STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Flint Mine Solar LLC and DESRI Flint Mine Development, L.L.C. for an Order Approving Financing Pursuant to Section 69 of the New York State Public Service Law.

Case: 22-E-0183

VERIFIED PETITION OF FLINT MINE SOLAR LLC AND DESRI FLINT MINE DEVELOPMENT, L.L.C. FOR MODIFICATION TO FINANCING APPROVAL PURSUANT TO PUBLIC SERVICE LAW SECTION 69

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Flint Mine Solar, LLC ("Flint Mine Solar") is the owner of the Flint Mine Solar Project (the "Project"), a solar electric generating facility in New York State certified under Article 10 of the Public Service Law ("PSL").[1] Flint Mine Solar is a wholly-owned subsidiary of Flint Mine Solar Holdings, LLC ("Flint Mine Holdings") which, in turn, is wholly owned by DESRI Flint Mine Development, L.L.C. ("DESRI").[2]

On March 30, 2022, Flint Mine Solar and DESRI (together, "Petitioners") petitioned the Public Service Commission ("Commission") pursuant to PSL § 69 ("2022 Petition"), for authorization for Flint Mine Solar and affiliates of DESRI to enter into indebtedness in connection with the Flint Mine Solar Project with maturity dates of more than twelve (12) months in an aggregate amount up to Three Hundred Million Dollars ($300,000,000), including the authority to

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[1] *See* Case 18-F-0087, *Application of Flint Mine Solar, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of a Solar Electric Generating Facility Located in the Towns of Coxsackie and Athens, Greene County*, "Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions" (August 4, 2021).

[2] Case 22-E-0113, *Joint Petition of Amber US Investments Holdings, LCC, Hudson Energy Enterprises LLC and DESRI Flint Mine Development, L.L.C. for a Declaratory Ruling that No Further Review of Upstream Ownership Transfer is Required or For Approval Under Public Service Law Section 70*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Regulation, and Making Other Findings (June 21, 2022)

pledge ownership interests in, and assets of, the Flint Mine Solar Project as collateral security for the repayment of that debt (the "Original Financing"). The Commission approved the Original Financing on July 15, 2022.[3] Petitioners were also granted authority to modify, without prior Commission approval, the identity of the financing entities, payment terms, and the amount financed, up to the $300 million limit.[4] The Commission noted that "captive New York ratepayers cannot be harmed by the terms of this financing because the petitioning entities will bear the financial risk associated with this financial arrangement."[5]

As explained herein, economic circumstances outside of the Petitioners' control have changed significantly since the 2022 Petition was filed necessitating an increase in the amount of authorized indebtedness to $450 million. The Project remains a competitive wholesale generating project and Petitioners will continue to bear the financial risks associated with the financing arrangements and captive New York ratepayers cannot be harmed by the terms and conditions of the indebtedness. Petitioners' request for authorization under PSL § 69 to increase the maximum amount of indebtedness with a maturity date of more than twelve (12) months in the above amount is in the public interest because it will further strengthen Flint Mine Solar's creditworthiness by providing Flint Mine Solar continuing access to capital to construct and operate the renewable energy facility, and will enhance and strengthen Flint Mine Solar's ability to provide cost-effective, safe, and reliable service.

[3] Case 22-E-0183, *Petition of Flint Mine Solar LLC and DESRI Flint Mine Development, L.L.C. for an Order Approving Financing Pursuant to Section 69 of the New York State Public Service Law*, Order Approving Financing (July 15, 2022) ("2022 Financing Order").

[4] *Id*., at 7.

[5] *Id*.

Petitioners anticipate that construction will commence in late Summer 2026. Accordingly, Petitioners respectfully request the relief sought herein be granted expeditiously to avoid any delays in the construction schedule.

I. BACKGROUND

A. Flint Mine Solar LLC

Flint Mine Solar is a limited liability company organized in 2017 under the laws of the State of Delaware for the purpose of constructing, owning and operating the Project. As previously stated, Flint Mine Solar is the holder of a CECPN authorizing construction of the Project (Siting Board Case 18-F-0087). Flint Mine Solar is wholly owned by Flint Mine Holdings.

B. DESRI

DESRI is the upstream owner of Flint Mine Solar. DESRI is a Delaware limited liability company and is wholly owned by DESRI Flint Mine Development Holdings, L.L.C., a Delaware limited liability company, which in turn is wholly owned by DESRI Portfolios Project Development, L.P., a Delaware limited partnership ("Project Development"). Project Development is owned by DESRI Project Development Holdings, L.L.C., a Delaware limited liability company, as the limited partner holding a 99% equity interest, and DESRI Holdings, L.P., a Delaware limited partnership ("DESRI LP"), as the general partner holding a 1% equity interest. DESRI Project Development Holdings, L.L.C. is wholly owned by DESRI Energy (C), L.L.C., a Delaware limited liability company, which is itself wholly owned by DESRI LP.

