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February 7, 2025

Town of Ulster  
Attn: Warren Tutt, Building Inspector  
584 East Chester Street  
Kingston, New York 12401

RE: Battery Energy Storage System - Zoning Law Interpretation Request  
Utility Company Structure Classification and Zoning District Standard

Dear Mr. Tutt,

This firm, working alongside Stockade Strategies, LLC, represents Terra-Gen, LLC<sup>1</sup> (referred to as the "Applicant"). The Applicant is proposing the construction of a 250 MW utility-scale battery energy storage system ("BESS") (the "Project") on property located at 430 Hurley Avenue (Tax Map No. 48.17-1-26). The parcel is split into two (2) zoning districts: OM and R-30. Pursuant to the Zoning Code of the Town of Ulster Zoning Law, "utility company structures" are an allowed use in both districts, subject to special permit and site plan review approval. The R-30 zoning district has an added requirement that utility company structures cannot exceed 3,500 square feet. If more than 3,500 square feet in the OM zoning district, a special permit is required from the Town Board (see Town of Ulster Table of Use Regulations). We respectfully submit the following two (2) interpretation requests:

1. **The first request is for a code interpretation that the proposed BESS is classified as a utility company structure under the Town of Ulster Zoning Code.** This interpretation is consistent with similar applications approved in the Town of Ulster, including the Lincoln Park Grid Support Center proposed by GlidePath and approved in 2019, as well as several solar projects. Additional details and support for such classification are outlined in this letter, including information on State definitions and regulations of BESS facilities.
2. **The second request is for a code interpretation that the Town will apply the zoning regulations of the OM zoning district to this Project.** Although the parcel is split into two different zoning classifications, this is the site of the former Coleman Catholic High School and is considered commercial property for tax purposes. The BESS facility will be accessed

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<sup>1</sup> Terra-Gen is an independent developer of utility-scale battery storage projects based in New York City and San Diego. Its operations include developing renewable energy locations in upstate New York (<https://terragenny.com/projects/>)

from Hurley Avenue, which is located in the OM zoning district. Although the rear portion of the parcel is zoned R-30, this section of the parcel is otherwise landlocked by the OM zoning district and the New York State Thruway. Applying the OM zoning classification to this Project is consistent with the OM corridor along Hurley Avenue, will ensure that the size limitation does not apply to this split zone, and will otherwise permit the Project to move forward with review by the Planning Board and Town Board.

Further, we request that the Town finds that regardless of the zoning classification of the parcel, the size limitation contained in the zoning code only applies to building structures, not battery energy storage containers, and therefore is inapplicable to the proposed improvements for the BESS facility. The Applicant is not proposing battery energy storage in a dedicated use building, and therefore the 3,500 square foot limitation in the R-30 zoning district does not apply, regardless of the split zoning.

### **PUBLIC UTILITY CLASSIFICATION**

As noted above, there are several regulations and classifications that support the determination that the proposed BESS is a utility company structure. Please consider the following:

Since the Town of Ulster Zoning law does not define public utilities or utility company structures, the Town must rely on state definitions and regulations. New York State Public Service Law § 2(23), the term "utility company" or "public utility company" applies to one or more persons or corporation operating an agency or agencies for public service, and who or which is or are subject to the jurisdiction, supervision and regulations prescribed by or pursuant to provisions of this chapter. Under PSL § 2(4), this includes companies "generating or distributing electricity or gas solely from one or more co-generation, small hydro or alternate energy production facilities." The term "alternate energy production facilities" is explained to include "energy storage device utilizing batteries," with a capacity of at least eighty (80) megawatts.

Not only does the proposed BESS constitute an "alternate energy production facility" making the corporate entity a "public utility", but under Section 66 of the Public Service Law the PSC has "general supervision of all gas corporations and electric corporations having authority under any general or special law or under any charges or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat or power." Section 66 has been regulating electricity generators, transmission companies and other entities in New York for decades (it was first adopted by the Legislature in 1910). Since then, the electric industry has been deregulated or "restructured" so that there is no longer a monopoly over electric generation and distribution. It is clear that the proposed facility is regulated by New York State and will be regularly supplying the public with electricity.

In addition to regulation by the Public Service Law, public utility uses are further defined under New York State and Federal law. New York State Public Service Law Section 2(23) provides the following definition: the term "utility company" or "public utility company" is a corporation operating an agency or agencies for public service, and "who or which is or are subject to the jurisdiction, supervision and regulations prescribed by or pursuant to provisions of this chapter". As discussed below, the Project is regulated under various provisions and regulations of the Public Service Commission. Similarly, the New York state Transportation Corporations Law Section 10 states that "[a]n electric corporation is a corporation organized to manufacture, to produce or otherwise acquire, and to supply for public use electricity for light, heat or power, and for lighting streets, avenues, public parks and places and public and private buildings of cities, villages and towns within this state." The Town, City and Village laws all

provide similar definitions for "public utility", for example, NY Village Law Section 5-524(6) states that "the term public utility services shall mean electric, gas, water, sewer and telephone services." New York State Town Law Section 118 states "[a]s used in this subdivision the term public utility shall mean electric, gas, water, sewer, fuel oil, and telephone services." New York State General City Law Section 25-v defines "utility" as "[a]ny electric corporation, gas corporation or steam corporation subject to the jurisdiction and general supervision of the public service commission." New York State Tax Law Section 186-a(2)(a) states "the word utility includes every person subject to the supervision of the state department of public service . . . who sells gas, electricity, steam, water or refrigeration, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water or refrigerator service."

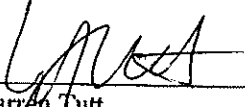
BESS projects are reviewed and regulated through respective New York utility interconnection queues and the New York Independent System Operator (NYISO) interconnection queue. Utility scale BESS projects are not built for private use. Instead, the Project will be integrated into the electric distribution architecture. The public need and service of energy storage is guided by the policy mandates and state requirements that have been established. In 2018, the PSC issued a landmark energy storage order based on the Energy Storage Roadmap. The Order established a 3,000 MW energy storage goal by 2030." (New York State Climate Action Council Draft Scoping Plan, December 30, 2021, at Page 166). New York's CLCPA, passed in 2019, requires 3,000 MW of energy storage by 2030. Governor Kathy Hochul recently announced a new framework to achieve 6 GW of energy storage by 2030, with NYSERDA issuing a comprehensive roadmap that expands the state's energy storage programs and goals (See CASE 18-E-0130 – New York's 6 GW Energy Storage Roadmap: Policy Options for Continued Growth in Energy Storage). A portfolio of energy storage technologies will be needed as intermittent renewable energy generation increases. Energy storage is an essential service to the surrounding community and State regulatory and policy mandates.

### CONCLUSION

In an effort to facilitate the Town's review of the Project, the Applicant hereby requests that you confirm that the Project is a public utility company structure subject to the zoning requirements of the OM zoning district and therefore permitted with Site Plan Review by the Planning Board and Special Permit by the Town Board. If you agree, please countersign this letter on the line below and file a copy of the letter with your office.

Thank you for your consideration and prompt attention to this matter. If you have any questions or would like additional information from the Applicant, please feel free to contact me directly.

AGREED TO BY:

  
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Warren Tutt  
Building Inspector

Very truly yours,

YOUNG/SOMMER LLC



Robert A. Panasci, Esq.  
E. Hyde Clarke, Esq.  
Attorneys for the Applicant

cc: James E. Quigley, Town Supervisor  
Dan Ahouse, Stockage Strategies, LLC  
Shabari Basu, Terra-Gen