

Town of Copake v. New York State Office of Renewable Energy Siting (ORES)

Docket number(s): 534318, 534413

Court/Admin Entity: N.Y. App. Div.

Summary of Opinion and Order 05/18/2023

The New York Appellate Division upheld State regulations for the siting of renewable energy facilities that the State's Accelerated Renewable Energy Growth and Community Benefit Act exempted from the environmental review that ordinarily would be required under the State Environmental Quality Review Act (SEQRA). The State regulations, however, were themselves subject to SEQRA. The Appellate Division agreed with parties challenging the regulations that the Office of Renewable Energy Siting (ORES) had misclassified the regulations as an Unlisted action under SEQRA, rather than as a Type I action, which would have created a presumption that an environmental impact statement should be prepared. The court further found, however, that ORES "took a thorough and hard look at the potential negative environmental impacts associated with the proposed regulations" and based on this review issued a negative declaration that the regulations would not have any adverse environmental impacts.

The court noted that the regulations advanced statutory purposes by expediting reviews of renewable energy facilities necessary for meeting the greenhouse gas emissions reduction targets of the Climate Leadership and Community Protection Act. The court also held that the regulations did not exceed ORES's statutory authority. The court found, among other things, that a provision providing for default approvals subject to certain uniform or site-specific conditions if review is not completed within one year was "important given the ultimate goal of zero emissions of electrical energy by 2040."

The court also noted that express language granted ORES the power to waive unreasonably burdensome local laws that would thwart the legislation's ultimate goals, and that the waiver provision was not unconstitutionally vague or unconstitutional under the New York Constitution's home rule provision.