

Hearing Date: April 20, 2017 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: April 13, 2017 at 4:00 p.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**APPLICATION FOR ENTRY OF AN ORDER
PURSUANT TO BANKRUPTCY RULE 2004 AUTHORIZING
DISCOVERY EXAMINATIONS OF EVERSTREAM SOLAR INFRASTRUCTURE
FUND I LP, EVERSTREAM SOLAR INFRASTRUCTURE FUND I, G.P.LP,
EVERSTREAM ENERGY CAPITAL MANAGEMENT LLC, AND BRUCE PFLAUM**

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); SunE Minnesota Holdings, LLC (8926); and Terraform Private Holdings, LLC (3523). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

TABLE OF CONTENTS

PRELIMINARY STATEMENT..... 2

JURISDICTION 3

BACKGROUND..... 4

 I. The Chapter 11 Cases 4

 II. The Debtors’ \$19 Million Investment in EverStream..... 4

 III. The Purported November Capital Call..... 5

 IV. The Reinstatement Offer and March Capital Call..... 6

 V. EverStream Refuses to Provide Any Information to the Debtors..... 7

RELIEF REQUESTED 8

BASIS FOR RELIEF REQUESTED..... 8

RESERVATION OF RIGHTS..... 11

NOTICE..... 11

NO PRIOR REQUEST 12

CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

Air Line Pilots Ass’n., Int’l v. Am. Nat’l Bank & Trust Co. of Chi.
(In re Ionosphere Clubs, Inc.), 156 B.R. 414 (S.D.N.Y. 1993) 10

Cameron v. United States, 231 U.S. 710, 714 (1914)..... 9

ePlus, Inc. v. Katz (In re Metiom, Inc.), 318 B.R. 263 (S.D.N.Y. 2004)..... 10

In re Coffee Cupboard, Inc., 128 B.R. 509 (Bankr. E.D.N.Y. 1991)..... 9

In re Drexel Burnham Lambert Grp., Inc., 123 B.R. 702 (Bankr. S.D.N.Y. 1991)..... 9

In re Enron Corp., 281 B.R. 836 (Bankr. S.D.N.Y. 2002)..... 9

In re Hilsen, No. 87-11261 (JMP), 2008 WL 2945996
(Bankr. S.D.N.Y. July 25, 2008)..... 9, 10

In re Hughes, 281 B.R. 224 (Bankr. S.D.N.Y. 2002)..... 9

In re Recoton Corp., 307 B.R. 751 (Bankr. S.D.N.Y. 2004) 9, 10

Statutes

11 U.S.C. § 105 2

11 U.S.C. § 365 11

11 U.S.C. § 1107 4

11 U.S.C. § 1108 4

28 U.S.C. § 157 3

28 U.S.C. § 1334 3

28 U.S.C. § 1408 3

28 U.S.C. § 1409 3

Rules

Fed. R. Bankr. P. 2004 8, 9, 10

Fed. R. Civ. P. 30(b)(6)..... 8, 11

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

SunEdison, Inc. ("SUNE"), and certain of its affiliates including EverStream HoldCo Fund I, LLC ("EverStream HoldCo"), as debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors" and, together with their non-Debtor affiliates, "SunEdison" or the "Company"),² hereby make this application (the "Motion") for entry of an order under section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), substantially in the form attached hereto as **Exhibit A**, authorizing discovery from EverStream Solar Infrastructure Fund I LP ("EverStream" or the "Partnership"), EverStream Solar Infrastructure Fund I, G.P.LP (the "General Partner"), EverStream Energy Capital Management LLC ("EverStream Management"), and Bruce Pflaum (together, the "EverStream Parties"). In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Patrick M. Cook, Vice-President – Capital Markets And Corporate Finance of SunEdison, Inc., in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration") [Dkt. No. 4], filed on April 21, 2016, and the Declaration of Brian Kirk (the "Kirk Declaration"), attached hereto as **Exhibit B**. In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully state:

PRELIMINARY STATEMENT

Prior to the Petition Date (defined below), debtor EverStream HoldCo invested approximately \$19 million into the Partnership pursuant to a Partnership Agreement (defined below). Under the Partnership Agreement, EverStream HoldCo

² For purposes herein, the definition of "SunEdison" and "Company" does not include TerraForm Power, Inc. and TerraForm Global, Inc., and each of their respective direct and indirect subsidiaries, unless otherwise provided.

agreed to invest capital in certain energy projects when called upon to do so by the Partnership in exchange for a right to a percentage of the profits and future distributions. First in November 2015 and next in March 2016 – at times when the Debtors could not pay their debts as they came due – the EverStream Parties called for capital. But the Debtors could not fund the approximately \$3.75 million that was requested. Thereafter, the EverStream Parties purported to extinguish the Debtors’ *entire* interest in the Partnership for what they admittedly and repeatedly stated was for “no consideration.” To assess whether this so-called cancellation of the Debtors’ property interest is valid and to determine whether any wrongdoing occurred, the Debtors requested that EverStream provide information regarding the decision to extinguish the Debtors’ interest and the value of the Partnership and its investments. Conscious of costs, the Debtors first sought this information on an informal basis and invited discussion as to scope. But EverStream refused to produce a single piece of information.

