

August 8, 2022, Press Release

Eleven Petitioners File Appeal with Supreme Court Appellate Division Against NY State Office of Renewable Energy Siting Regulations

On August 2, 2022, eleven petitioners filed an appeal against the NY State Office of Renewable Energy Siting (ORES) regarding the drafting and implementation of regulations, standards and conditions for siting industrial-scale wind and solar facilities under the Accelerated Renewable Energy Growth and Community Benefit Act.

The litigants include a cross section of towns representing thousands of New Yorkers as well as several citizen groups and bird conservation organizations: the Towns of Copake, Malone, Somerset and Yates; Save Ontario Shores, Inc., Cambria Opposition to Industrial Solar, Inc., Clear Skies Above Barre, Inc., the American Bird Conservancy, Delaware-Otsego Audubon Society, Inc., Genesee Valley Audubon Society, Inc., and the Rochester Birding Association, Inc.

The legal challenge focuses on ORES' failure to take into account the pertinent social, economic and environmental factors in siting wind and solar industrial energy facilities. The petitioners are also questioning the constitutionality of ORES' adoption of regulations designed to override local, duly-enacted, municipal laws.

Jeanne Mettler, Town of Copake Supervisor, insists that, "Everyone recognizes the importance of preserving our planet and creating the conditions for a more sustainable future." Supervisor Mettler added, however, that, "We are deeply disappointed by the ORES Regulations - written entirely by an industry consultant - because they demonstrably disregard the Legislature's mandate to protect the environment and to waive local laws only upon a factual showing that doing so will avoid significant harms to the environment."

In fact, the law suit contends that the ORES Regulations were written by a consulting firm, Tetra Tech, which has significant conflicts of interest in New York. According to its own filing with the state, Tetra Tech provided and/or is currently providing project design and siting services in NY to at least 25 renewable energy developers and projects.

Pamela Atwater, President of Save Ontario Shores, Inc., was not surprised that the resulting regulations are developer friendly. However, she was taken aback that ORES, in its response to the 5,000 comments from energy, environmental and local experts, decided to make no substantive changes to the regulations. "ORES was unable to find even a single potentially significant adverse environmental impact that may result from its extensive regulations. The state agency could only come to that conclusion by repeatedly rejecting scientific evidence and legitimate concerns from commenters without sufficient reasoning or justification," Atwater said.

The litigants are calling for the court to annul ORES' regulations and require ORES to engage in a new rulemaking process that takes all pertinent social, economic and environmental factors into account, and to require ORES to promulgate new regulations that comply with the standard for waiver set forth by the Legislature that protects towns and municipalities under the NY State Constitution's Home Rule provisions.

Press inquiries may be referred to Supervisor Jim Simon, Town of Yates (716-946-2075), Deputy Supervisor Richard Wolf, Town of Copake (917-484-1483) or Vice President Kate Kremer, Save Ontario Shores, Inc. (585-414-4954).