

TOWN BOARD: TOWN OF DOVER
COUNTY OF DUTCHESS: STATE OF NEW YORK X

In the Matter of the Petition of:

CRICKET VALLEY ENERGY CENTER LLC

AMENDED PETITION

For Text Amendments to the Town of Dover
Zoning Law.

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Cricket Valley Energy Center LLC ("Cricket Valley Energy") respectfully submits this Amended Petition to the Town Board of the Town of Dover (the "Town Board") for text amendments to Chapter 145, the Zoning Law of the Town of Dover (the "Zoning Law") as follows:

I. INTRODUCTION

1. On June 22, 2011, Cricket Valley Energy submitted a Petition to the Town Board requesting text amendments to two sections of the Zoning Law, Section 145-40 and Section 145-30.

2. The purpose of the requested amendments is to encourage appropriate and beneficial site utilization for parcels situated in or abutting the "M" Industrial Manufacturing District through an adjustment of standards. These amendments provide greater flexibility in site design to help mitigate environmental impacts and will not cause any adverse impacts on the adjacent industrial uses. The amendments will allow for the development of an advanced, state-of-the art, electrical generation/manufacturing facility, designed to avoid or

minimize environmental impacts thereby facilitating the use and implementation of environmentally prudent development and construction features in the M Zone. This amendment will enable Cricket Valley Energy to remediate and rehabilitate a potentially contaminated and inactive site and to remove old, vacant, partially collapsed industrial buildings, some of which were destroyed by fire 15 years ago, while generating millions of dollars of tax revenue for the Town for over 30 years and creating hundreds of new jobs.

3. The purpose of the requested amendments has not changed. However, Cricket Valley Energy now proposes to reduce the scope of the requested amendment to Section 145-40 of the Zoning Law concerning noise standards. Cricket Valley Energy's requested amendments with respect to Section 145-30 remain unchanged.

4. Specifically, Cricket Valley Energy proposes to amend Section 145-40 as follows:

Section 145-40

...

(C)

...

(2) No person, firm or corporation shall allow the emission of sound, which, as measured at the property line, has a sound level in excess of:

(a) sixty (60) decibels on the A-Weighted Scale between the hours of 7:00 a.m. and 8:00 p.m.; and

(b) fifty (50) decibels on the A-Weighted Scale between the hours 8:00 p.m. and 7:00 a.m., *unless the property line is abutting a rail line in an "M" Zoning District in which case no sound level measured at the boundary of the abutting "M" Zoning*

District and rail line shall exceed sixty-five (65) decibels on the A-Weighted Scale. [new language italicized]

5. Rather than proposing requesting a text amendment that would permit a higher decibel level at all property lines abutting an "M" Zoning District, as was requested previously, the amended version of the text amendment requests authorization for a higher decibel level only at property lines abutting a rail line in an "M" Zoning District.

6. The reason for the reduced scope of the requested amendment to the noise standard is that Cricket Valley Energy currently holds an option to purchase the RASCO site located immediately south of the property currently subject to Cricket Valley Energy's site plan application. Cricket Valley Energy intends to exercise this option and merge the two (2) lots, thereby eliminating the existing lot line. With the elimination of this lot line, the only area where noise exceedances may occur is the western property line abutting the rail line.

7. The reduced scope of the proposed text amendment to Section 145-40 of the Zoning Law remains consistent with the Town of Dover Master Plan and permits appropriate and beneficial utilization of parcels abutting rail lines.

II. TOWN OF DOVER MASTER PLAN

8. Upon information and belief, the Town of Dover Master Plan was adopted on September 21, 1993 by Resolution No. 1 of 1993 of the Planning Board. On April 28, 1999, Master Plan amendments were thereafter adopted. According to the Master Plan, a total of 246 acres or 7% of the total Town land area is devoted to industrial development or uses. A goal set forth in the Master Plan is the following:

To encourage economic opportunities that provide a stronger employment base, meet the needs of its residents, and are

consistent with the rural character of the Town. (The Town of Dover Master Plan, p. 96).

The implementation measures to achieve that goal include the active encouragement of businesses to locate in Dover; diversification of the Town's economic base by encouraging a variety of business and employment opportunities; floating light industrial zoning provisions to supplement the map districts in the Land Use Plan, with sensitivity that access should be to State highways for industrial uses and industrial traffic should not travel through established residential areas. In addition, sufficient acreage, setbacks and screening should be required so as to cause no substantial impacts on the value of residential property in the area.

9. The Master Plan also provides that the uses to be allowed include manufacturing, and particularly manufacturing uses that do not need highway frontage.

