

Joint Press Release from the Counties of Somerset, Morris and Sussex

August 28, 2014

Three Counties Issue Default Notices on Solar Project Developer

The second-phase solar programs for Morris County and Somerset County, along with the initial program for Sussex County, are proceeding without the original developer after default notices against SunLight General Capital and its affiliates were issued on August 21.

SunLight, which became developer for the three programs in 2011 following a competitive procurement process in each county, was issued separate default notices after public meetings by the Improvement Authorities held last week.

SunLight had been in an ongoing dispute with its contractor, Power Partners MasTec, regarding which of the two was responsible for extensive delays and cost overruns. The Morris and Sussex programs were run through the Morris County Improvement Authority. The Somerset County program was handled by the Somerset County Improvement Authority.

All three procurement documents stated that the contracts and bond funding provided by the county improvement authorities were guaranteed maximum-price contracts and would not pay for any delay or cost overruns. In a preliminary private arbitration decision rendered August 15, MasTec was awarded a substantial judgment against SunLight that rendered the developer insolvent. This award does not apply to either county authority or the counties themselves.

Although the arbitration was private, with the counties not allowed to participate, MasTec has sought recovery by placing liens on the county authorities' remaining bond funds to satisfy what was then a potential arbitration award. Approximately half the sites have been built in each of Morris and Sussex, while all but two have been constructed in Somerset County.

Both the trial and appellate courts in New Jersey have ruled against MasTec in the lien cases, saying the contractor has no rights to the bond monies. The New Jersey Supreme Court will hear MasTec's appeal but has given no timetable for a hearing and decision.

MasTec also is in federal court seeking further relief on certain matters. Accordingly, the two county improvement authorities and the three counties have reached out to MasTec in an attempt to resolve all litigation.

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The three counties also have contacted the agencies that rate their bonds. As required by law, the counties have notified the bond-rating agencies that if insufficient program revenue is available, due to the ramifications of the default notices or for other reasons, the counties will honor their respective guarantees of the debt-service payment on the bonds, beginning with bond payments due in 2015, while they continue to work towards a long-term global solution with all parties.

In addition, the county improvement authorities have notified the municipal marketplace, as required under applicable federal securities law. Although the developer is in default, with the county guarantees in place, the three series of improvement-authority bonds, one for each county program, are not in default.

The developer is required to operate and maintain the existing sites until a successor is found. The timetable for that process is on hold pending the settlement discussions regarding the litigation between the county authorities and MasTec.

Construction for the unbuilt sites also is on hold, pending final decisions in the court cases or a mutually agreeable arrangement between the local governments and MasTec that will free up the bond monies.