



November 4, 2022

VIA ELECTRONIC MAIL

Amanda Hiller
Acting Tax Commissioner and General Counsel
New York State Department of Taxation and Finance
William A. Harriman Campus, Building 9
Albany, NY 12227

Dear Ms. Hiller:

On behalf of the Alliance for Clean Energy New York (ACE NY) and the New York Solar Energy Industries Association (NYSEIA), we are writing to respectfully request that the Department of Taxation and Finance (Department) immediately begin the process to publish the existing Solar and Wind Appraisal Model pursuant to the State Administrative Procedure Act (SAPA), helping to ensure such model will be available to be implemented by local assessors at least prior to 2023 assessment roles. Also, as required by Real Property Tax Law (RPTL) Section 575-b, we request the Department to publish annual Solar and Wind Appraisal Model draft discount rate or rates for 2023 assessment roles, to allow industry stakeholders the allotted time for public comment prior to publishing the annual final discount rate or rates. Further, we encourage the Department to update the model through the SAPA process, as permitted by law.

The lawsuit brought in the *Matter of Town of Blenheim et al v Hiller* argues that the Department was required to follow the SAPA process in publishing the Solar and Wind Appraisal Model in 2021, for use in 2022 assessment roles. Upon the issuance of the temporary restraining order on April 29, 2022 (ordering the Department to stop requiring assessors to use the model), the Department had to decide whether to publish the model pursuant to SAPA or to await a decision from the courts. Without getting into the merits of the case against the Solar and Wind Appraisal Model, the Department should follow the SAPA process and publish the Solar and Wind Appraisal Model without delay. There is no downside to the Department re-publishing the previously published model according to the traditional SAPA process.

Waiting for the courts to make a final determination has led to further delays in meeting the State's renewable energy goals and created further confusion for local assessors. The Albany County Supreme Court has not yet decided whether to grant a permanent injunction on the use of a Solar and Wind Appraisal Model that has not gone through the SAPA process, which is only the first step in the litigation process. Even if that Court denies the injunction, there should be little doubt that the assessors will

appeal that decision to the Appellate Division, which will further delay the final decision by at least one year. In other words, this lawsuit will not be completed until late 2023, at the very earliest, which means another year of project assessment uncertainty. It is also important to note that nothing in the temporary restraining order limits the Department's ability to "periodically thereafter as appropriate" update the model, and we encourage the Department to consider beneficial updates to the model including stakeholder feedback as part of the SAPA process.

Simply issuing the previously published Solar and Wind Appraisal Model through the SAPA process would resolve the only defect raised in the lawsuit. Therefore, we strongly urge the State to submit the model, including draft discount rate or rates, through the SAPA process. Assessors will need the model in the Spring of 2023 to prepare the updated assessment rolls for the upcoming year. Thus, there is still time to proceed with the SAPA process, though the sooner the better.

It is our understanding – and we hope the Department rightfully acknowledges – that all communications regarding the model for the 2023 assessment rolls, and all models moving forward, are not limited by any active Temporary Restraining Order. We are interested in speaking with Department staff further about these issues and would like to schedule a call within the next weeks if possible.

Thank you for your consideration of our request.

Sincerely,



Anne Reynolds
Executive Director
Alliance for Clean Energy New York



Zack Dufresne
Executive Director
New York Solar Energy Industries Association

Cc:

John O'Leary, Deputy Secretary for Energy & Environment
Sean Ewart, Assistant Secretary for Energy
Doreen Harris, President & CEO, NYS Energy Research and Development Authority
Basil Seggos, Commissioner of the NYS Department of Environmental Conservation
Rory Christian, Chair, NYS Public Service Commission
Mr. Houtan Moaveni, Executive Director, NY State Office of Renewable Energy Siting
Carolyn Dee, Senior Policy Advisor for Finance & Technology