] providing proper notice via an accurate 60-day filing notice" and that the required 60-day Notice period be reset.¹⁰ In its motion, the Town asserts that Hecate CC's reliance on its March 28, 2024, 60-Day Notice failed to provide an accurate application filing date. The Town terms Hecate CC's 60-day Notice "false and misleading" insofar as it identified an inaccurate application filing date of June 3, 2024, which "is not trivial."¹¹ The Town also asserts that 16 NYCRR 1100-1.6(d) mandates that such notices contain the date on which the application will be filed with ORES. The Town claims that Hecate CC's 60-day Notice did not provide adequate notice of the date the application would be filed. The Town argues that Hecate CC's 3-Day Notice is "premature" and that ORES will

⁸ Portal Item Nos. 32-101.

⁹ Portal Item No. 102.

¹⁰ Portal Item No. 31, Town of Copake letter motion at 1.

¹¹ Copake motion at 2.

violate its own regulations if it accepts the application in reliance of both Notices.

The Town also argues that Hecate CC's refusal to comply with applicable notice rules "is compounded by its intent to file during the holiday season," resulting in community residents being "deprived of the normal 90-day period" for funding requests from the local agency account because they will have a truncated 30-day period to apply for funding over the busy holidays.¹² The Town concludes that Hecate CC's "surprise announcement to file its application" is intended to deprive the public of meaningful opportunities for participation in the proceeding.

On December 30, 2024, Intervenors Birch Hill Road Neighbors Association (Birch Hill) and Sensible Solar for Rural New York (Sensible Solar) filed separate letters in support of the Town's motion, made similar arguments, and requested the same relief.¹³

Hecate CC's Response

In its December 26, 2024, response to the Town's motion, Hecate CC asserts that it "lacks legal and precedential merit but suggests an action directly contrary to established ORES practice" and is inconsistent with the efficient administration of the ORES permitting process.¹⁴ Hecate CC argues that the Town's motion fails to clearly state the relief requested, as required by 16 NYCRR 1100-8.5(c)(2), and that

¹² Copake motion at 2.

¹³ Portal Item No. 106, Birch Hill Road Neighbors Association response; Portal Item No. 107, Sensible Solar for Rural New York response.

¹⁴ Portal Item No. 103, Hecate CC response at 1-2.

"general protests" are insufficient.¹⁵ Hecate CC also asserts that the ORES regulations establish a minimum not a maximum timeframe for filing its application after publishing a 60-Day Notice and not a deadline after publication by which the application must be filed, citing 16 NYCRR 1100-1.3(d).¹⁶ Hecate CC disputes that it has violated the ORES regulations.

Hecate CC further argues that ORES has "previously accepted applications submitted well after the 'on or about' dates noticed" in an applicant's 60-Day notice of intent to file an application and that some applications were filed several months after the date set forth in the notice of intent.¹⁷ Hecate claims that in those cases ORES did not consider the notices of intent to be deficient and to do so now would be arbitrary and capricious. Hecate CC also claims that the Town is asking ORES to impose "new procedural constraints for Article

¹⁵ Id. at 3-4. Hecate CC claims that in failing to identify the relief requested, the Town leaves too speculation whether it is seeking a ruling or order: directing Hecate to re-notice the 60-Day Notice; or directing Hecate not to file the application for the project; or directing ORES staff not to accept an application for the project.

¹⁶ Id. at 4-5.

¹⁷ Id. at 5-6. Hecate CC cites several ORES cases in support of this assertion, including ORES Permit Application No. 23-00049, Matter of York Run Solar, LLC (Notice of Intent identified a September 2, 2023, filing date, but application not filed until January 22, 2024); ORES Permit Application No. 23-00054, Matter of Flat Creek Solar, LLC (Notice of Intent identified May 15, 2024, filing date, but application not filed until September 6, 2024); ORES Permit Application No. 22-00031, Matter of Rich Road Solar Energy Center, LLC (Notice of Intent identified December 15, 2022, filing date, but application not filed until March 31, 2023); ORES Permit Application No. 22-00030, Matter of Alfred Oaks Solar, LLC (Notice of Intent identified October 31, 2022, filing date, but application not filed until April 14, 2023).

VIII applications” that lack any regulatory or precedential basis.¹⁸

Finally, Hecate CC asserts that all required parties and the public were properly notified of the application filing and have not been deprived of meaningful participation in the proceeding, having had sufficient time to prepare requests for funding. Hecate CC also asserts that that most time periods under the ORES regulations include holidays.¹⁹

ORES Staff’s Response

In its December 30, 2024, response to the Town’s motion, ORES staff asserts that Hecate CC’s 60-Day Notice and its 3-Day Notice were properly published pursuant to 16 NYCRR 1100-1.3(d) and 1100-1.6(c)-(d), including the dates identified in each for the application’s filing and the required substantive information about the project.²⁰ ORES staff asserts that all parties and the public had appropriate notice and that there is no legal basis for the Town’s requested relief that ORES not accept Hecate CC’s application. ORES staff submits that the Town’s motion should therefore be denied.²¹

DISCUSSION

The Town’s motion to reject Hecate CC’s application is denied. The two regulations at issue here, address two separate and distinct sequential events, which the Town conflates. The first, 16 NYCRR 1100-1.3(d), addresses when an applicant is required to publish a notice of intent to file its application,

¹⁸ Portal Item No. 108, Hecate CC response at 6-7.

