

**VILLAGE BOARD  
VILLAGE OF COXSACKIE  
GREENE COUNTY NEW YORK**

**Resolution No. 32021**

**February 8, 2021**

**WHEREAS**, Hecate Energy Greene 1, LLC, Hecate Energy Greene 2, LLC, and Hecate Energy Greene 3, LLC (the “Applicant”) has proposed to construct a fifty (50) megawatt (MW) solar energy facility in the Town of Coxsackie (the “Town”), Greene County (the “Project”), and has applied to the New York State Board on Electric Generation Siting and the Environment (the “Siting Board”) for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law to allow the Applicant to construct and operate the Project;

**WHEREAS**, the Village has participated fully in every phase of the review of the Project under Article 10 of the Public Service Law using intervenor funds awarded for that purpose;

**WHEREAS**, the Village opposes the Project as a whole because the Project is inconsistent with: (1) Town substantive local law, (2) the Town and Village of Coxsackie Comprehensive Plan, and (3) the rural and historic character of the Village, among other reasons;

**WHEREAS**, the Siting Board’s review of the Applicant’s proposed Project coincides with the review of Case No. 18-F-0087, the Application of Flint Mine Solar (“Flint Mine”) for a 100-megawatt solar facility, and together the Facility Areas of these Projects represent over 9% of land in the Town of Coxsackie;

**WHEREAS**, the Applicant has not evaluated the way these projects will cumulatively alter the rural, agricultural, and historic character of the area;

**WHEREAS**, the Applicant has sought no local approvals for the Project from the Town Board, the Town Planning Board or the Town Zoning Board of Appeals, and has instead requested a waiver from the Siting Board claiming that three of the Town of Coxsackie’s zoning district restrictions for utility-scale solar (Code §§ 167-6(B)(1), (2)), and lot coverage (Code § 167-6(B)(5)), are unduly burdensome;

**WHEREAS**, the Village opposes the Applicant’s request for a waiver and, has taken the position in testimony filed with the Siting Board that the request for a waiver should be denied as the Applicant has presented no or insufficient evidence that the Town Solar Law is unduly burdensome;

**WHEREAS**, the Village has participated in settlement negotiations with the Applicant through its counsel, Whiteman Osterman & Hanna, LLP, and engineering consultant, Barton & Loguidice, D.P.C., in order to obtain the best possible terms for the Village, regardless of the Village’s consistent opposition to the Project; and

**WHEREAS**, the Village has reviewed the proposed Certificate Conditions, Visual Settlement Proposal, SEEP Guidelines, and Noise Complaint Protocol (the “Settlement Documents”), and having been advised by its counsel and engineering consultant, that the Settlement Documents are satisfactory with the exception of Certificate Conditions 14, 38, and 47 and Section 7 (a)(iii) the Noise Complaint Resolution Protocol;

**NOW THEREFORE BE IT RESOLVED**, that after reviewing the Settlement Documents, including the proposed Certificate Conditions and SEEP Guidelines, which are posted on the NYS Department of Public Service website, and which are available at all times for public review, the Village Board of the Village of Coxsackie hereby finds that:

- 1) The Village has no objection to the proposed Certificate Conditions with the exception of paragraphs 14, 38, and 47 in the version submitted to the Siting Board on December 16, 2020 (a copy of the objected to conditions is attached hereto as Exhibit A);
- 2) The Village has no objections to the Visual Settlement Proposal submitted to the Siting Board on February 5, 2021;
- 3) The Village has no objection to the SEEP Guidelines in the version of the document filed with the Siting Board on December 16, 2020;
- 4) The Village objects to Section 7 (a)(iii) the Noise Complaint Resolution Protocol in the version of the document filed with the Siting Board on December 16, 2020;
- 5) The Village also finds that its agreement with the proposed Settlement Documents is conditioned upon the Applicant revising the Project to comply with the Solar Law; entering into acceptable agreements with the Town on road use and repair, decommissioning and security, the visual mitigation plan/landscape screening and security, and a PILOT agreement; and
- 6) The Village also finds that, as compared to the Flint Mine Project, the Hecate Project will have a more detrimental impact on the character of the area; and
- 7) The Village Mayor is authorized, through their legal counsel and engineering consultant, to submit a letter to the Siting Board evidencing the Village’s position on the Certificate Conditions and SEEP Guidelines, as well as the Noise Complaint Resolution Protocol, and to provide a copy of this resolution to the Siting Board.

**BE IT FURTHER RESOLVED**, that this resolution shall take place immediately.

Vote on resolution:

Mayor Mark Evans	YES
Trustee Donald Daoust	YES
Trustee Stephen Hanse	YES
Trustee Katlyn Irwin	YES
Trustee Rebecca Vermilyea	YES



Mark Evans, Village Mayor

I, the undersigned Clerk of the Village of Coxsackie do hereby certify that the above is a resolution duly adopted by the Village Board of Trustees on February 8, 2021.

