

COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF BLUEBIRD	)	
SOLAR LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY	)	CASE NO.
100-MEGAWATT MERCHANT ELECTRIC SOLAR	)	2021-00141
GENERATING FACILITY IN HARRISON	)	
COUNTY, KENTUCKY PURSUANT TO KRS	)	
278.700 AND 807 KAR 5:110	)	

ORDER

On June 23, 2023, Bluebird Solar LCC (Bluebird Solar) filed a motion requesting the Siting Board’s approval for an asset transfer to Harrison County Fiscal Court to effectuate the issuance of industrial revenue bonds (IRBs). Bluebird Solar indicated the transfer has been contemplated since the beginning of the project and was addressed in the Siting Board’s initial consideration of the case.<sup>1</sup>

BACKGROUND

Bluebird Solar filed an application to construct an approximately 100-megawatt (MW) merchant solar generating facility in Harrison County, Kentucky on February 4, 2022. The Siting Board issued an Order on August 3, 2022, that granted a certificate of construction conditioned upon full compliance with the mitigation measures contained in the Order.<sup>2</sup> In the August 3, 2022 Order, the Siting Board noted IRBs and Payment in

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<sup>1</sup> Motion for Approval of IRB Transfer (filed June 23, 2023) at 2.

<sup>2</sup> Order (Ky. Siting Board Aug. 3, 2023).

Lieu of Taxes (PILOT) agreements were being considered by Bluebird Solar and the Harrison County Fiscal Court.<sup>3</sup>

### PROPOSED TRANSACTION

Bluebird Solar indicated that the Harrison County Fiscal Court adopted a bond inducement resolution on July 10, 2018.<sup>4</sup> The IRBs will have a term of up to 30 years and will be issued in an aggregate not to exceed \$220,000,000.<sup>5</sup> Bluebird Solar created a wholly owned special purpose entity, Bluebird Solar Investments LLC (Bluebird Investments) that will purchase the IRBs. Bluebird Solar will transfer title of its assets to the Harrison County Fiscal Court and then lease back the assets for thirty years. After ensuring necessary third-party financing, Harrison County Fiscal Court will enact a Bond Ordinance. The Bond Ordinance will allow the Harrison County Fiscal Court to issue and sell the IRBs and approve the execution, delivery, and acceptance of: a lease agreement between Harrison County Fiscal Court and Bluebird Solar; a bond purchase agreement between the Harrison County Fiscal Court and Bluebird Investments detailing the issuance, sale, and delivery of the IRBs to Bluebird Investments; a PILOT Agreement requiring Bluebird Solar to make payments to local government during the term of the bonds; and, any other related or necessary documents.<sup>6</sup>

Following the Bond Ordinance's enactment, Bluebird Solar, Bluebird Investments, and Harrison County Fiscal Court will close on the IRB financing. Bluebird Investments

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<sup>3</sup> Order (Ky. Siting Board Aug. 3, 2022) at 17.

<sup>4</sup> Motion for Approval of IRB Transfer at 2.

<sup>5</sup> Motion for Approval of IRB Transfer at 2.

<sup>6</sup> Motion for Approval of IRB Transfer at 3.

will purchase the IRBs and the proceeds of the sale will be paid to Bluebird Solar as the costs incurred for developing and constructing the project.<sup>7</sup> Pursuant to the lease agreements in the IRB process, Bluebird Solar will lease back the project from the Harrison County Fiscal Court for 30 years. The lease payments will equal the amount necessary to amortize the IRBs over the term.<sup>8</sup> Bluebird Solar's obligation to make lease payments will be used as security for the repayment for the IRBs, the Harrison County Fiscal Court will assign to Bluebird Investments the right to receive lease payments.<sup>9</sup> After the assignment to Bluebird Investments, the Harrison County Fiscal Court will not be involved in the leases or development of the project.<sup>10</sup>

When the bonds mature, Bluebird Solar will pay off any remaining principal and interest on the IRBs to discharge the debt.<sup>11</sup> The lease agreement then obligates the Harrison County Fiscal Court to transfer the title of the project back to Bluebird Solar for a *de minimis* payment.<sup>12</sup> The bond documents will also provide Bluebird Solar the right to pay off and discharge the IRBs and reacquire title to the project at any time.<sup>13</sup>

### DISCUSSION AND FINDINGS

Based upon the motion and being otherwise sufficiently advised, the Siting Board finds Bluebird Solar's motion should be granted. Bluebird Solar stated the transfer of title

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<sup>7</sup> Motion for Approval of IRB Transfer at 3.

<sup>8</sup> Motion for Approval of IRB Transfer at 3.

<sup>9</sup> Motion for Approval of IRB Transfer at 3.

<sup>10</sup> Motion for Approval of IRB Transfer at 3.

<sup>11</sup> Motion for Approval of IRB Transfer at 4.

<sup>12</sup> Motion for Approval of IRB Transfer at 4.

<sup>13</sup> Motion for Approval of IRB Transfer at 4.

of the project's assets is to effectuate the IRB and PILOT Agreement. Harrison County Fiscal Court will have title to the project and its assets, however through the lease documents and bond provisions Bluebird Solar will retain control of the project. The Siting Board has a statutory duty to ensure any entity that acquires a merchant solar generating facility or the certificate of construction for a merchant solar generating facility must have the financial, technical, and managerial capacity to construct the project and comply with all mitigation measures imposed by the Siting Board.<sup>14</sup> In the present case, there is no reason to address the financial, technical, and managerial capacity of the Harrison County Fiscal Court, because it will have no interest in the project. The transfer in this case is only to secure an IRB and PILOT Agreement with the Harrison County Fiscal Court. Bluebird Solar will remain in control of the project and will still be required to comply with all mitigation measures imposed by the Siting Board.

IT IS THEREFORE ORDERED that:

1. Bluebird Solar's motion to approve a transfer of the projects assets to effectuate IRB financing is approved.
2. Bluebird Solar shall file a copy of the IRBs, lease agreements, assignments, and any other documents related to the agreement with Harrison County Fiscal Court with the Siting Board.

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<sup>14</sup> See Order (Ky. Siting Board Dec. 6, 2022), for a discussion of what the Siting Board must consider when making a determination to allow a transfer of the construction certificate pursuant to KRS 278.710.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

Chairman, Public Service Commission

Vice Chairman, Public Service Commission

Commissioner, Public Service Commission

by KAC  
w/permission

Secretary, Energy and Environment Cabinet,  
or her designee

Secretary, Cabinet for Economic Development,  
or his designee

ENTERED  
AUG 28 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

Executive Director  
Public Service Commission  
*on behalf of* the Kentucky State  
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and Transmission Siting

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