

Commonwealth of Kentucky
Before the Public Service Commission

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COMMISSION

In the Matter of:

Tariff Filing of East Kentucky Power Cooperative, Inc.)
and Its Member Distribution Cooperatives for)
Approval of Proposed Changes to their Qualified)
Cogeneration and Small Power Production Facilities)
Tariffs and the Implementation of Separate Tariffs for)
Power Purchases for Solar Generating Qualifying)
Facilities)

Case No. 2017-00212

JOINT APPLICATION FOR REHEARING

Pursuant to KRS 278.400, Bluebird Solar LLC (“Bluebird”) and Great Blue Heron Solar LLC (“Great Blue”), hereby jointly apply for rehearing of the Commission’s Order entered on September 22, 2017, which denied Applicants’ respective motions to intervene. This Application requests rehearing on an issue addressed in the Order which may be dispositive, but about which the Order makes critical omissions and mistakes — the existence of an LEO for Bluebird and for Great Blue.¹ The Commission has gone astray in its reasoning as to the existence and effect for each Applicant of a legally enforceable obligation under 18 C.F.R. §292.304 (“LEO”). Furthermore, the Commission has made erroneous findings and conclusions without acknowledging or considering the FERC Order issued September 7, 2017, in Docket No. QM17-5-00 (filed in this record on September 8, 2017) or the 9/21/17 Notice by Bluebird Solar LLC of FERC Ruling Affecting Intervention Request (“Bluebird Notice”), and after receiving *ex parte* communications

¹ There are a number of other substantive and procedural (due process) deficiencies in the Order, *e.g.*, the position that any intervention other than by the Attorney General is permissive (p.4), the lack of any analysis for the conclusory finding that intervention “would unduly complicate and disrupt the proceedings” (p.5), *ex parte* communications preceding the Order, and the failure to include the Applicants on the Order’s service list. These should be addressed in any active rehearing of the denial of intervention or in a KRS 278.410 review action to vacate or set aside the Order.

from a representative of East Kentucky Power Cooperative, Inc. (“EKPC”) about the FERC Order on the issue of LEOs.

Specifically, Applicants request that the Commission, on rehearing, modify the 9/22/17 Order to determine that Bluebird and Great Blue each has an LEO that predates June 9, 2017, because there is no state law restriction barring formation of the LEO and, therefore, Applicants’ interests and issues are with the existing tariff and not the proposed, revised tariff. In the alternative, if the Commission holds that there is a possibly-applicable state-law restriction, then the relief requested is that the affected Applicant(s) be given notice of the possibly-applicable state-law restriction(s) and an opportunity to make a factual or legal showing about any such restriction’s applicability. In further support of this Application, Bluebird and Great Blue incorporate the Bluebird Notice and state as follows:

1. The 9/22/17 Order makes critical omissions and mistakes about the nature and existence of an LEO for each Applicant and the effect on its intervention request of having an LEO.

1.1. The 9/22/17 Order does not mention the FERC Order, despite FERC’s findings and conclusions about LEOs and the *ex parte* discussions (reflected in the filing made by the Commission in this case the day before) about the FERC Order’s LEO statements.

1.2. The 9/22/17 Order does not mention the Bluebird Notice filed the day before, dispute the points made therein relating to Bluebird’s LEO, or consider the applicability of those points to Great Blue’s LEO.

1.3. The 9/22/17 Order states (p.4): “Movants’ expressed interests in the rates and terms of EKPC’s proposed tariff are predicated on their respective claims that they have created legally enforceable obligations to sell power to EKPC.” As shown in the Bluebird Notice (pp. 4-

5 ¶¶ 5,6, pp. 8-10 ¶¶ 13, 15), this is exactly backwards. Furthermore, Applicant’s respective motions to intervene showed expressly how their interests were affected by disputes or uncertainty about the existence or timing of their respective LEOs.