By this Motion, the Debtors seek limited discovery from the EverStream Parties to enable them to evaluate the validity of EverStream’s purported cancellation of Debtors’ interest in the Partnership for no consideration and, should the cancellation be invalid, to determine the value of that interest so that the Debtors may market and ultimately monetize that interest for the benefit of its creditors.

JURISDICTION

1. This Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding under 28 U.S.C. § 157(b). Venue proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

I. The Chapter 11 Cases

2. On April 21, 2016, twenty-six of the Debtors commenced a case (the "Initial Chapter 11 Cases") by filing a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Chapter 11 Cases"). The Debtors' Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered.

3. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. On April 29, 2016, the Office of the United States Trustee for the Southern District of New York (the "United States Trustee") appointed an Official Committee of Unsecured Creditors (the "Committee"). To date, no trustee or examiner has been appointed in the Debtors' Chapter 11 Cases.

II. The Debtors' \$19 Million Investment in EverStream

5. On February 7, 2013, the EverStream Partnership was formed by agreement. Kirk Decl. ¶ 4. On August 29, 2013, the agreement was amended and restated in its entirety (the "Prior Partnership Agreement") to include the debtor EverStream HoldCo as a limited partner. *Id.* ¶ 5. On May 26, 2015, EverStream HoldCo entered into a side letter with the Partnership (the "Side Letter"). *Id.* ¶ 6.

6. On June 16, 2015, EverStream HoldCo entered the Amended and Restated Limited Partnership Agreement of EverStream Solar Infrastructure Fund I LP, which amended and restated the Prior Partnership Agreement (the "Partnership Agreement"). *Id.* ¶ 7. Pursuant to the Partnership Agreement, as a limited partner, EverStream HoldCo agreed to, among other things, contribute an aggregate amount of

capital to the Partnership (its "Capital Commitment") to fund certain energy project investments from time to time in exchange for a right to a percentage of the profits and future distributions. *Id.* ¶ 8.

7. As of the Petition Date, the Debtors had invested approximately \$19 million in the Partnership. *Id.* ¶ 9. To date, the Debtors have not received any distributions from the Partnership. *Id.* ¶ 9.

III. The Purported November Capital Call

8. On November 17, 2015, Bruce Pflaum sent a letter as an "authorized member" on behalf of the Partnership's General Partner to the Debtors purporting to be a capital call in the amount of \$500,000, of which the Debtors' share was \$212,014 (the "November Letter"). EverStream requested the money be wired by December 2, 2015. *Id.* ¶ 11.

9. On December 9, 2015, the Partnership – by Bruce Pflaum, this time as "Managing Partner" – sent a purported "Notice of Default" asserting that EverStream HoldCo failed to comply with the demand for capital in the November Letter, and, therefore was a "Defaulting Partner" under the Partnership Agreement. *Id.* ¶ 12.

10. On February 23, 2016, Bruce Pflaum, as an "authorized member," sent the Debtors a letter on behalf of the General Partner, purporting to extinguish EverStream HoldCo's interest in the Partnership (the "February Letter"). *Id.* ¶ 13. The February Letter stated:

You are hereby notified that *the General Partner has caused your entire interest in the Partnership to be extinguished for no consideration* pursuant to Section 6.6 of the Partnership Agreement. As a result of the foregoing, (i) your Capital Commitment, Capital Contributions and Uncontributed Capital Commitment have been reduced to zero, (ii) your right to all future distributions pursuant to Section 8.2 of the Partnership

Agreement have been eliminated, and (iii) the Side Letter has been terminated.

(Emphasis added). *Id.* ¶ 13. The February Letter also asserted that the extinguishment of EverStream Holdco's rights did not affect any continuing obligations to pay damages and interest pursuant to the Partnership Agreement. *Id.* ¶ 13.

11. Thereafter, the Debtors disputed the effectiveness of the November and February Letters in part because the November Letter did not provide adequate notice of a capital call as required by the Partnership Agreement. *Id.* ¶ 14.

