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Rural Municipalities, Community and Conservation Groups Sue New York State's Office of Renewable Energy Siting Over 94-C Process for Siting of Industrial Solar and Wind Facilities

The lawsuit claims ORES violated New York's Environmental Quality Review Act (SEQRA)

Legal action threatens to halt renewable energy siting projects currently under ORES consideration in New York State while the case is reviewed

(NEW YORK, NY) — Today, local governments, community organizations and conservation and public interest groups across New York State are set to file a lawsuit against the New York State Office of Renewable Energy Siting (ORES) asserting a violation of New York State Environmental Quality Review Act (SEQRA). The lawsuit seeks to overturn regulations setting standard uniform conditions applicable to all renewable energy projects in the state. The coalition of plaintiffs alleges ORES failed to acknowledge that its regulations for siting power plants could result in even one significant adverse environmental impact, and as a result failed to prepare an environmental impact statement.

The move marks one of the first challenges against ORES, which was recently created as part of Accelerated Renewable Energy Growth and Community Benefit Act in the FY2020-2021 Budget. ORES was created to fast-track siting for proposed industrial-scale renewable energy projects, and to assist New York in meeting its aggressive renewable energy goals. Speed is no doubt important in siting renewable energy projects, but speed is not everything. In creating a new energy plant siting process, ORES ignored thousands of public comments in prioritizing speed over the robust review of environmental impacts.

[New York State Environmental Quality Review Act \(SEQRA\)](#) requires 'all state and local government agencies to consider environmental impacts equally with social and economic factors' when taking government action. In taking action to promulgate new regulations for siting power plants, ORES was required to take a hard look at the environmental impacts of the regulations. ORES's failure to create an Environmental Impact Statement is particularly concerning given the state's recent adoption of a law exempting individual project applications from SEQRA review.

The lawsuit is filed on the grounds that ORES failed to meet the legal requirements of SEQRA to take a "hard look" at the environmental impacts that could result from their permitting standards **prior** to adopting their regulations. ORES performed only a cursory "short-form" review, in violation of the detailed environmental impact statement that SEQRA requires. In fact, ORES concluded that regulations applicable to wind farms with 700-foot turbines spanning entire counties, and solar projects covering thousands of acres of farmland, would not result in even one adverse environmental impact.

Growing concern surrounding the unforeseen consequence of New York State's new expedited siting process (94-C) was partially sparked by Hecate Energy's proposed Shepherd's Run solar facility in rural Copake and Craryville, NY. The industrial-scale solar facility will devastate more than 250 acres of natural resources, landscape, farmland and rural viewsheds in Copake. Shepherd's Run is a clear violation of local zoning laws. In 2017, the Town of Copake enacted a prohibition on solar energy projects greater than 10 acres to ensure that developers respect its natural resources, farmland, wildlife, rural viewsheds, property values, and agriculture- and tourism-centric economy. In response, Chicago-based Hecate Energy has committed to using the 94-C process to bypass the Town of Copake's planning board and zoning laws, as well as overwhelming community opposition and concern. Hecate Energy is one of many renewable energy developers that will most likely ignore

local authority, a signal that upstate, rural New York will become the ‘Wild West’ when it comes to siting solar and wind projects.

The regulations also entrench arbitrary timelines that don't universally allow enough time for necessary wildlife field studies. Similarly, automatic approvals loom if challenging review deadlines are not met, making it possible for harmful projects to bypass input from key stakeholders. Only the most threatened of wildlife species are given real consideration, and even these are afforded little protection. Worst of all, there is nothing concrete to ensure that projects are sited in low-risk locations, which is the most important aspect of minimizing impacts to wildlife. This is crucial, since projects are too often proposed in inappropriate locations. For example, Heritage Wind in Orleans County is proposed adjacent to a high-biodiversity wetland complex that supports nesting Bald Eagles and many rare species, in a major migratory pathway for birds.

The Climate Leadership and Community Protection Act passed in 2019 and established ambitious clean energy goals for New York State. Legislation and statewide initiatives to promote renewable developments and rapid transition to green energy shortly followed. The pursuit of dramatic transformation has revealed the threat to New York’s rural communities if proper consideration is not given to the local impacts of siting large-scale projects in rural and natural areas. Organizations across the state have taken notice of the pathway New York is on and are raising their collective voices.

The plaintiffs suing are a broad group of Upstate towns and public interest organizations at risk of being adversely affected by existing and proposed permit applications in front of ORES.

- Town of Copake
- Town of Yates
- Town of Farmersville
- Town of Cambria
- Town of Malone
- Cambria Opposition to Industrial Solar, Inc.
- Save Ontario Shores, Inc.
- American Bird Conservancy
- Delaware-Otsego Audubon Society
- Genesee Valley Audubon Society
- Clear Skies Above Barre, Inc.
- Rochester Birding Association
- Town of Somerset

The lead lawyers in the matter will be Mindy Zoghlin and Benjamin Wisniewski, of the firm Zoghlin Group PLLC, who also represents the Town of Copake in the Hecate Energy Shepherd’s Run application, and Gary Abraham, long-time energy and environmental advocate. William Sheehan, the Vice President and General Counsel of the American Bird Conservancy, is acting as its co-counsel in the case. The team has deep knowledge and experience in the renewable energy siting permit area, as well as in environmental and land use litigation.

The suit will seek a temporary restraining order (TRO) and a preliminary injunction to invalidate the ORES regulations, and to require ORES to adopt new regulations based on performance of a full environmental impact statement studying the environmental effects that could result statewide from ORES permits for large-scale renewable energy installations.