III. THE PROPERTY

10. Cricket Valley Energy intends to construct a 1,000 megawatt (MW) state-of-the-art electric power generation facility on a real property site which Cricket Valley Energy has an option to purchase, consisting of approximately 131 acres in the M Zoning District generally bounded to the east by New York State Route 22; to the north by a Consolidated Edison (ConEd) transmission line right-of-way, which contains the Iroquois Interstate Natural Gas Pipeline; to the south by industrial zoned property; and to the west generally by the Swamp River (although a portion of the property extends west of the River). See attached site map (Exhibit A) and attached artist rendering of the proposed Cricket Valley Energy facility (Exhibit B).

11. An active Metro North commuter railroad line (under separate ownership) transects the property in a north-south direction. No project activities are proposed west of the railroad track. The property west of the railroad track (approximately 74 acres) is wooded and predominantly wetland, with some upland associated with rock outcrops and access ways. See site plan attached as Exhibit C.

12. The proposed project will be restricted to the project development area of approximately 57 acres located to the east of the railroad track. This portion of the site had previously been proposed for designation by New York State Department of Environmental Conservation ("NYSDEC") as the Mica Products Critical Environmental Area (CEA) due to the potential need for cleanup associated with its former uses. The project development area within the proposed CEA comprises two parcels: Tax Parcel No. 04-7061-00-580190 (which comprises the majority of the project development area) and Tax Parcel No. 04-7061-00-585063 (which encompasses a small portion of the project development area and extends off-site). See Assessor's map with site plan overlay attached as Exhibit D.

13. The property has a long history of industrial use and numerous dilapidated, vacant, partially collapsed industrial structures and associated debris are located on the property. It was used as a magnesium refining facility from 1932 until 1966. Between 1966 and 1980, the Mica Products Corporation formica production facility operated at the site manufacturing organ cabinets, cassette tape recorders and other laminated wood products. During the early 1990's until a January 1, 1996 fire, the site was operated by the Polytech Recycling Corporation as part of its tire recycling operation. There is still a large amount of

debris on the property associated with these prior uses. See pictures of existing buildings on the site attached as Exhibit E.

14. The property sits in relative isolation, with vegetation and hilly topography providing a natural buffer and significantly limiting views of existing on-site structures.

IV. THE REQUESTED TEXT AMENDMENTS

15. Cricket Valley Energy has submitted its Draft Environmental Impact Statement ("DEIS") to the NYSDEC, including a complete explanation of the mitigation measures proposed to be implemented which are designed to mitigate identified adverse impacts to the maximum extent practicable. NYSDEC issued a notice that the DEIS was deemed complete on May 25, 2011. See NYSDEC notice attached as Exhibit F. The facility's design has incorporated state of the art features, including advanced noise reduction equipment and a site layout that mitigates facility sound emissions. However, there are locations along the site's property lines where noise mitigation measures are not predicted to maintain noise emissions at or below the levels in the Zoning Law's current performance standards set forth in Section 145-40. While the project is expected to comply with the most restrictive night-time sound level limit (50 decibels (dBA)) of the Town of Dover Zoning Noise Standards (Section 145-40(C)) at the north, south and east property lines, the project's sound levels are predicted to exceed this standard at the west property line abutting the rail line. See areas of potential exceedance on the map attached as Exhibit G. Exhibit G also contains an excerpt from the DEIS discussing the noise studies performed on and adjacent to the project site, noise mitigation measures adopted, anticipated project sound emissions on and around the project site and compliance with the Town of Dover noise standards.

16. Due to (a) Cricket Valley Energy's intention to exercise its option to purchase the RASCO site to the south; and (b) Cricket Valley Energy's intention to merge these two (2) parcels thereby eliminating the existing property line, the potential for noise exceedances will no longer exist at the southern property line. However, noise exceedances are still expected at the western property line that abuts a rail line.

17. The rail line is not a noise sensitive use. To the contrary, passengers in a train could not possibly hear any noise from the Cricket Valley Energy facility as the train traverses the site.

18. Cricket Valley Energy respectfully proposes that the Town Board amend the Zoning Law to avoid the current Law's restriction on development adjacent to rail lines on industrially zoned properties, and to enable the project to proceed as currently designed and proposed. Such amendment would apply only where a proposed use abuts rail lines on other properties zoned for industrial uses which are unlikely to be sensitive to the amended sound levels proposed herein. The proposed amendment is narrowly drafted to permit no sound level to exceed 50 decibels on the A-Weighted Scale between the hours of 8:00 P.M. and 7:00 A.M., except where the source property abuts a rail line in an "M" Zoning District, in which case the noise limit is raised to 65 decibels. This proposed amendment recognizes the legislative intention of permitting certain property to be used for industrial uses while not negatively affecting community character and residential uses.