IV. The Reinstatement Offer and March Capital Call

12. On March 17, 2016, Bruce Pflaum, as an authorized member of the General Partner, sent a letter to the Debtors maintaining that all prior notices were valid and effectively extinguished the Debtors' rights. *Id.* ¶ 15. Despite this, EverStream offered to "reinstatement" EverStream Holdco's interest in the Partnership if the Debtors satisfied the original call for capital in the November Letter, a newly issued capital call for \$3,535,531 (the "March Capital Call"), and paid associated interest (the "Reinstatement Offer"). In total, EverStream demanded that the Debtors pay approximately \$3.75 million by April 1, 2016. *Id.* ¶ 15.

13. On April 9, 2016, as Managing Partner of the General Partner, Bruce Pflaum notified the Debtors of the failure to pay the approximately \$3.75 million that EverStream and the General Partner claimed was due, and, thus, asserted that the interest was not reinstated and EverStream Holdco's rights remained extinguished "for no consideration" pursuant to the Partnership Agreement. *Id.* ¶ 16.

14. On April 22, 2016, as Managing Partner of the General Partner, Bruce Pflaum further notified the Debtors that, to the extent the February Letter was not effective in extinguishing EverStream Holdco's rights in the Partnership, the additional

failure to satisfy the Reinstatement Offer was an independent ground to extinguish the interest in the Partnership “for no consideration” under the Partnership Agreement (the “Extinguishment Notice”). *Id.* ¶ 17. Among other things, if valid, this had the effect of reducing EverStream Holdco’s “Sharing Percentage” under the Partnership Agreement from approximately 42% to zero. *Id.* ¶ 17.

15. On September 20, 2016, Bruce Pflaum filed a proof of claim on behalf of EverStream [Claim No. 2409] against EverStream Holdco asserting a general unsecured claim in the amount of \$362,228.97 for default interest owed and attorney’s fees. Alternatively, in the event a court unwinds or deems its extinguishment of the Debtors’ interest ineffective, EverStream asserts a secured claim in the amount of \$4,109,756.43 on account of the Debtors’ unpaid capital calls, plus interest and expenses.

V. EverStream Refuses to Provide Any Information to the Debtors

16. Because EverStream’s purported extinguishment of EverStream Holdco’s interest in the Partnership purports to eliminate an interest in Debtor property, the Debtors have an undeniable right to receive information regarding the facts and circumstances concerning its purported cancellation to investigate the propriety of EverStream’s actions, including any potential avoidance actions or state law claims, and to assess the value of the Debtors’ interest in the Partnership.

17. Seeking to reduce costs for all involved, on March 16, 2017, the Debtors reached out to EverStream’s counsel to request the informal production of certain information and documents, substantially in the form as set forth in Exhibits 1 and 2 to the Proposed Order, and to invite a discussion as to the scope of that discovery. But on March 28, 2017, EverStream’s counsel responded that EverStream would not furnish a single piece of information regarding the Partnership, its value, or the facts and circumstances surrounding the purported cancellation of the Debtors’ interest in

the Partnership. Because EverStream and its General Partner have refused to provide this critical information, Rule 2004 discovery is needed from the Partnership, the General Partner, EverStream Management, and its Managing Partner, Bruce Pflaum.

RELIEF REQUESTED

18. By this Motion, the Debtors request entry of an order, pursuant to Bankruptcy Rule 2004:

- (a) directing the EverStream Parties to produce responsive, non-privileged documents requested on the attached **Exhibit A(1)** hereto for examination by the Debtors no later than fourteen (14) days within entry of an order approving this Motion;
- (b) directing Bruce Pflaum to submit to an examination under oath on such date and time and at a location in New York City as designated in writing by the Debtors on not less than 14 days' notice; and
- (c) directing EverStream, the General Partner, and EverStream Management each to appoint an appropriate representative pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure to submit to an examination under oath on the topics set forth on the attached **Exhibit A(2)** on such date and time and at a location in New York City as designated in writing by the Debtors on not less than 14 days' notice.

BASIS FOR RELIEF REQUESTED

19. Good cause exists for the targeted Rule 2004 discovery the Debtors seek here because the Debtors need this information to assess the validity of the cancellation of its interest in the Partnership and to determine whether any wrongdoing occurred.

20. Bankruptcy Rule 2004(a) states that on "motion of any party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). The scope of any examination sought under Bankruptcy Rule 2004 may relate to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's

right to a discharge.” See Fed. R. Bankr. P. 2004(b).

21. Thus, a debtor may use Bankruptcy Rule 2004 “to determine the nature and extent of a bankruptcy estate and to ascertain whether wrongdoing has occurred.” *In re Hilsen*, No. 87-11261 (JMP), 2008 WL 2945996, at *4 (Bankr. S.D.N.Y. July 25, 2008) (Peck, J.) (citations omitted); see also *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (“The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred.”); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (“The purpose of a Rule 2004 examination is ‘to show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved.’”) (citing *Cameron v. United States*, 231 U.S. 710, 714 (1914)).

