

SUN8 PDC LLC, c/o Distributed Sun LLC
601 13th Street N.W., Suite 450 South,
Washington, DC 20005

February 8, 2016

Town Board,

c/o Town Clerk, Town of Dryden
93 E Main Street,
Dryden, NY 13053

Members of the Board,

Re: Petition for Waiver from Moratorium Prohibiting Certain Actions under Local Law 2 of 2016.

I am writing on behalf of SUN8 PDC LLC (“SUN8”), a subsidiary of Distributed Sun LLC, to seek a waiver from the moratorium prohibiting the Town of Dryden (the “Town”) from accepting an application for a special use permit, or approving projects that SUN8 is proposing in the Town. This petition provides the merits of our request and the hardship SUN8 will suffer if the waiver is not granted.

Introduction to Projects

SUN8 is proposing 16 projects, in two broad groups, within the Town. The first group of projects, titled Pinney, is located on a property with an address of 2150 Dryden Road, Dryden, NY (tax ID 38.-1-3.1). The Pinney property is 158 acres in its entirety and will host six 2MWac projects (to comply with limits under PSL § 66-j) on approximately 75 acres. These six projects will be interconnecting to electrical circuit number 524 along Peruville Road.

The second group of projects, titled Ellis, is located in the areas north and south of Stevenson Road on approximately 110 acres of land (tax IDs 56.-5-31, 57.0-1-6, 57.0-1-7.1, 67.0-1-3, 67.0-1-4, 67.0-1-7.2). The Ellis lands will host eight 2MWac and two 1MWac projects (to comply with limits under PSL § 66-j) and will be interconnecting to two distribution circuits (circuit numbers 401 along Route 366 and 405 along Ellis Hollow Road).

Development of the Ellis and Pinney projects has a long history. The project development efforts began in 2014 and 2016, respectively. Of the 16 projects proposed, NYSEG has reviewed and approved 14 projects for interconnection and has provided cost estimates to SUN8 for

upgrades to the distribution circuits. Under Public Service Commission regulations and laws in NY, NYSEG requires an advance payment of 25% of all these costs within 60 business days of receipt of a cost estimate to retain the active status of the projects within their system. Failure to pay on a timely basis would remove the project from NYSEG's interconnection queue. In addition, NYSEG retains the right to not commence any upgrade work until the remainder of the estimated costs is paid. NYSEG has advised SUN8 that unless 100% of these payments are made in early April 2017, NYSEG cannot complete the proposed upgrades and provide electric service to the proposed projects in calendar year (CY) 2017.

SUN8 has already paid the required 25% advance payment of \$670,946 to NYSEG on six Ellis projects with the anticipation that the projects can be constructed and placed in service in CY 2017. Additional payments of approximately \$3.4MM are due (on Ellis and Pinney projects) in April 2017 to ensure that NYSEG delivers electric service in CY 2017.

These projects are expected to create more than 150 construction jobs, provide \$3.5MM+ in upgrades to electric distribution circuits in the area, bring revenue to local jurisdictions through property taxes (or PILOTs), bring substantial long-term savings to retail electric customers, allow local residents to source solar electricity in their own community, improve the resilience and reliability of the regional electrical grid, and make significant progress towards New York's clean energy goals.

Hardship and Consequences

The moratorium imposes a significant economic burden on SUN8 and its investors. Under the moratorium, the Town may not accept an application for, or grant any special use permits for solar energy systems, issue any building permits for solar energy systems, or issue any permits to construct utility facilities on highways in connection with any activity prohibited thereunder.

Without a waiver from the moratorium, SUN8 will not be able to seek a special use permit or make required payments to NYSEG. Consequently, NYSEG will not be able to undertake any utility work in connection with the proposed projects until the moratorium is removed and payment is made. Furthermore, this opens up the opportunity for NYSEG to remove these projects from the interconnection queue, negating three years of hard work. If SUN8 has to make the payments due to NYSEG without receiving approval of special use permits and appropriate SEQR determination, SUN8 will have to seek capital from risky alternative sources, at costs/rates that are significantly out-of-market, causing severe hardship to SUN8 while adding downward pressure on anticipated returns in an ultra-competitive landscape.

SUN8 and its investors have expended capital, over the last three years for the Ellis projects and over the last one year in the case of the Pinney projects, with the intention to place these projects in service in CY 2017. The federal Renewable Energy Investment Tax Credit (“ITC”) is available in the tax year in which a project is placed in service. With the new Presidential administration considering major corporate tax reform in 2018, mainstream solar energy investors have expressed trepidation and serious concerns regarding the uncertainty around such tax reform and its impact to the ITC in years beyond 2017. If the proposed projects cannot be placed in service in CY 2017, SUN8 will experience grave uncertainty in raising cost-effective capital for the projects causing irreparable harm to SUN8.

Mitigating Factors

Local Law 2 of 2016, amended by Local Law 1 of 2017 exempts telecommunication facilities from the moratorium as they are regulated under The Telecommunications Tower Siting Law which clearly outlines regulations for such facilities. In the last two months, the Town’s personnel and the Planning Board have made material progress in defining a proposal for the Town to govern solar energy systems and we believe that the proposal presents a similar method to review and approve of applications for special use permits for solar energy facilities.

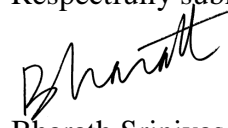
SUN8’s proposed projects will be presented to the Town Board for a special use permit and a determination of environmental impact under the State Environmental Quality Review Act (“SEQRA”). This will present an opportunity to receive public comment and to review the projects impact before a special use permit is granted. Therefore, approving this request for a waiver from the moratorium will allow the proposed projects to seek a special use permit from the Town and the waiver by itself will not approve the proposed projects.

Approval of the waiver will allow the Town to separately review the application for a special use permit while continuing to review the currently prohibited actions and their impact on the Town’s comprehensive plans.

Conclusion

We respectfully request the Town to consider the capital and efforts SUN8 has expended over the last three years in developing these projects, the unintended consequences of the moratorium on SUN8’s projects, the hardship that would otherwise be imposed on SUN8 and grant a waiver from the moratorium for the Ellis and Pinney projects.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bharath", written over the printed name below.

Bharath Srinivasan
Senior Vice President
Distributed Sun LLC