1.4. The 9/22/17 Order does not cite the FERC finding that: “Barring any restrictions under state law, Bluebird ... would be grandfathered such that Commission approval of this Application would not include Bluebird....” FERC Order p.8 ¶21 (emphasis added). It subverts that finding, however, by requiring that a QF provide support —

under either Kentucky law or Commission precedent, to demonstrate that their respective solar QF projects have created legally enforceable obligations based on offers to negotiate contracts to sell their output to EKPC.

9/22/17 Order p.5.² It does not mention any “barring ... restrictions under state law” or make findings or conclusions that any such restriction is applicable here.

1.5. The 9/22/17 Order presumes that neither Applicant has an LEO in finding (p. 4) that “neither Great Blue nor Bluebird Solar receives service from EKPC, pays any rates to EKPC, or is a customer of EKPC.” An LEO is sufficient, although not necessary, to trigger coverage under the Purchasing tariff. *See* Bluebird Notice pp.7-8 ¶11.

2. In their filings in the EKPC’s termination petition proceeding, FERC Docket No. QM17-5-000, EKPC, Bluebird, and solar-energy QF Blue Jay Solar LLC (“Blue Jay”), argued the issue of whether and when Bluebird and Blue Jay had an LEO. The FERC Order (p.7 ¶19) states that it will grandfather any LEO that exists prior to the termination effective date (June 9, 2017). It then finds that Bluebird and Blue Jay “potentially established” an LEO as of the date each “notified East Kentucky of its intent to sell its output to East Kentucky pursuant to PURPA” — December 5, 2016, and March 8, 2017, respectively. The one condition/proviso that FERC

²The 9/22/17 Order (p.5) also refers to “a determination of whether its proposed QF solar project qualifies as a legally enforceable obligation under 807 KAR 5:054, Section 7(4)(b).”

found would keep the “potentially established” LEOs from arising would be “any [barring] restrictions under state law.” *Id.* p.8 ¶21.

2.1. As discussed in the Bluebird Notice (pp. 3-5, ¶¶ 4-6), the date an LEO arises has two separate functions here. It affects whether a QF like Bluebird, with more than 20 MW net capacity, is grandfathered and so is not included in the termination of EKPC’s purchase requirement under 16 C.F.R. §292.303(a). *See* FERC Order p.8 ¶21. It also affects the purchase rates. Under FERC’s regulations, a QF may opt to provide energy or capacity “pursuant to a legally enforceable obligation for delivery over a specified term” with rates based on the “avoided costs calculated at the time the obligation is incurred.” 16 C.F.R. §292.304(d)(2)(ii).

2.2. FERC has held that establishment of an LEO “turns on the QF’s commitment and not the utility’s actions.” Declaratory Order, *FLS Energy, Inc.*, 157 FERC ¶ 61,211 (2016) p. 9 ¶24. “[A] QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.” Order Denying Application to Terminate, *Virginia Electric and Power Co.*, 151 FERC ¶ 61,038 (2015) p.12 ¶25.. “Barring any restrictions under state law,” a commitment to sell the QF output to EKPC created an LEO under 16 C.F.R. § 292.304(d).

2.3. In its *ex parte* email dated September 19, 2017, EKPC disputes the obvious import of the text of the FERC Order — that EKPC is “still on the hook” for purchasing from the Bluebird and Blue Jay QFs³ — and gives its “take on things so you can share our thoughts with others at the Commission.” The EKPC email does not identify, describe, or posit any barring

³ The email refers to an “attached RTO Insider article about the [FERC] decision,” which may be titled, “Still on the hook for 2 QFs.” There evidently was an attachment to the email, but it has not been included in the filing made by this Commission.

restrictions under state law. It acknowledges that “there are prior orders in which FERC has stated that a QF that commits in writing (such as in a letter to the utility) to sell its output to the utility creates a LEO for the utility to purchase the QF's output.” EKPC’s “take” is that “FERC’s conclusion regarding the two QFs’ asserted LEOs appears to directly contradict” Order No. 688 and QF regulations. EKPC evidently thinks that FERC is wrong about grandfathering Bluebird and Blue Jay, but that “take” confirms that the FERC Order indeed does hold that the two QFs have LEOs that predate June 9, 2017, “[b]arring any restrictions under state law.”