19. The Amendment to the Code proposed is as follows:

SECTION 145 – 40

...

(C)

...

(2) No person, firm or corporation shall allow the emission of sound, which, as measured at the property line, has a sound level in excess of: (a) sixty (60) decibels on the A-Weighted Scale between the hours of 7:00 a.m. and 8:00 p.m.; and (b) fifty (50) decibels on the A-Weighted Scale between the hours 8:00 p.m. and 7:00 a.m., *unless the property line is abutting a rail line in an "M" Zoning District in which case no sound level measured at the boundary of the abutting "M" Zoning District shall exceed sixty-five (65) decibels on the A-Weighted Scale.* [new language italicized]

20. Local codes commonly apply different standards for sound levels at receiving properties based on the zoning use designation of the receiving property, with higher levels permitted for commercial and industrial receiving properties. For instance, the Town of Carmel limits noise within commercial/retail districts to 60 decibels on the A-weighted scale, and does not apply any decibel limit specific to industrial use properties. *See* Code of the Town of Carmel § 104-14(B), (C). Similarly, the Town of Brookhaven applies maximum permissible A-weighted sound pressures of 65 decibels and 75 decibels for commercial and industrial receiving properties, respectively, without a time-of-day distinction. *See* Brookhaven Town Code, § 50-5 (A). *See also*, Code of the Town of Babylon § 156-9(C)(5) (permitting sound levels of 82 dB(A) and higher for industrial use properties). For perspective, 50 decibels is equal to a quiet rainfall or the background noise of a typical office.

21. This proposed modification will allow redevelopment of the property in a manner that will be consistent with the legislative intention of the property being used for industrial uses and not creating any adverse additional environmental impacts by such change and will not adversely affect any residential uses.

22. The remaining change sought by way of text amendment to the Zoning Law is with respect to the provisions of Section 145-30(G). For safety and plant physical security reasons, Cricket Valley Energy desires to have an 8 or 10 foot fence as close to its property lines as possible, where its property borders non-residential uses to the west (rail line) and to other M zoned property to the south. Section 145-30(G) prohibits such fencing. See affected areas on the site on Exhibit H. The text amendment requested would allow for fencing bordering non-residential uses in property zoned "M" for industrial uses.

23. Section 145-30(G) should be amended to add the following language :

(3) The setback requirements of this Chapter shall not apply to retaining walls of any height or to fences less than ten (10) feet high in any side or rear yard where "M" zoned property borders (i) Metro-North railroad tracks; or (ii) abutting "M" zoned property.

24. This proposed amendment, like the proposed amendment to Section 145-40(C)(2)(b), remains consistent with zoning and planning requirements which protect the quality of life for non-industrial properties, including residential properties. While maintaining such protection, such amendments will permit an economically beneficial and properly placed use to be developed on appropriately zoned property.

25. The Cricket Valley Energy project development and construction will require an estimated investment of approximately \$955 million, which will provide a significant

benefit to the local, regional, and state economies. In the short-term, it is expected that an average of 300 construction jobs will be created during the three-year construction process, with up to 750 jobs during the five-month peak construction period. Once completed, the operation of the Cricket Valley Energy facility will support approximately 28 well-paying jobs in Dover, with significant secondary economic benefits resulting from recirculation of payments and wages to the local economy. The project will also provide a substantial long-term revenue source for the Town of Dover, Dutchess County, and the Dover Union Free School District through an anticipated Payment in Lieu of Taxes (PILOT) agreement. The Cricket Valley Energy project has offered to enter into a PILOT Agreement with initial tax payments to the Town of Dover and the Dover Union Free School District of approximately \$3.5 million per year. The amendments to Section 145-30(G) also will permit safety and security measures on any property bordering industrial-zoned properties.

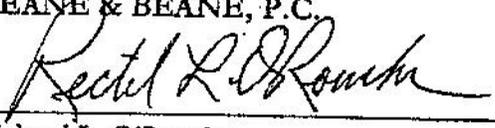
WHEREFORE, Petitioner Cricket Valley Energy respectfully requests that the Town Board of the Town of Dover consider, review and enact the requested text amendments described herein.

Dated: White Plains, New York
January 24, 2012

CRICKET VALLEY ENERGY
CENTER LLC

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By:


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