22. Bankruptcy Rule 2004 may be used to investigate matters that affect the administration of the estate. See, e.g., *In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991) (“The object of the examination of the [debtor] and other witnesses is to show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved.”). It may also be used to seek information relating to potential causes of action on behalf of the estate. See, e.g., *In re Hughes*, 281 B.R. 224, 226 (Bankr. S.D.N.Y. 2002) (noting that Bankruptcy Rule 2004 examination is an appropriate means to aid in the “investigation of potential claims on behalf of the debtor”).

23. The granting of a motion under Bankruptcy Rule 2004 is within the discretion of this Court. See *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) (“As the permissive language of the rule suggests, the Court has the discretion to grant

a request for a 2004 examination”) (citations omitted). Bankruptcy Rule 2004 “allows considerable leeway for all manner of so-called fishing expeditions provided that there is a reasonable nexus to the debtor and the administration of the debtor’s case.” *In re Hilsen*, 2008 WL 2945996, at *1.

24. Bankruptcy Rule 2004 provides for “the examination of any entity.” *See* Fed. R. Bankr. P. 2004 (a). “Any third party who has a relationship with a debtor may be made subject to a Rule 2004 investigation.” *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (citing *Air Line Pilots Ass’n., Int’l v. Am. Nat’l Bank & Trust Co. of Chi. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 432 (S.D.N.Y. 1993)); *see also ePlus, Inc. v. Katz (In re Metiom, Inc.)*, 318 B.R. 263, 268-271 (S.D.N.Y. 2004) (holding that Bankruptcy Rule 2004 may be employed by debtors who seek to compel discovery of information maintained by creditors or third-parties where such information relates to the effective reorganization and administration of the estate).

25. Here, the Debtors require the ability to investigate the actions taken by the EverStream Parties in attempting to extinguish the Debtors’ entire interest in the Partnership for no consideration to assess whether any wrongdoing occurred and to ascertain whether (and what) claims may exist to recover property of these Chapter 11 estates. *See* Kirk Decl. ¶ 18. The Debtors also require information about the value of the Partnership and its investments so that they may determine the value of their interest to appropriately assess the benefit any such action would have for the Debtors’ estates. *See id.* Finally, should the purported extinguishment be invalid, the Debtors require information regarding value so that the Debtors may effectively market and monetize their interest. *See id.*

26. To facilitate this investigation, the Debtors seek production of documents pertaining to the EverStream Parties’ knowledge of the Debtors’ financial

position prior to the filing of the bankruptcy, EverStream's decision and the EverStream Parties' actions taken to extinguish the Debtors' interest, their treatment of similarly situated limited partners, and the value and financial position of the Partnership and its investments. The initial document discovery is attached as **Exhibit 1 to the Proposed Order**.³ The Debtors also request the authority to conduct a deposition of Bruce Pflaum related to the extinguishment of the Debtors' rights in the Partnership and to conduct depositions pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure on the topics identified on **Exhibit 2 to the Proposed Order**.

RESERVATION OF RIGHTS

27. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds or to seek information through other means; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Motion.

NOTICE

28. Notice of this Motion has been provided in accordance with the *Order Pursuant to Bankruptcy Code sections 102 and 105, Bankruptcy Rules 1015, 2002, 9007, and 9036, and Local Bankruptcy Rule 2002, Authorizing the Establishment of Certain Notice, Case Management, and Administrative Procedures*, dated May 20, 2016 [Dkt. No. 360]. Additionally, notice of this Motion has been provided to the EverStream Parties. The

³ The Debtors provided this list and the Rule 30(b)(6) topics to EverStream's counsel and invited a discussion as to the scope of discovery prior to approaching the Court, but EverStream declined and instead took the position that the Debtors are not entitled to a single document or piece of information. As set forth above, that is not the law.

Debtors respectfully submit that such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

29. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Debtors respectfully request entry of an order granting this Motion in its entirety and granting such other and further relief the Court deems just and appropriate.