Substantially concurrently with Flint Mine Solar's start of continuous on-site construction work, Flint Mine Solar will become the borrower for the purposes of the Financing discussed herein. Thereafter, Financing may be provided by other DESRI LP subsidiaries, and non-controlling, non-managing interest may be held by upstream equity owners whose investment may be used to repay all or part of the debt contemplated herein. As noted below, the Petitioners reserve the right to restructure their debt in a manner which ensures that the management of the Flint Mine Solar Project will always remain under the control of DESRI affiliates, without further Commission approval of those debt restructuring decisions.

II. THE COMMISSION SHOULD AUTHORIZE THE AMENDED FINANCING

Pursuant to PSL § 69, no gas or electric corporation "may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months…" without an order from the Commission authorizing such issuance.[6] The Commission determined that PSL § 69 applies to Petitioners but that the scrutiny applicable to monopoly utilities may be reduced for Flint Mine Solar, which is a lightly-regulated company that will operate the Project in the competitive wholesale markets, and does not have captive ratepayers."[7] Based on the circumstances at the time of the 2022 Petition, the Commission further determined that "an in-depth analysis of the [original] proposed financing [was] not needed. Instead, by relying on the representations of the Petitioners made in their filing, prompt regulatory action [was] possible."[8]

As noted above, economic circumstances have changed with respect to the Project, but facts related to the companies involved and the type of financing have not. Due to Project economics, Petitioners now seek authority for Flint Mine Solar and DESRI affiliates to increase the amount of aggregate long-term indebtedness outstanding at any time of up to four hundred fifty million dollars ($450 million), and/or guarantee and pledge ownership interests in themselves and their assets as collateral security for the repayment of this debt at some time after the consummation of the proposed Transaction. The proposed debt is in the public interest because it

[6] *See* PSL § 69.

[7] 2022 Financing Order, at 7.

[8] *Id*.

will further strengthen Petitioners' creditworthiness by allowing them and their affiliates to raise third party indebtedness and thereby provide the Flint Mine Solar Project with continuing access to capital to construct and operate the Facility, and will strengthen Petitioners' ability to provide cost-effective, safe, and reliable service. The proposed debt is thus both for a statutory purpose (*i.e*., the construction and operation of a state-of-the-art solar electric generating facility) and in the public interest.

Flint Mine Solar and certain DESRI affiliates intend to close on financial transactions with highly-reputable lenders with experience financing renewable energy projects whereby the lenders will agree to provide Flint Mine Solar and such DESRI affiliates with (i) senior secured construction loan facilities, ITC bridge loan facilities and construction-period letters of credit (the "Construction Facilities"), and (ii) secured term loan facilities, revolving loan facilities and operational-period letters of credit (the "Term Facilities") (together, the "Financing Facilities") in connection with the development, construction, operation, and maintenance of the Flint Mine Solar Project. Petitioners expect that this indebtedness will be structured such that the earliest maturity date for the Financing Facilities is on or about the planned Commercial Operation Date, in March 2028, which date is more than twelve months from financial closing.

Petitioners further seek the flexibility to modify or refinance, without prior Commission approval, this indebtedness, including the identity of the financing entities, payment terms, and the amount financed, up to the $450 million dollar limit. The Commission routinely grants such requests by lightly-regulated wholesale generators, *i.e*., "[g]iven that [Petitioners are] regulated lightly, [they] are afforded the flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and amount financed" because "[t]he exercise of financing flexibility will allow [Petitioners] to avoid disruption of its financing arrangements and enable it to operate more effectively in competitive electric wholesale . . . markets."[9]

III. NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT

Pursuant to the Commission's regulations at 16 NYCRR §§ 7.2(a) and 7.2(b)(2)(v), PSL § 69 approval of a securities issuance is a Type 2 action for which no further environmental review of the Financing is required under the New York State Environmental Quality Review Act.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Commission approve the proposed Financing as described herein.

Dated: May 1, 2026

Respectfully submitted,

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[9] *See*, *e.g.*, Case 11-M-0483, *Sithe/Independence Partners, L.P.*, "Order Approving Financing" (Dec. 21, 2011), at 4 ("Sithe Order").