The suit also seeks an order shifting all current and potential ORES applications to the already existing state Siting Board for review of applications under Article 10 of the Public Service Law. This alternative means of siting will allow the state to continue working towards its renewable energy goals while ORES takes the time it needs to create new, more protective regulations. The Siting Board, unlike ORES, employs a well-established process for reviewing, mitigating, and avoiding the environmental impacts of renewable energy projects.

“What we are seeing here is regulatory capture. ORES hired a renewable energy industry consultant to draft regulations that favor the industry, then ignored broad-based criticism from nearly everyone else with a stake in power plant siting. The goal of this litigation is to force ORES to actually consider the concerns of rural New Yorkers, host municipalities, and environmental groups. ORES must be required to address the significant

adverse impacts of industry-friendly regulations, and make changes where appropriate,” **said Benjamin Wisniewski, Partner at the Zoghlin Group PLLC.**

“We’re asking, how much environmental destruction should be tolerated in order to obtain small amounts of power from wind and solar farms? The State failed to look at that question. But the law requires not only the question, but reasonable answers,” **said Gary Abraham, long-time energy and environmental advocate.**

“The existential threat of climate change is real. However, New York State cannot fail rural communities, ignore home rule and erase natural resources and precious farmland with the current rubberstamp renewable energy siting process. Environmental impact should be weighed when looking to save the environment. Both the Town Board and the Columbia County Board of Supervisors have been unanimous in opposing the Hecate project as currently proposed. I am happy to stand with rural Towns across the State in challenging these regulations. In Copake you cannot put a shovel in the ground without the Planning Board demanding SEQRA review. To think that this massive industrial installation could be allowed without strict environmental review is shocking,” **said Jeanne Mettler, Copake Town Supervisor.**

“As an elected town supervisor whose residents have industrial renewable energy targets on our backs, I for one will not sit back and allow the 94-C law and regulations — written behind closed doors by unnamed people and being administered, remarkably, by one unelected official — to violate the norms of procedural and rural environmental justice. We all want to contribute to a more sustainable future, but when ORES ignored the local knowledge and expertise of thousands of comments offered on their draft regulations, it was clear that New York State wasn’t interested in what is clean, green or sustainable. Rather, it is bent on being arbitrary, capricious and dictatorial,” **said James Simon, Yates Town Supervisor.**

“As Town of Somerset Supervisor, it is unthinkable to have this state create ORES to oversee and override our local laws and comprehensive plan. One person should not decide what is best for us. It’s become clear that ORES doesn’t care about environmental or health the safety of our community,” **said Jeff Dewart, Somerset Town Supervisor.**

“Four years ago, Cypress Creek Renewables approached the Town of Cambria with a very large solar project, telling town officials and residents that the project would not move forward without community support. When town officials and residents learned the proposed project did not comply with town zoning laws and would convert hundreds of acres of agricultural land into an industrial power plant, strong opposition quickly developed. Despite Cypress Creek Renewable’s initial statements that it would not force their project on our community if we did not want it, the company has consistently ignored our concerns and is seeking approval through the 94-C process, which will undoubtedly set aside our duly enacted local laws that everyone else is required to follow. The Town of Cambria is ready to join the fight to stop New York State and ORES from violating SAPA, SEQRA, and the home rule provisions of the New York State Constitution,” **said Wright H. Ellis, Cambria Town Supervisor.**

“Allowing the renewable industry to make and enforce rules through ORES with no oversight is a situation in which the industry has a vested interest in not pursuing environmental safety with vigor. In addition, seeking to violate the Home Rule provisions of the New York State Constitution by granting ORES unfettered power to waive local laws will not be tolerated,” **said Ed Saleh of Cambria Opposition to Industrial Solar, Inc.**

“The regulations had the potential to create a model for rapid, yet environmentally responsible renewable energy development. Instead, far too little protection was afforded to birds and other wildlife, and the resulting process poses too much risk and uncertainty. It’s truly unfortunate that this lawsuit is necessary, but improvements must be made to these regulations,” **said Joel Merriman, American Bird Conservancy’s Bird-Smart Wind Energy Campaign Director.**

"We strongly support renewable energy. But in our involvement with several projects, New York State's commitment to protection of at-risk birds has been sorely lacking. The new ORES rules make the situation even worse," **said Andy Mason, Delaware-Otsego Audubon Society Co-President.**

"New York has certainly accelerated away from the sensible, neglecting its diversity and trading it for assumed 'greener pastures.' We can only begin to make a praise-worthy impact when we honor the beauty we already hold," **said Barbara Verburg, president of Clear Skies Above Barre, Inc.**

"Save Ontario Shores has participated in a State siting process for six years with an out-of-state developer who does not recognize critical local environmental, health, safety and economic concerns as legitimate. The State response to community concerns is to create a system (ORES) that tips the scale in favor of the developers on all counts. Our voices are now shut out of the process and that means wildlife and habitat is sacrificed and local comprehensive planning is trampled," **said Kate Kremer of Save Ontario Shores, Inc.**

"The ORES legislation's 'quick fix' to the climate crisis risks harming species diversity and ultimately humans. Science-based setbacks from areas of importance to wildlife, including major bird migratory routes and wildlife concentrate areas are necessary to protect species from further decline. Climate change and nature loss are interlinked and must be tackled together. This is also a finding of a key recent report by 50 leading scientists from around the world searching for combined solutions to the climate and biodiversity crises. Fixing ORES could put New York State on the front line of creating a positive solution to both of these crises," **said Amy Kahn, Conservation Chair for the Rochester Birding Association.**

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