Dated: March 30, 2017
New York, New York

SUNEDISON, INC., *et al.*,
Debtors and Debtors in Possession
By Their Co-Counsel
TOGUT, SEGAL & SEGAL LLP
By:

/s/ Frank A. Oswald
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EXHIBIT A

Proposed Order

EXHIBIT A

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)
: :
:

**ORDER PURSUANT TO BANKRUPTCY RULE 2004
AUTHORIZING DISCOVERY EXAMINATIONS OF
EVERSTREAM SOLAR INFRASTRUCTURE FUND I LP,
EVERSTREAM SOLAR INFRASTRUCTURE FUND I, G.P.LP, EVERSTREAM
ENERGY CAPITAL MANAGEMENT LLC, AND BRUCE PFLAUM**

Upon the application (the "Motion") of SunEdison, Inc., and certain of its subsidiaries, including EverStream HoldCo Fund I, LLC, as debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the "Debtors") for entry of an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing Bankruptcy Rule 2004 discovery from EverStream Solar Infrastructure Fund I LP ("EverStream" or the "Partnership"),

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); SunE Minnesota Holdings, LLC (8926); and Terraform Private Holdings, LLC (3523). The address of the Debtors' corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

EverStream Solar Infrastructure Fund I, G.P.LP (the "General Partner"), EverStream Energy Capital Management LLC ("EverStream Management"), and Bruce Pflaum (together, the "EverStream Parties") as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice of the Motion need be provided; and the Court having held a hearing to consider the relief requested in the Motion (the "Hearing"); and upon the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion and granted herein is in the best interests of the Debtors, their respective estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The EverStream Parties shall comply with the document requests attached hereto as **Exhibit 1** by no later than fourteen (14) days after the entry of this Order or at a time as mutually agreed by the Debtors and the respective EverStream Party. If any EverStream Party withholds any document on the basis of privilege, that

entity is required to provide a privilege log in accordance with Bankruptcy Rule 7026, so as to be delivered with the document production.

3. Bruce Pflaum shall appear for examination by counsel to the Debtors under oath on such date and time and at a location in New York City as designated in writing by the Debtors on not less than 14 days' notice.

4. EverStream, the General Partner, and EverStream Management each shall appoint an appropriate representative pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure who shall appear for examination under oath by counsel to the Debtors on the topics attached hereto as **Exhibit 2** on such date and time and at a location in New York City as designated in writing by the Debtors on not less than 14 days' notice.

5. This Order is without prejudice to the Debtors' right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable law. To the extent necessary, the Debtors' rights are reserved to request additional depositions and any additional documents under Bankruptcy Rule 2004 based on any information that may be revealed as a result of the discovery provided pursuant to this Order.

6. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement, and enforce the provisions of this Order.

Dated: April __, 2017
New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Definitions

EXHIBIT 1
Definitions

1. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.
2. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
3. The use of the singular form of any word includes the plural and vice versa.
4. “Capital Call” has the meaning set forth in the Partnership Agreement.
5. The term “concerning” means relating to, referring to, describing, evidencing, or constituting.
6. “Debtor” means debtor EverStream Holdco Fund I, LLC.
7. “Debtor’s Interest” means interest in the Partnership.
8. The term “document” is defined to be synonymous in meaning and equal in scope to “documents or electronically stored information” in rule 34(a)(1)(A) of the Federal Rules Civil Procedure. A draft or non-identical copy is a separate document within the meaning of this term.
9. “Final Notice of Extinguishment” means the purported notice of extinguishment from the General Partner to the Debtor, dated April 22, 2016.
10. “First Notice of Default” means the purported notice of default from EverStream Solar Infrastructure Fund I, G.P. LP to the Debtor, dated December 10, 2015.

11. "First Notice of Extinguishment" means the letter from EverStream Solar Infrastructure Fund I, G.P. LP to the Debtor purporting to extinguish the Debtor's Interest, dated February 23, 2016.

12. The terms "including," "include" or "includes" mean including, but not limited to.

13. "General Partner" means EverStream Solar Infrastructure Fund I, G.P. LP.

14. "Limited Partner" means any former or present limited partner of the Partnership (as defined in the Partnership Agreement).

15. "March 17, 2016 Cover Letter" means the letter from the General Partner to the Debtor dated March 17, 2016, concerning the March Capital Call Notice.

16. "March Capital Call Notice" means the letter from the General Partner to the Debtor purporting to request two capital calls from the Debtors, dated March 17, 2016.

17. "Management" means EverStream Energy Capital Management LLC.

18. "November 2015 Letter" means the letter from the General Partner to the Debtor purporting to request a capital call from the Debtor, dated November 17, 2015.

19. "Partnership Agreement" means the EverStream Solar Infrastructure Fund I LP Amended and Restated Limited Partnership Agreement, dated June 17, 2015.

20. The term "person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

21. "Relating to" means reflecting, describing, evidencing, constituting, containing, alluding to, germane to, mentioning, analyzing, setting forth, summarizing, characterizing, contradicting, incorporating, affecting, including or otherwise pertaining -- either directly or indirectly -- to the subject matter of the inquiry.

22. "Subsequent Follow-up Notice" means the notice from the General Partner to the Debtor, dated April 9, 2016.