**SEAL**

A handwritten signature in black ink, appearing to read "Nikki Berezna", written over a horizontal line.

Nikki Berezna, Clerk

## EXHIBIT A

### OBJECTED TO CONDITIONS AND PROVISIONS

14. *The Certificate Holder shall construct and operate the Facility in accordance with the substantive provisions of the applicable local laws as identified in Exhibit 31 of the Application and as such Application has been further clarified and supplemented by the Certificate Holder, except for three of the Town of Coxsackie's zoning district restrictions for utility-scale solar (Code §§ 167-6(B)(1), (2)), lot coverage (Code § 167-6(B)(5)), and buried lines and wiring (Code § 167-6(C)(4)(q)). These three provisions are determined by the Siting Board to be unreasonably burdensome in the view of existing technology, cost/economics, or consumer needs and shall not apply to the Facility.*

The Village supports the Town's finding that the Project is in violation of Section 167-6 (B)(1)-(2) of the Solar Law, which prohibits the siting and operation of a utility-scale solar facility in any zoning district other than the Commercial and Industrial Districts. The purpose of this provision is to protect the Town's agricultural land and rural landscapes in furtherance of the Town and Village of Coxsackie Comprehensive Plan. Despite these valid zoning restrictions, the Project is proposed in the Town's Rural Agricultural Zoning District. The Village cannot support a waiver of a fundamental component of the Towns Solar Law and Zoning Code.

The Village supports the Town's finding that the Project is in violation of Solar Law § 167-6(B)(5), provides that a utility-scale solar facility may occupy up to 20% of the area of the solar lot. This law is important to the Municipalities because it is intended to preserve open space and protect agricultural lands. The Applicant has failed to provide any evidence that its requested waiver is the minimum necessary or that the adverse agricultural and open space impacts are mitigated to the maximum extent practicable. For that reason, a waiver of the Solar Law is inappropriate.

The Village supports the Town's finding that the Project does not comply with §§ (C)(4)(i), which provides that "arrays shall be located on a Solar Lot in such a manner as to avoid, to the maximum extent feasible, soils classified as prime farmland by the U.S. Department of Agriculture, New York State or the Natural Resources Conservation Service."

38. *The Certificate Holder shall file with the Secretary, within 1 year after the Facility becomes operational, a tracking report of the actual number of direct jobs created during the construction and operational phases of the Facility, as well as the actual tax payments to local jurisdictions made during the construction and operation phases of the Facility.*

The Village objects to this condition to the extent that the Applicant proposes a \$2,571 per megawatt PILOT payment. This proposed PILOT payment is effectively the only local benefit provided by the Project and is insufficient to justify the damage the Project will cause to the area's historic and rural character.

47. *Copies of any local or state permits and/or approvals required for construction and operation of the Facility, if such approvals were authorized by the Siting Board, shall be filed with the Secretary if not otherwise included in other filings (e.g., Stormwater Pollution Prevention Plan (SWPPP), MS4 approvals (if applicable), 5-acre waiver (if necessary), DEC's acknowledgement of Notice of Intent for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity)). As applicable, the Certificate Holder shall submit for review the building plans to an entity qualified by the NYS Department of State, in order to obtain compliance certified with the NYS Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of NYS, and the substantive provisions of any applicable local electrical, plumbing, or building code. Said certification shall be filed as an Informational Filing with the Board. If, due to conditions of local or state permits and/or approvals, relevant Facility plans require changes that are likely to result in significant adverse environmental impacts or an adverse environmental impact not included in the Application, the design drawings and applicable compliance filings shall be revised accordingly and submitted for review and approval pursuant to 16 NYCRR §1002.2 and §1002.3, as appropriate.*

The Village objects to this condition to the extent that the Town of Coxsackie Buildings Department is the proper entity to review compliance with the NYS Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of NYS, and the substantive provisions of any applicable local electrical, plumbing, or building code.

### **Noise Complaint Resolution Protocol**

7. (a)(iii). *If the Sound Complaint location is one (1) mile from active construction activity the following steps will be taken:*

1. *A representative from the construction firm will visit the site of the complaint during construction activity to investigate.*
2. *The Certificate Holder will determine whether the Certificate Conditions of the Order on Construction noise are met and if no, correction(s) will be taken, or*
3. *Construction personnel in consultation with the EM will determine if any equipment is not functioning properly and thus creating unusual sound. If so, this equipment will be repaired or replaced as soon as practical.*

The Village objects to this provision because it is inappropriate for construction personnel to be responsible for evaluating noise complaints. Noise testing should be provided for complaints within one mile of the facility.