3. There are no barring restrictions under Kentucky law. EKPC has not pointed to any statute, regulation, or case law to the contrary, and none such is identified in the 9/22/17 Order. This Commission’s regulations are silent on the question of whether and when an LEO arises, and do not specify any restriction or precondition on the formation of an LEO.

3.1. State law may add restrictive LEO preconditions to the general federal standard — hence, the proviso in the FERC Order that Bluebird and Blue Jay have grandfathered LEOs “[b]arring any restrictions under state law.” FERC and the states (usually through their utility regulatory commissions) thus have complementary functions in the implementation and enforcement of PURPA mandates.⁴ This cooperation may lead to different standards or preconditions for LEOs in the various states; however, a particular state standard is part of (not different from) the federal standard for that state and cannot be in conflict with PURPA or the baseline federal standard.

3.2. States may not adopt policies that prevent formation of LEOs or an LEO requirement that gives the purchasing utility veto power over LEO formation. Examples of stan-

⁴ See, e.g., 16 U.S.C. § 824a-3(a), (f)(i) (requiring FERC, after consultation with state regulatory representatives, to prescribe rules, and state regulatory authorities to implement the rules “for each electric utility over which it has ratemaking authority”)

ards or prerequisites that have been declared to be inconsistent with PURPA requirements and implementing regulations are an Idaho PUC determination that a purchase power agreement must be executed by both parties before an LEO arises, Declaratory Order, Cedar Creek Wind, LLC, 137 FERC ¶ 61,006, (Oct. 4, 2011) pp. 11-12 ¶30, and a Montana PSC standard requiring both a facilities study and an interconnection agreement as a predicate for an LEO, *FLS Energy, Inc.*, 157 FERC ¶ 61,211, p.8 ¶20.

3.3. Kentucky has not enacted or implemented additional restrictions or preconditions for an LEO. This Commission’s regulation “to encourage cogeneration and small power production by requiring electric utilities to ... purchase electricity from such facilities, 807 KAR 5:054, does not define the term “legally enforceable obligation,” or set standards for how or when it arises. It uses the term only in connection with the rates for power purchases (*id.* Section 7), and contains a provision for rate options for QFs with design capacity over 100 kilowatt (*id.* Section 7(4)(b)) that is complementary to 16 C.F.R. §292.304(d)(2). Section 7 compels the purchase of power by electric utilities, an element emphasized by the use of the mandatory “shall,”⁵ but also by the provision that the regulation “is not intended to restrict voluntary agreements between qualifying facilities and electric utilities.” 807 KAR 5:054, Section 9.

3.4. The current tariffs for Purchasing Electric Power and Energy at Various Locations throughout Kentucky from Qualified Cogeneration and Small Power Production Facilities — P.S.C. Ky. No. 8 for EKPC and part of P.S.C. Ky. No. 2 for Bluegrass Energy Coop. Corp. — do not have any disqualifying criteria or “barring” restrictions. These Purchasing tariffs refer to 807 KAR 5:054, set out baseline rate schedules, and provide other terms and conditions. They also set parameters for negotiations and provide for execution of “a contract with East Ken-

⁵ For example: “Each electric utility shall provide a standard schedule for qualifying facilities with design capacity over 100 kilowatts.” 807 KAR 5:054, Section 7(4).

tucky Power Cooperative and one of EKPC's member for the purchase of electric power by East Kentucky Power Cooperative." *See, e.g.*, EKPC Tariff 6th Revised Sheet No.1. The conditions anticipate applicability at an early stage, governing a QF's design, construction, and installation as well as its operation and maintenance, and excluding QFs "proposing to supply" as-available power from entitlement to a capacity payment. *See id.* 4th Revised Sheet Nos. 2-3. Neither the tariff nor any of its provisions depend on whether the QF does or does not have an LEO. Although the tariff makes purchase transactions "[a]vailable only to ... [QFs] which have executed a contract," it is consistent with, and supports, existence of an LEO before a contract is executed for a QF proposing or committing to supply power to EKPC.