¹⁹ See id. at 7-8.

²⁰ See Portal Item No. 108, ORES staff response at 2.

²¹ On January 6, 2025, Friends of Columbia Solar served a late response in opposition to the Town’s motion. All responses were due by December 30, 2024. See 16 NYCRR 1100-8.5(c)(3).

which must include a potential application filing date and can be published and served no earlier than 60 days before the application is filed. The second, 16 NYCRR 1100-1.6(c)-(d), addresses when an applicant is required to publish the notice of the filing of its application, which must include the date on or about which the application will be filed, and can be published and served no earlier than 3 days before the application is filed. The former is known as a 60-Day Notice of Intent and the latter is known as a 3-Day Notice of Intent.

The Town's motion essentially complains about a nearly seven-month delay following the 60-Day Notice because it contained a June 3, 2024, potential application filing date. This complaint is without merit in view of the language of 16 NYCRR 1100-1.3(d), which is permissive rather than mandatory and did not require Hecate CC to file its application by June 3, 2024. It leaves to an applicant's discretion when to file an application. Thus, compliance with 16 NYCRR 1100-1.3(d) is met as long as the notice of intent is published no less than 60-days before an application is actually filed. And that is the case here. The Town lacks any basis in law to claim that the June 3, 2024, date for the application filing identified in Hecate CC's 60-day Notice was mandatory.

Notably, an applicant's discretion about the timing to file its application is informed by the extensive pre-application discussions with ORES that occur regarding the application's required contents. The highly technical nature of the ORES siting regulations and the application itself lends support to the conclusion that 16 NYCRR 1100-1.3(d) does not include a mandatory application filing deadline.

The applicability of the two regulations at issue here should be clarified. Hecate CC titled and substantively described its December 19, 2024, 3-Day Notice as a "Notice of

Intent to File an Application,” which is similar to the language contained in the title and substantive description of the 60-Day Notice. Although the 3-Day Notice expressly says that an application will be filed on December 23, 2024, consistent with the language of 16 NYCRR 1.6(c), it more appropriately should be titled and substantively described as a “Notice of Application Filing and Availability of Local Agency Account Funds,” setting forth a filing date on or about December 23, 2024. This would have differentiated the 3-Day Notice from the 60-Day Notice and may have avoided any public confusion between the two.²²

Nevertheless, the Town was not prejudiced by the 3-Day Notice being titled as a “Notice of Intent to File an Application” because the substance of the Notice expressly stated that Hecate CC would file its application on or about December 23, 2024, and because the application was in fact filed on that date. Moreover, the Town received timely notice of ORES’s Notice of Application Filing and Availability of Local Agency Account Funds on December 24, 2024, which made clear the application’s filing pursuant to 16 NYCRR 1100-1.6(c)-(d), the availability of local agency funding, and the funding application deadline.

The Town’s complaint that Hecate CC’s 3-Day Notice was improper in view of the holidays is unpersuasive. The Town and Intervenor Birch Hill and Sensible Solar have had sufficient time to address the filing of Hecate CC’s application and to

²² Hecate CC also combined its 60-Day Notice with a separately required notice of a community meeting, which is addressed under a different regulatory provision, has a different (30-day) notice timeframe, and serves a different purpose. See 16 NYCRR 1100-1.3(b). Combining the two notices has the potential to confuse the public and, consequently, the better practice would be to serve and file each notice separately in accordance with the required timeframes.

prepare their local agency account funding applications pursuant to 16 NYCRR 1100-5.1. Their filings opposing Hecate CC's 3-Day Notice would have been time better spent in reviewing Hecate CC's application and in preparing their own applications for funding. Nevertheless, in view of the intervening holidays during the events outlined above, it is in the public interest to extend the January 23, 2025, deadline for parties to apply for local agency account funding.²³ Accordingly, in the exercise of discretion, the December 24, 2025, Notice of Application Filing and Availability of Local Agency Account Funds is hereby modified to establish a January 31, 2025, deadline for submitting such funding applications.

In fairness to all parties and for administrative efficiency, any further motion filed in this proceeding shall include an affirmation by the moving party describing the good faith efforts undertaken to resolve the dispute prior to filing the motion. The affirmation shall be consistent with State Administrative Procedure Act (SAPA) § 302(4).²⁴

²³ Under certain circumstances in other cases, the ORES Office of Hearings has entertained late applications for local agency funding when appropriate.

²⁴ SAPA § 302(4) provides that an affirmation shall affirm the truth of statements contained in the affirmation under penalty of perjury and shall be in substantially the following form: "I affirm this ___ day of ___, ___, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an administrative hearing. (Signature)." Pursuant to section 302(4), affirmations may be used in an administrative proceeding in New York in lieu of and with the same force and effect as an affidavit.

CONCLUSION

For the foregoing reasons, the Town's motion is denied and its ancillary request to reset the timeframe for filing Hecate CC's application is denied as moot. The deadline for filing applications for local agency account funds pursuant to 16 NYCRR 1100-5.1 is extended to January 31, 2025.

(SIGNED)

Maureen F. Leary
Administrative Law Judge
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cc: Party List - ORES Permit Application No. 24-00103
Honorable James T. McClymonds, ORES Chief ALJ