



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

July 17, 2017

Mr. Rich Hall
87 Reads Way
New Castle, DE 19720

RE: PLUS review 2017-06-05, New Castle County Ordinance 17-044

Dear Rich,

Thank you for meeting with State agency planners on June 28, 2017 to discuss the proposed ordinance for New Castle County. According to the information received, you are seeking review of an ordinance to amend the Uniform Development Code (UDC) that will encourage renewable energy sources, clarify the definition of minor and major utilities, and limit use standards that pertain to the classification of utilities.

Please note that changes to the plan could result in additional comments from the State. Additionally, the comments below reflect only issues that are the responsibility of the agencies that were represented at the meeting.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact Connie Holland 739-3090

- The Office of State Planning Coordination (OSPC) would like to commend New Castle County for taking advantage of the PLUS process. The ordinance under review is an extremely important one taking into consideration it relates to energy and utilities which are critical for efficiency as well as economic development in New Castle County.
- Discussion at the PLUS meeting acknowledged the need to revisit and amend the UDC relating to utility definitions and other areas of the code that appear to need clarification. DNREC and other outside organizations had significant concerns should these ordinances be adopted as presented.
- Concern from DNREC ranged from setbacks, landscaping, installation issues, height limits, and signage to name a few. OSPC suggested that New Castle County meet with DNREC prior to any public hearing. It is the OSPC's understanding that a meeting has been scheduled.

- OSPC has received correspondence from Mark Dunkle representing Silver Run Electric (SRE) stating their comments relative to electric utility transmission lines and substations. The letter states that, as currently written, there is a fear this ordinance would be unduly discriminating. A copy of that letter is attached to this letter.
- OSPC also received an e-mail dated June 21, 2017 from Wendie Stabler representing SunEast Power and Freepoint Solar. The e-mail expressed concerns that if the ordinance should pass as written many opportunities for solar power may not be realized. It is the understanding of the Office of State Planning that New Castle County is working with Ms. Stabler on amendments. A copy of that e-mail is also attached to this letter.
- Because PLUS is a public meeting and not a public hearing there is no opportunity for public comment during the meeting. As such, OSPC staff explained those outside State government should make sure to attend all future public meetings so New Castle County may hear their comments and/or concerns.
- It does appear this ordinance is needed. It is OSPC's hope that after working together with DNREC and others this process will result in an amended ordinance that will help New Castle County prosper.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071

- The DNREC Division of Energy and Climate has concerns that this proposal could artificially and unnecessarily constrain the installation of solar photovoltaic (PV) in New Castle County.
- More than 82 megawatts (MW) of solar PV have been installed in Delaware since the state adopted the Renewable Energy Portfolio Standards Act (REPSA). REPSA requires that the State's utilities procure 3.5 percent of their electricity from solar PV by 2025. PV installations of between 200 kW and 2 MW account for roughly one quarter of solar PV in Delaware. When you add utility scale (5 to 15 MW) solar, installations of 200 kW and larger account for nearly 60 percent of the installed solar PV in Delaware.
- DNREC has reviewed the ordinance and has significant concerns that the proposal would unnecessarily restrict the future growth of solar PV. Specifically the 150-foot setback, the fencing and landscaping provisions, signage requirements, and the 16-foot limit on ground mounted solar would create practical barriers to the development of solar PV 200 kW and larger.
- The fencing and landscaping requirements seem arbitrary. There are PV installations throughout NCC that are visible from the street and their neighbors are not harmed in any meaningful way. Over-specific requirements for landscaping and fencing for ground mounted solar would add expense to PV projects to solve a problem that doesn't need to be solved.

- The 150-foot setback for ground mounted PV installations of more than 200 kW would have a significant impact on property owners' ability to develop ground mounted solar at this scale. DNREC did a quick visual survey of existing PV installations of 200 kW, and identified several that might have been subject to the 150-foot setback provision if it had been in place at the time. One site (Ion Power) has PV panels well within 150 feet of the Delaware City refinery. What would be the rational basis for requiring a 150-foot setback, landscaping and fencing to shield the view of solar panels from an oil refinery? Another (Croda) has PV installed well within 150 feet of the eastbound ramp to the Delaware Memorial Bridge. It is not clear why motorists traveling to New Jersey would have any rational reason for objecting to these PV installations. The Metachem site just north of the refinery (a Superfund site managed by DNREC and EPA and is unsuitable for just about any other productive use) is considering installing PV. A 150-foot rule would sharply constrain the ability to use its land for this purpose.
- Ground mounted PV at this scale has been installed in other jurisdictions. Wilmington has one on the Seventh Street Peninsula) that doesn't appear to create any difficulty for its neighbors. The McKee's Park community solar installation in Newark is adjacent to commercial and residential properties, with no report of unhappy neighbors.
- DNREC thinks the 16-foot height limit needs further review, particularly relating to ground mounted solar used for car ports. The Del Tech parking lot at Second and Orange Streets poses a potential difficulty with the requirement that PV racks be no taller than 16 feet. Del Tech just cut the ribbon on a similar carport installation in Dover. Would such an installation be allowed under this rule? It's described as a carport, but the structure is simply PV panels raised high enough to allow parking underneath.
- DNREC thinks the signage requirement is unnecessarily restrictive. In the case of a carport PV installation, a sign that reads, "danger, keep out" would clearly not be appropriate for a public parking facility. Such signage would discourage use of a facility that presents no actual hazard to the public.
- DNREC would encourage New Castle County to revisit the proposed restrictions, and is willing to review the proposed ordinance and provide any technical advice DNREC can in the interests of sound legislation that would not conflict with the public interest in developing solar power in Delaware.