23. "SunEdison" means SunEdison Inc. and Sun Edison, LLC, together with any representatives, affiliates, employees, officers, directors, agents or assigns; any representatives or persons acting or authorized to act on their behalf; and any predecessors, corporate parents, subsidiaries, affiliates or business units.

24. "You" or "your" means the parties to whom this these Requests are directed, and shall include anyone acting on behalf of those parties, over whom the parties have control, or which is, or may be subrogated to the parties' interests, including, without limitation, any officer, agent, servant, employee, attorney, insurance company, investigator, independent adjusting company, or other Person or entity.

Document Requests

1. All documents concerning membership in the Partnership, including documents sufficient to identify all limited partners.

2. All documents concerning Partnership financials, including historical financial statements and auditor reports for the years 2015 and 2016 and any future projections.

3. All documents concerning valuation of the Partnership and the interest of any Limited Partner, including any calculation of revenue, earnings, or any other metric.

4. All documents concerning valuation of the Debtor's Interest, including any calculation of revenue, earnings, or any other metric.
5. All documents concerning the Partnership's investments, including documents sufficient to identify all past, present, and anticipated or planned investments, the value or projected value of those investments, and a portfolio breakdown of those investments.
6. All documents concerning the historical performance of the Partnership.
7. All documents concerning Partnership management, including biographies of all executive officers and board members of Management and the General Partner.
8. All documents concerning the Partnership's efforts to raise capital, including any solicitation or marketing of the Partnership.
9. All documents concerning distributions to Limited Partners, including documents sufficient to show all distributions to date.
10. All documents and communications concerning Capital Calls to any Limited Partner.
11. All agreements between the Partnership and any Limited Partner, including any amendments, modifications, or terminations of such agreements since You purported to extinguish the Debtor's interest in the Partnership.
12. All documents and communications concerning the November 2015 Letter, March Capital Call Notice, and March 17, 2016 Cover Letter.
13. All documents and communications concerning the First Notice of Default, First Notice of Extinguishment, Subsequent Follow-up Notice, and Final Notice of Extinguishment.

14. All documents and communications concerning the purpose of any Capital Call.

15. All documents and communications concerning funds raised through any Capital Call.

16. All documents and communications concerning the planned or anticipated use of funds to be raised through any Capital Call.

17. All documents and communications concerning the Partnership's actual or historical use of funds raised through any Capital Call.

18. All documents and communications concerning the "Japanese solar project" referenced in the March Capital Call Notice.

19. All documents and communications concerning the "additional international solar project" referenced in the March Capital Call Notice.

20. All documents and communications concerning the Debtor's alleged failure to meet any Capital Call.

21. All documents and communications concerning the impact or anticipated impact on the Partnership resulting from Debtor's alleged failure to meet any Capital Call, including any impact on the value of the Partnership or any planned or actual investment by the Partnership.

22. All documents and communications concerning the failure of any Limited Partner other than the Debtor to meet any Capital Call.

23. All documents and communications concerning any impact or anticipated impact on the Partnership resulting from the failure of any Limited Partner other than the Debtor to meet any Capital Call, including any impact on the value of the Partnership or any planned or actual investment by the Partnership.

24. All documents and communications concerning the actual or threatened classification of a Limited Partner other than the Debtor as a “Defaulting Partner” as defined in the Partnership Agreement.

25. All documents and communications concerning any action taken, contemplated, or threatened against any Limited Partner other than the Debtor for the failure to meet a Capital Call, including any actions under the Partnership Agreement.

26. All documents and communications concerning the purported extinguishment of the Debtor’s Interest, including the decision to attempt to extinguish the Debtor’s Interest and any analysis of that decision.

27. All documents and communications concerning any plan to redistribute, transfer, or otherwise dispose of the Debtor’s Interest.

28. All documents and communications concerning any action to redistribute, transfer, or otherwise dispose of the Debtor’s Interest.

29. All documents and communications concerning the bankruptcy filing, or potential future bankruptcy filing, of SunEdison, including the effect of such a filing on the Partnership.

30. All documents and communications concerning the bankruptcy filing, or potential future bankruptcy filing, of the Debtor, including the effect of such a filing on the Partnership.

31. All documents and communications concerning SunEdison’s financial condition before SunEdison filed for bankruptcy.

32. All documents and communications concerning the Debtor’s financial condition before the Debtor filed for bankruptcy.

33. All documents in support of the Partnership's proof of claim in the Debtor's bankruptcy case, including any accrued interest, attorney records, costs, or other damages.

