

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: : **Chapter 11**
: :
SUNEDISON, INC., et al., : **Case No. 16-10992 (SMB)**
: :
Debtors.¹ : **Jointly Administered**
: :
: :

**DECLARATION OF J. ERIC IVESTER PURSUANT TO LOCAL BANKRUPTCY
RULE 9077-1(a) IN SUPPORT OF ORDER TO SHOW CAUSE SCHEDULING
HEARING ON SHORTENED NOTICE FOR THE DEBTORS' MOTION FOR (I) AN
ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF TURBINES,
(B) ESTABLISHING THE NOTICE PROCEDURES AND APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (C) APPROVING PROCEDURES FOR THE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS,
(D) SCHEDULING A SALE HEARING, AND (E) GRANTING RELATED RELIEF
AND (II) AN ORDER (A) APPROVING THE SALE OF FIFTEEN (15) GE 1.79-100
WIND TURBINES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS RELATED THERETO, AND (C)
GRANTING RELATED RELIEF**

I, J. Eric Ivester, being duly sworn, deposes, and says:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); and SunE Minnesota Holdings, LLC (8926). The address of the Debtors' corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

1. I am a partner at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden”), which maintains offices for the practice of law at, among other locations, Four Times Square, New York, New York 10036-6522. Skadden is counsel to the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors” and, together with their non-debtor affiliates, “SunEdison” or the “Company”). I am admitted in, practicing in, and a member in good standing of the bar of the State of New York and the bar of the United States District Court for the Southern District of New York.

2. I submit this declaration, pursuant to Rule 9077-1(a) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Bankruptcy Rules”), in support of the Debtors’ request that the Court shorten the time for notice of the hearing (the “Hearing”) to consider the proposed order, as more fully described in the Debtors’ Motion for (I) An Order (A) Approving Bidding Procedures for the Sale of Turbines, (B) Establishing the Notice Procedures and Approving the Form and Manner of Notice Thereof, (C) Approving Procedures for the Assumption and Assignment of Executory Contracts, (D) Scheduling a Sale Hearing, and (E) Granting Related Relief and (II) An Order (A) Approving the Sale of Turbines Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts Related Thereto, and (C) Granting Related Relief (the “Sale Motion”).²

3. Except as otherwise indicated, I have personal knowledge of the information contained herein, either directly or through professionals at Skadden working at my direction, members of management of the Debtors, or the Debtors’ other advisors. The Debtors

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion.

must proceed by Order to Show Cause, scheduling a hearing on shortened notice for expedited consideration of the relief sought under the Sale Motion, because the Debtors need prompt relief to avoid irreparable injury to their estates, as set forth in more detail below.

4. On October 8, 2016, SunEdison, Inc., the parent company of the Debtors (the "Seller"), entered into the Stalking Horse Agreement pursuant to which the Stalking Horse Buyer has committed to purchase the Turbines pursuant to the terms set forth in the Stalking Horse Agreement. Under the Stalking Horse Agreement, the Seller is permitted, in accordance with the Bidding Procedures, to hold an Auction for the Turbines and accept higher or otherwise better bids after a limited no-shop period between execution and this Court's entry of the Bidding Procedures Order.

5. The Debtors believe that the presence of the Stalking Horse Buyer will set a floor for the value of the Turbines and potentially attract other potential buyers to bid for the Turbines, thereby maximizing the realizable value of the Turbines for the benefit of the Debtors, their estates, their creditors, and all other parties-in-interest.

6. However, as set forth in the Company Declaration, although the Stalking Horse Agreement sets a minimum value for the Turbines and provides a strong starting position, the Company must move with haste to attract other viable bidders before the value of the Turbines declines further and to avoid subjecting the Debtors' estates to unnecessary costs and expenses with respect to the ongoing maintenance and storage of the Turbines.

7. Specifically, if the Sale is not consummated prior to the end of calendar year 2016, certain tax attributes relating to the Turbines will be lost or reduced, resulting in diminution of value to the Debtors' estates in exchange for the Turbines. The failure to consummate the Sale in 2016 may lead to further irreparable harm to the Debtors' estates

because newer generations of wind turbines will become available in 2017. Furthermore, the Turbines face ongoing monthly storage and maintenance costs that are diminishing the overall value of the Debtors' estates on an ongoing basis. An expedited sale of the Turbines will put an end to the cash burn involved in otherwise holding onto the Turbines..

8. Accordingly, I believe it is in the best interests of the Debtors to consummate a sale of the Turbines as soon as possible – in order to mitigate the risk that the Sale does not close until 2017 to the detriment of the Debtors' estates and to end unnecessary storage and maintenance costs in connection with the Debtors' continued ownership of the Turbines.