Once a decision has been reached on this proposed amendment and ordinance please forward a copy to the Office of State Planning Coordination for our records.

PLUS review 2017-06-05

Page 4 of 4

Thank you for the opportunity to review this ordinance. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in blue ink, appearing to read "Constance C. Holland". The signature is fluid and cursive, with the first name "Constance" and last name "Holland" clearly distinguishable.

Constance C. Holland, AICP
Director, Office of State Planning Coordination

Attachments

LAW OFFICES

PARKOWSKI, GUERKE & SWAYZE

PROFESSIONAL ASSOCIATION

116 WEST WATER STREET

P.O. BOX 598

DOVER, DELAWARE 19903

302-678-3262

FAX: 302-678-9415

WEBPAGE: www.pgslegal.com

F. MICHAEL PARKOWSKI
I. BARRY GUERKE
DAVID S. SWAYZE
CLAY T. JESTER
JOHN C. ANDRADE
MARK F. DUNKLE (also GA & PA)
WILLIAM A. DENMAN
MICHAEL W. ARRINGTON (also MD & DC)
CHRISTINE P. SCHILTZ
MICHAEL W. TEICHMAN
KASHIF I. CHOWDHRY (also PA)
JAMES D. NUTTER
JAMES D. GRIFFIN
VINCENT G. ROBERTSON
ELIO BATTISTA, JR.
JUDY M. JONES
WILLIAM J. WALLS, JR. (also PA)

KEITH H. ELLIS (also DC)
CAROLYN M. MCNEICE
SHANE C. HEBERLING

*Rec
6/26/2017
11:59
cfe*
WILMINGTON OFFICE
1105 NORTH MARKET STREET, 19TH FLOOR
WILMINGTON, DE 19801
302-654-3300
FAX: 302-654-3033

REHOBOTH BEACH OFFICE
19354C MILLER ROAD
REHOBOTH BEACH, DE 19971
302-226-8702
FAX: 302-226-8704

June 26, 2017

Constance Holland, AICP
State Planning Director
Office of State Planning Coordination
122 Martin Luther King Blvd. South
Dover, DE 19901

**RE: PLUS Agenda Item VI June 28, 2017 New Castle County (2017-06-05)
Draft Ordinance No. 17-044**

Dear Ms. Holland:

Our firm represents Silver Run Electric (“SRE”), which is a member of the LS Power Group, a leader in the power industry in the mid-Atlantic region. SRE would like to provide the following comments on New Castle County draft Ordinance No. 17-044 which is scheduled for PLUS review on June 28, 2017. Our comments are limited to the changes to the current UDC provisions regarding electric utility transmission lines and substations, not the provisions related to Solar Power.

First and foremost, we agree that updating the utilities provisions of the UDC to specify a quantitative threshold between major and minor utility definitions is a good idea that reduces uncertainty for all parties. However, we would ask that the County consider moving the draft voltage threshold for a minor utility from “no more than 115 kilovolts (kV)” to “no more than 230 kilovolts (kV), nominally”. The first attachment hereto shows these changes. The following describes our rationale for these suggestions.

First, the addition of the word “nominally” makes good policy sense to remove ambiguity. The reason for this is that it is common practice to operate the electric system at voltages a few percent higher than the nominal ratings; therefore to avoid confusion about the application of the provision, we would recommend this addition.

As to the voltage value itself, different voltages are used in various states/regions across the country. Per our understanding, the strawman threshold of 115kV was chosen somewhat arbitrarily after taking an approximate average of related provisions from a handful of zoning ordinances nationally. This seems consistent as 115kV is a relatively common transmission voltage in the U.S. but not one used in New Castle County. The nominal transmission voltage classes in place here are 138kV, 230kV, and 500kV.