EXHIBIT 2

Topics of Examination

EXHIBIT 2

Rule 30(b)(6) Topics of Examination

1. Identity of individuals or entities with a partnership interest in the Partnership.
2. Valuation or analysis of the Partnership or Partnership interests, including the Debtor's Interest.
3. All past, present, and anticipated or planned investments by the Partnership, including any analysis related thereto.
4. Valuation or analysis of all past, present, and anticipated or planned investments by the Partnership.
5. The Partnership's financials, including any financial records for the years 2015 and 2016 and any projected financials for future years.
6. Past or planned distributions by the Partnership.
7. The Partnership's efforts to raise capital, including any solicitation or marketing efforts.
8. Capital Calls to any Limited Partner, including the stated and actual purpose and ultimate use thereof.
9. Agreements between the Partnership and any Limited Partner.
10. Any amendments, modifications, or terminations to any agreements between the Partnership and any Limited Partner.
11. The November 2015 Letter, March Capital Call Notice, March 17, 2016 Cover Letter, First Notice of Default, First Notice of Extinguishment, Subsequent Follow-up Notice, and Final Notice of Extinguishment.

¹ Terms not defined herein shall have the meaning ascribed in Exhibit 1 to the Proposed Order.

12. Any impact or anticipated impact on the Partnership from the Debtor's purported failure to meet any Capital Call.
13. Any action threatened or taken against any Limited Partner for the failure to meet a Capital Call.
14. Any impact or anticipated impact on the Partnership from the failure of any Limited Partner to meet a Capital Call.
15. The "Japanese solar project" referenced in the Second Capital Call Notice.
16. The "additional international solar project" referenced in the Second Capital Call Notice.
17. Any plan to redistribute, transfer, or otherwise dispose of the Debtor's Interest, including any analysis in connection therewith.
18. Any action taken to redistribute, transfer, or otherwise dispose of the Debtor's Interest, including any analysis in connection therewith.
19. Your knowledge of the bankruptcy filing, or potential future bankruptcy filing, of the Debtor and SunEdison.
20. Your knowledge of the SunEdison's financial condition before SunEdison filed for bankruptcy.
21. Your knowledge of the Debtor's financial condition before the Debtor filed for bankruptcy.
22. The management of the Partnership.

EXHIBIT B

Kirk Declaration

EXHIBIT B

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 BRIAN KIRK

Pursuant to 28 U.S.C. § 1746, Brian Kirk hereby declares:

1. I am a Director of Strategy and Mergers & Acquisitions of SunEdison, Inc. and certain of its affiliates including EverStream HoldCo Fund I, LLC ("EverStream HoldCo"), the debtors and debtors in possession in the above captioned cases (collectively, the "Debtors" and, together with their non-Debtor affiliates, "SunEdison").

2. I joined SunEdison in 2015 and focus on business development for the global utility scale platform. Prior to my current position, I was a Vice President of Finance at AtlanticPower, where I led structured finance and mergers and acquisitions

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); SunE Minnesota Holdings, LLC (8926); and Terraform Private Holdings, LLC (3523). The address of the Debtors' corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

transactions for a diverse portfolio of power generation and infrastructure assets in North America. I have nine years of experience in wind and solar, serving in structured finance, corporate finance, principal investing and business development roles at Atlantic Power, First Wind, and Wells Fargo. I have executed more than 30 corporate and asset-level transactions totaling more than \$6 billion. I hold an AB from Princeton University.

3. I am in all respects competent to make this declaration (the "Declaration") in support of the Debtors' *Application for Entry of an Order Pursuant to Bankruptcy Rule 2004 Authorizing Discovery Examinations of EverStream Solar Infrastructure Fund I LP, EverStream Solar Infrastructure Fund I, G.P. LP, EverStream Energy Capital Management LLC, and Bruce Pflaum*, dated March 30, 2017. Unless otherwise stated, based on my experience, consultation with my colleagues and review of relevant documents, I have personal knowledge of the facts set forth herein. If called upon to testify, I could and would testify competently to those facts.

I. The Debtors Invest \$19 Million in EverStream

4. On February 7, 2013, EverStream Solar Infrastructure Fund I LP ("EverStream" or the "Partnership") was formed by agreement.

5. On August 29, 2013, the agreement was amended and restated in its entirety (the "Prior Partnership Agreement") to include EverStream HoldCo as a limited partner.

6. On May 26, 2015, EverStream HoldCo entered into a side letter with the Partnership (the "Side Letter").

7. On June 16, 2015, EverStream HoldCo entered into the Amended and Restated Limited Partnership Agreement of EverStream Solar Infrastructure Fund I LP

(the "Partnership Agreement"), which amended and restated the Prior Partnership Agreement.

8. Pursuant to the Partnership Agreement, as a limited partner, EverStream HoldCo agreed to, among other things, contribute an aggregate amount of capital to the Partnership (its "Capital Commitment") to fund certain energy project investments from time to time in exchange for a right to a percentage of the profits and future distributions.

9. As of the Petition Date, the Debtors had invested approximately \$19 million in the Partnership. To date, the Debtors have not received any distributions from the Partnership.