9. Therefore, it is critical that the Debtors establish the rules of the sale process early, so that the Seller can continue marketing the Turbines and provide potential bidders sufficient time to gather the necessary information and formulate a bid before the Turbines lose substantial value as set forth in detail in the Company Declaration.

10. Accordingly, the Debtors believe that their proposed sale process—entry into the Stalking Horse Agreement, holding an auction pursuant to the proposed Bidding Procedures, and the ultimate sale of the Turbines through a 363 sale process—represents the best strategy to stabilize the business in the first instance and, ultimately, maximize value for the Debtors' various stakeholders.

11. Importantly, the Sale Motion contemplates a Sale Hearing that complies with the notice periods required by Bankruptcy Rule 2002(a)(2). Thus, it is only the notice period for the Bidding Procedures that needs to be shortened. If the Court approves the Bidding Procedures on shortened notice, it will jumpstart the marketing and bid process and could ultimately spur other bids. Put another way, the time saved in establishing the bidding

procedures maximizes the time available to potential bidders prior to the Auction without harming the value of the Turbines.

12. The Debtors do not believe that due process would be hindered as a result of the proposed shortening of the notice period for the hearing on the Bidding Procedures to twelve (12) days, nor would any party in interest be unduly prejudiced by the shortened notice period. Indeed, similar relief has been entered by this and other courts. See, e.g., Order Granting the Debtors' Motion to Shorten Time, In re Relativity Fashion, LLC, No. 15-11989-MEW (Bankr. S.D.N.Y. Aug. 4, 2015) (15 days between sale motion being filed and hearing); Order Expediting Consideration of & Shortening the Notice Period Applicable to, the Bid Procedures Component, In re RadioShack Corp., No. 15-10197-KJC (Bankr. D. Del. Feb. 6, 2015) (15 days between sale motion being filed and hearing); Order Approving Motion to Shorten the Time, In re Connaught Grp., Ltd., No. 12-10512-SMB (Bankr. S.D.N.Y. Feb. 24, 2012) (6 days between sale motion being filed and hearing); Order Granting Debtors' Ex Parte Motion for an Expedited Hearing, In re United Retail Grp., Inc., No. 12-10405-SMB (Bankr. S.D.N.Y. Feb. 9, 2012) (15 days between sale motion being filed and hearing); Order Shortening Time of Notice, In re Escada (USA) Inc., No. 09-15008-SMB (Bankr. S.D.N.Y. Dec. 22, 2009) (10 days between sale motion being filed and hearing); Order Shortening Time, In re BearingPoint, Inc., No. 09-10691-REG (Bankr. S.D.N.Y. Mar. 25, 2009) (9 days between sale motion being filed and hearing); Order Approving Trustee's Motion for an Order Approving Procedures to Sell or Transfer Certain Assets, In re Dreier LLP, No. 08-15051-SMB (Bankr. S.D.N.Y. Mar. 13, 2009) (9 days between sale motion being filed and hearing); Order Shortening Time, In re Wellman, Inc., No. 08-10595-SMB (Bankr. S.D.N.Y. Oct. 1, 2008) (5 days between sale motion being filed and

hearing); Order Scheduling Hearing on Shortened Notice, In re Thinkpath, Inc., No. 08-10810-SMB (Bankr. S.D.N.Y. June 30, 2008) (6 days between sale motion being filed and hearing).

13. Moreover, the Debtors have actively engaged with both the advisors to the DIP Lenders and the advisors to the Committee in connection with the relief requested herein. Specifically, the Debtors provided various drafts of the Stalking Horse Agreement, the Motion and related exhibits, the Bidding Procedures, the proposed Bidding Procedures Order, and the proposed Sale Order to these advisors in advance of filing, received comments from certain of the advisors to these parties, and incorporated those comments into the drafts that are being filed. The Debtors and/or their advisors also held certain due diligence sessions with respect to the Sale Transaction, whereby the Debtors provided information to, and answered questions from, advisors to the Committee.

14. As required by Local Bankruptcy Rule 9077-1(a), no previous application for similar relief has been made for the Sale Motion.

15. Accordingly, it is in the best interests of all parties in interest for the Court to enter the proposed Order to Show Cause so that the Court can consider approval of the Bidding Procedures Order at the October 20, 2016 hearing at 10:00 a.m. (Prevailing Eastern Time).

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I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge, information, and belief, and after reasonable inquiry, the foregoing is true and correct.

Dated: October 8, 2016

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

/s/ J. Eric Ivester

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