3.5. Obligations are "legally enforceable" if there is some adjudicative process by which they may be specifically enforced or another remedy obtained for their breach. For a committed QF, the utility's obligations include purchasing at rates in accordance with federal and state mandates. The QF may obtain specific enforcement of those obligations through the utility's state regulatory agency, FERC, or the courts. For example, if the QF and utility do not agree on purchase rates, the QF may enforce the utilities' obligation to pay a rate based on avoided cost by asking this Commission to determine the rate. 807 KAR 5:074, Section 7(4). The enforceability of this obligation pre-exists the request to the Commission; seeking enforcement (or not) does not affect the underlying enforceability of the obligation.

3.6. It should also be pointed out that the federal standard construing a reciprocal commitment by a utility to purchase from the QF commitment to sell establishes the mutual obligation that is the core of an enforceable contract. *See Kovacs v. Freeman*, 957 S.W.2d 251, 254 (Ky. 1997). Under Kentucky law, to be enforceable as a contract, an agreement must also contain definite and certain terms setting forth the promised performance to be rendered by each

party. *Kovacs*, 957 S.W.2d at 254; *Quadrille Business Sys. v. Ky. Cattlemen’s Association, Inc.*, 242 S.W.3d 359, 364 (Ky. App. 2007).⁶ EKPC’s tariff makes a QF’s commitment very well-defined: It must sell all its power to EKPC, provide good-quality power, and operate and maintain the facility to identified written standards. *See* EKPC Tariff 4th Revised Sheets No. 2-3. The tariff specifies baseline rates for the purchase obligation, and the regulation provides a process for reaching definite rates from those baselines. Thus, Kentucky law might enforce EKPC’s obligations as an express contract in these circumstances.⁷ *See, e.g., Kentucky Utilities Co. v. PSC*, 252 S.W.2d 885, 896 (Ky. 1952) (holding that utility regulatory law was part of the contract).

4. Bluebird set out the facts relating to its commitment to EKPC and attempts to negotiate a formal contract in its Motion to Intervene and the Bluebird Notice. EKPC does not dispute the facts about Bluebird, its commitment, or what else it has done toward negotiating a signed purchase power agreement — only the characterization or conclusion from those facts that Bluebird has an LEO.

4.1. As is described and supported at greater length in its earlier filings, Bluebird notified EKPC by 12/5/16 email that it had self-certified, was in the PJM interconnection queue, and, as discussed the previous Friday (12/2/16), “wants to sell all of its output to [EKPC].” *See* Bluebird Notice Exh.A. It is to this commitment notification that FERC refers in finding that Bluebird is grandfathered, barring any restrictions under state law. FERC Order p.8 ¶21.

4.2. Subsequent Bluebird actions and exchanges with EKPC are described and supported at greater length in its earlier filings. *See, e.g.,* Bluebird Notice pp. 5-6 ¶¶ 7-9 &

⁶ Clear and definite terms are required “so that the court can measure the damages in the event of its breach.” *Quadrille*, 242 S.W.3d at 364.

⁷ A Kentucky court might also treat the commitment, negotiations, tariff, and regulations as a contract “implied by law” to permit restitution or recovery “as if promises were made,” *Perkins v. Daugherty*, 722 S.W.2d 907, 909 (Ky. App. 1987).

Exhs. B-D. Even if anything beyond Bluebird's 12/5/16 commitment were required, EKPC's response sending the Blue Grass Energy tariff, Bluebird's attempt to negotiate final purchase rates and terms from the tariff baseline, and its "unsolicited" offer for the purchase of 80 MW would more than suffice. In addition, Bluebird's election of option (ii) in 16 C.F.R. §292.304(d), *see* 12/16/16 letter (Bluebird Notice Exh.B), made all of the essential elements of a purchase agreement sufficiently well-defined for possible enforceability of EKPC's obligations as an express contract. See ¶ 3.6 above.