10. EverStream is managed by EverStream Energy Capital Management LLC. Bruce Pflaum is the Managing Partner of the EverStream Solar Infrastructure Fund I, G.P.LP (the "General Partner").

II. EverStream's First Request for Capital

11. On November 17, 2015, Bruce Pflaum, as authorized member, sent a letter on behalf of the Partnership's General Partner to the Debtors purporting to be a capital call in the amount of \$500,000, of which the EverStream Holdco's share was \$212,014 (the "November Letter"). The November Letter requested that this amount be wired by December 2, 2015.

12. On December 9, 2015, the Partnership – by Bruce Pflaum, as "Managing Partner" – sent the Debtors a purported "Notice of Default" asserting that EverStream HoldCo failed to comply with the November Letter, and, therefore was a "Defaulting Partner" under the Partnership Agreement.

13. On February 23, 2016, Bruce Pflaum, as an “authorized member” of the General Partner, sent the Debtors a letter purporting to extinguish EverStream Holdco’s interest in the Partnership (the “February Letter”). The February Letter stated:

You are hereby notified that *the General Partner has caused your entire interest in the Partnership to be extinguished for no consideration* pursuant to Section 6.6 of the Partnership Agreement. As a result of the foregoing, (i) your Capital Commitment, Capital Contributions and Uncontributed Capital Commitment have been reduced to zero, (ii) your right to all future distributions pursuant to Section 8.2 of the Partnership Agreement have been eliminated, and (iii) the Side Letter has been terminated.

(Emphasis added). The February Letter also asserted that the extinguishment of EverStream HoldCo’s rights did not affect the Debtors’ continuing obligations to pay damages and interest pursuant to the Partnership Agreement.

14. Thereafter, the Debtors disputed the effectiveness of the November and February Letter in part because EverStream did not provide sufficient notice as required by the Partnership Agreement.

III. The Reinstatement Offer and March Capital Call

15. On March 17, 2016, Bruce Pflaum, as authorized member of the General Partner, sent a letter to the Debtors maintaining that all prior notices were valid and effectively extinguished EverStream HoldCo’s rights, but offered to “reinstate” its interest in the Partnership if the Debtors satisfied the original call for capital in the November Letter, a newly issued capital call for \$3,535,531 (the “March Capital Call”), and paid associated interest (together, the “Reinstatement Offer”). In total, EverStream demanded that the Debtors pay approximately \$3.75 million by April 1, 2016 to reinstate the interest.

16. On April 9, 2016, Bruce Pflaum, as Managing Partner of the General Partner, notified the Debtors that the approximately \$3.75 million it claimed was due

was not paid, and, thus, asserted that EverStream HoldCo was not reinstated as limited partner and its rights remained extinguished “for no consideration” pursuant to the Partnership Agreement (the “Notice of Default”).

17. On April 22, 2016, Bruce Pflaum, as Managing Partner of the General Partner, further notified the Debtors that, to the extent the February Letter was not effective, the additional failure to satisfy the Reinstatement Offer was an independent ground to extinguish EverStream HoldCo’s interest in the Partnership “for no consideration” under the Partnership Agreement (the “Extinguishment Notice”). Among other things, if the Extinguishment Notice were effective, it would reduce the Debtors’ “Sharing Percentage” under the Partnership Agreement from approximately forty-two percent 42% to zero.

IV. EverStream Refuses to Provide Any Information to the Debtors

18. As of the date hereof, the Debtors do not have sufficient information regarding the circumstances of EverStream’s purported extinguishment of its interest in the Partnership or the Partnership’s value to assess whether any wrongdoing occurred or determine whether any claims exist on behalf of the Debtors. Should EverStream’s actions be deemed invalid at sometime in the future, the Debtors also do not have sufficient information regarding the Debtors’ interest in the Partnership to be able to market and monetize their interest.

19. The Debtors need information and documents regarding the Partnership, its value, and the facts and circumstances surrounding the purported cancellation of the Debtors’ interest in the Partnership from the Partnership, the General Partner, EverStream Management, and its Managing Partner, Bruce Pflaum, to assess and value potential claims that may exist for the benefit of creditors of these chapter 11 cases.

20. I understand that EverStream would not furnish any such information or documents on an informal basis.

21. As a result, the Debtors now seek formal discovery from these parties to enable the Debtors to evaluate the validity of EverStream's purported cancellation of the EverStream HoldCo's interest in the Partnership for no consideration and, should the cancellation be invalid, to determine the value of that interest so that the Debtors may market and ultimately monetize that interest for the benefit of its creditors.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on March 30, 2017 in New York, New York.

/s/Brian Kirk
BRIAN KIRK