We suggest the appropriate threshold would be defining 230kV and below as a minor utility and above 230kV (i.e., effectively 500kV when applied to New Castle County) as a major utility. This classification would be more consistent with utility industry standards and, more generally, differences in use characteristics between the two classes as described below.

From a technical standpoint, PJM (the non-profit organization which plans and operates the electrical system in the Mid-Atlantic and beyond, providing reliable electrical service for 65 million Americans) provides definitions that support the proposed categorization. Specifically, PJM defines Extra High Voltage transmission lines as at or above 345kV. Applied to the voltage levels used in New Castle County, this puts 500kV in one category and 230kV and below in a separate category. Treating Extra High Voltage facilities differently is rational because they serve a different purpose on the electrical system than lower voltage lines – specifically, they comprise the grid's backbone to efficiently move large amounts of bulk energy around regionally. This contrasts with lower voltage facilities (i.e., 230kV and below in New Castle County) in that these voltages are intended for the local transmission of electricity.

As we discussed with George Haggerty and Mary Jacobson of the New Castle County Land Use Department on April 18th of this year, PJM definitions for cost allocation purposes reinforce the regional function of facilities 345kV and above contrasted with local function of 230kV and below. As PJM defines it today, Regional Facilities (i.e., double circuit 345kV or 500kV and above) have costs applied across the grid under the presumption that these major utility facilities benefit consumers system-wide. On the other hand Lower Voltage Facilities (i.e., 230kV and below) have 100% of their costs applied locally to only the zone(s) they are deemed to benefit. In other words, these minor utility projects are considered to produce localized benefits because they are not intended to transfer bulk electricity around the system regionally.

From a practical land use-oriented perspective, applying the threshold defined by PJM is good policy. While there are few absolutes regarding specific voltages and their associated character, there are typical characteristics that support a common sense distinction for lines above 230kV. For the most part in the Mid-Atlantic, existing 500kV lines are supported by large, lattice-type towers. These towers require four foundations covering a total footprint approaching or sometimes exceeding 1,000 square feet; one particular existing 500kV tower in New Castle County has a foundation footprint of nearly 4,000 square feet. Tower widths commonly approach 100 feet. Lattice steel is usually galvanized, giving it a grey/silver color which some perceive to stand out visually, particularly among forested areas.

On the other hand, 230kV lines are typically supported by poles like those Delmarva Power & Light constructed for its 230kV line from Red Lion to Cedar Creek in 2016 and are generally

proposed for the Silver Run Project. Each pole has a single foundation; as proposed for the Silver Run Project, each foundation footprint is planned to be less than 65 square feet with most in the 35-40 square feet range. Poles are typically tapered with bases about 4 to 7 feet in diameter and arms supporting the conductors about 20 feet long. It is fairly common to use self-weathering steel that some perceive to visually blend into the natural environment well.

This proposed definition of minor utility also fits well with the existing electrical infrastructure in New Castle County. There are two 500kV substations currently in New Castle County, Red Lion and Keeney –which are located in Heavy Industrial or Industrial zones. There are a large number of 230kV and below substations/switchyards in New Castle County as shown in the attached map – which are spread across many zoning districts. On the whole, applying this suggested designation of minor vs. major utility is justified from technical and land use perspectives, is more consistent with existing electric utilities and past precedent, and is not unduly discriminatory against competitive transmission projects that benefit electric consumers in numerous ways.

In summary, we recommend that “230 kilovolts (kV), nominally” be substituted wherever “115 kilovolts (kV)” appears in Draft Ordinance No. 17-044 so that vital electric transmission infrastructure can continue as an administratively approved essential service in New Castle County.

Very truly yours,



MARK F. DUNKLE

MFDcl

cc: Casey Carroll, Silver Run Electric

Enclosure

F:\DLS Power\Holland 6-26-17.docx

Holland, Connie (OMB)

file
(2017-06-05)

From: Stabler, Wendie C. <wstabler@saul.com>
Sent: Wednesday, June 21, 2017 4:49 PM
To: Underwood, Robert (DNREC); Garvin, Shawn M. (DNREC); Cade, Cerron (DEDO)
Cc: Holland, Connie (OMB); Layton, Holly (DNREC); Fitzgerald, Caren (DNREC); Coyle, Kevin F. (DNREC); Tholstrup, Michael S. (DNREC); 'Hall, Richard'; George Haggerty (gohaggerty@nccde.org); Reed MacMillan (drmacmillan@nccde.org)
Subject: New Castle County Unified Development Code Text Amendment-Utility Scale Solar; PLUS Hearing 6/28
Attachments: ORDINANCE 17-044.pdf; PLUS AGENDA.PDF

Hello Secretary Garvin Secretary Cerron and Mr. Underwood,

I hope this email finds you well.