4.3. The currently-effective Purchasing rate schedule covers Bluebird, which is a small power production facility with a design capacity over 100 kW, and has committed to sell all the power from the QF only to EKPC. The applicability of the tariff was emphasized by EKPC's sending the Blue Grass Energy tariff in response to Bluebird's formal commitment to sell its power to EKPC. Negotiations and offers by Bluebird have focused on the rates and other terms and conditions of the tariff, and have been consistent with the tariff. Unlike under an energy distribution tariff, it is the utility who receives and pays, and the customer (Bluebird) who delivers and is paid under the Purchasing tariff. The services to be received from EKPC relating to the tariff are negotiation of a written contract and interconnection services.

5. In its Motion to Intervene, Great Blue set out facts relating to its commitment to EKPC and its attempts to negotiate a formal contract. EKPC does not dispute the facts about Great Blue, its commitment, or what else it has done toward negotiating a signed purchase power agreement — only the characterization or conclusion from those facts that Great Blue has an LEO. Because Great Blue's solar project's net capacity is not over 20 MW, the FERC Order does not terminate the mandatory purchase obligation for that QF, regardless of whether or when it had an LEO. See FERC Order p.7 ¶18 n.25. However, like the Blue Jay QF, Great Blue "pro-

vided notice to East Kentucky of its commitment to sell its output to East Kentucky pursuant to PURPA” on March 8, 2017. FERC Order p.8 ¶21. Thus, Great Blue also has an LEO that pre-dates June 9, 2017.

5.1. Great Blue sent a letter to EKPC (with a copy to its attorneys) on March 8, 2017, in which it notifies Great Blue that it had self-certified as QF and “commits to sell all of its output to East Kentucky....” A copy of the 3/8/17 letter is attached as Exhibit 1. Great Blue declares that the commitment creates an LEO, chooses the subsection (ii) option in 16 C.F.R. §292.304(d), and expresses a wish “to initiate a discussion on the power purchase agreement.” This letter includes all the substantive elements of the 12/5/16 Bluebird email to which FERC refers in finding that Bluebird is grandfathered because it had an LEO, barring any restrictions under state law. *See* FERC Order p.8 ¶21. EKPC acknowledged the letter and that, “in accordance with its obligations under PURPA, EKPC is willing to discuss a power purchase agreement for the purchase of Great Blue Heron Solar’s electrical output.” 3/10/17 EKPC email, attached as Exhibit 2.

5.2. Subsequent Great Blue actions and exchanges with EKPC are described in its Motion to Intervene (see p.2 ¶2). It is noteworthy that even though Great Blue declared in the 3/8/17 letter that it had an LEO and then had an in-person negotiation meeting at EKPC’s headquarters in mid-May, EKPC did not mention until mid-July 2017 that it did not recognize an LEO for Great Blue. Furthermore, although Great Blue specifically asked, EKPC has declined to state what it considers to be an LEO or how it is created. *See* 8/3/17 Great Blue letter attached as Exhibit 3; 8/16/17 EKPC letter attached as Exhibit 4. Negotiations have continued, but no final

power purchasing agreement has been reached.⁸ As in Bluebird's case, assuming *arguendo* that the commitment of all its output were not enough, these subsequent developments would suffice for Great Blue to have an LEO. Therefore, even if a Great Blue LEO did not exist as of March 8, 2017, an LEO has arisen before now.

5.3. The 3/8/17 Great Blue letter established the chief prerequisites for coverage under the Purchasing tariff (*i.e.*, small power production facility with a design capacity over 100 kW, committed to sell all the QF power only to EKPC). Negotiations and offers by Great Blue have focused on the rates and other terms and conditions of the tariff, and have been consistent with the tariff. Thus, as for Bluebird (see ¶4.3 above), the current Purchasing tariff applies and covers Great Blue's commitment.