I am writing on behalf of my clients SunEast Power and Freepoint Solar, to alert you to pending legislation in New Castle County that has statewide import. If modified as we proposed, the benefits of home grown utility scale power in Delaware may be realized. If passed in its current form, we fear we may lose this great opportunity.

Pending legislation (a text amendment to the UDC), is slated to be considered by PLUS agencies at their hearing on 6/28.

Any assistance you can give this initiative at the State level to support amending the proposed ordinance so that, as a practical matter, it will allow utility scale solar power generation in an area south of the canal that is best suited to accommodate responsible development is most appreciated. Since I expect that you are particularly preoccupied this time of year, and may not be able to meet, some further thoughts and background are set forth below, along with the agenda for the PLUS meeting where this will be considered.

If you need further information and/or would have the time to meet with us in the next few weeks, we would also be most willing to come to you.

I am also taking the liberty of copying Holly Layton and Caren Fitzgerald with the DNREC Energy Office (working with Mr. Underwood, as I understand), as well as Kevin Coyle and Michael Tholstrup who seem to cover PLUS on a fairly regular basis, as well as Connie Holland of the State Planning Office. We are also copying Rich Hall (the GM of NCCDLU and the Assistant GM, George Haggerty and Reed McMillan) with whom we have been working cooperatively to try to improve this legislation. Please also feel free to share with others in state government as you feel appropriate.

We look forward to hearing from you and hope we can work together to bring the benefits of utility scale solar power to Delaware.

=====
Throughout the country, utilities, businesses and government entities and institutions have been contracting with larger utility scale solar projects in order to take advantage of the competitive pricing at long term fixed rates. Examples on the Eastern Shore include a large solar project in Accomack County, Virginia serving Amazon's power requirements and the Great Bay Solar Project in Somerset County, Maryland which sells

power to the US General Services Administration. Each of these projects create over \$100 million in new investment and will produce enough clean renewable energy to serve over 15,000 homes.

Here in Delaware, the team of Freepoint Solar and SunEast Development have been investing in utility scale solar development sites for the past twelve months. While we applaud Delaware's commitment to greenhouse gas reduction and a strong renewable portfolio standard, the simple fact is that Delaware only generates 1% of its electricity from wind and/or solar that is located in the state. In-state generation provides good jobs as well as new revenue with a very modest need for services and minimal impact on the environment. Utility scale solar has real advantages over other forms of renewable energy because of its ability to be sited in an appropriate manner that will not diminish the quality of life in the Diamond State.

Recently the New Castle County Council introduced a text amendment to the Unified Development Code (attached for your convenience) that, among other things, addresses how solar projects will be permitted and sited in that county. The Preliminary Land Use Service Meeting for this text amendment is on June 28, and we are hopeful that state agencies (DNREC and DEDO chief among them) would provide supportive comments during this hearing. With regard to the specifics of the text amendment, we would appreciate support on the following points which we have previously discussed with the New Castle County Department of Land Use:

1. Delaware benefits when clean energy projects are built in our state - they create jobs and revenue in parts of the state that have historically not seen economic growth. Utility scale solar is particularly advantageous as it will supply Delaware businesses and institutions with long term competitive energy rates while at the same time having a minimal impact on agricultural land, which may revert back to farming in future years.
2. It is better to have a few larger solar projects in the county as opposed to a large number of medium or small sized projects. Instead of restricting the percentage of a parcel that may be used for solar projects as set out in the introduced text amendment, we support having an overall limit on the number of acres used for solar.
3. Solar projects benefit from federal tax credits, which are scheduled to be phased out starting in 2020. New Castle County should update the UDC in order to better take advantage of this federal incentive - which plays a major role in keeping the cost of solar energy that may be sold to Delaware businesses and institutions very competitive.

--
Reed Wills
Chief Operating Officer
SunEast Development LLC
121 West Miner Street, Suite 1E
West Chester, PA 19382

o 484.983.3130
c 302.540.2696
f 610.900.6067
e reed.wills@suneastpower.com
www.suneastdevelopment.com

Wendie C. Stabler
Partner
Saul Ewing LLP
P. O. Box 1266
Wilmington, DE 19899
302-421-6865
302-421-5868 (fax)
wstabler@saul.com

For Federal Express:
1201 N. Market Street, Suite 2300
Wilmington, DE 19801
Counsel to Freepoint and SunEast Power

"Saul Ewing LLP <saul.com>" made the following annotations:

+~~~~~+

This e-mail may contain privileged, confidential, copyrighted, or other legally protected information. If you are not the intended recipient (even if the e-mail address is yours), you may not use, copy, or retransmit it. If you have received this by mistake please notify us by return e-mail, then delete.

+~~~~~+