6. With existing LEOs and their election of the option in 16 C.F.R. §292.304(d)(2) (ii), Bluebird's and Great Blue's interests focus on the currently-effective tariffs and negotiating a purchase contract from the tariff's minimums and baselines. An LEO would leave Bluebird and Great Blue without the special interests in this proceeding that would support intervention and would shift the balance of benefits and burdens relating to the presentation of facts and issues toward a conclusion that intervention would unduly complicate this proceeding.

6.1. The effect of having an LEO on the grounds for intervention is explained in Bluebird Notice (*see esp.* pp. 9-10, ¶¶ 13-15). The gist of that presentation is practical: Although not perhaps necessary, an LEO is certainly sufficient to "lock in" the currently-effective tariff. If the current tariff is locked in, the tariff customer (Bluebird or Great Blue) cannot be affected by the proposed revisions that are the subject of this tariff proceeding.

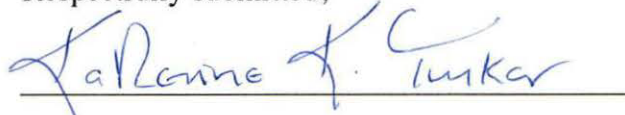
⁸ Geenex Solar LLC (Great Blue's manager-owner) and EKPC have entered into a confidentiality and non-disclosure agreement dated May 16, 2017, which limits disclosure of information received in connection with the negotiations and the proposed transaction. Great Blue therefore has not attached any communications of substantive information, offers, or other negotiations.

6.2. On the other hand, the specific interest is obvious if, for example, Great Blue does not have an existing LEO. Great Blue would be at risk that provisions of the proposed tariff would be approved in the midst of its negotiations toward a formal power purchase agreement. Its election of 18 C.F.R. §292.304(d)(2)(ii) rates, “calculated at the time the obligation is incurred,” may then refer to the revised “rates” proposed by EKPC, which are real-time values for energy and values “for the applicable capacity auction.” See proposed new EKPC sub-tariff for “Cogeneration and Small Power Production Power Purchase Rates Schedule from Solar Generation,” Original Sheet Nos. 7-8. This specific interest — held only by a solar QF — is not represented at all in this tariff proceeding. The utility parties are proponents of these revisions; the Attorney General, by and through his Office of Rate Intervention, represents “consumers’ interests,” which is generally understood to mean the interest of rate payers, not rate receivers like a QF under the Purchasing tariff.

CONCLUSION

WHEREFORE, Applicants Bluebird Solar LLC and Great Blue Heron Solar LLC each respectfully requests that the Commission, on rehearing, modify the 9/22/17 Order to find that each has an LEO and for that reason should be denied full intervention in this proceeding addressed to proposed tariff revisions.

Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 29th day of September, 2017, the original and 10 copies of the foregoing were filed by hand-delivery to the Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that a copy of the foregoing was served by mailing it via first-class U.S. Mail, postage prepaid, to the addressees listed on the attached Service List.



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704-817-0397

March 8, 2017

Mr. David Crews
East Kentucky Power Cooperative Inc.
4775 Lexington Road
PO Box 707
Winchester, KY 40392
David.Crews@ekpc.coop

RE: Great Blue Heron Solar LLC - Purchase of Electric Output

Dear Mr. David Crews,

I wish to inform you that Great Blue Heron Solar LLC has self-certified as a qualifying facility. Please see the attached Ferc Form 556. Great Blue Heron Solar LLC ("Great Blue") is a 20 MW Solar Facility and commits to sell all of its output to East Kentucky Power Corporation Inc. ("EKPC"). This commitment creates a legally enforceable obligation under §292.304 of PURPA. Great Blue is choosing to establish a legally enforceable obligation in accordance with §292.304 (d)(ii). We wish to initiate a discussion on the power purchase agreement.

Kind Regards,

A handwritten signature in black ink that reads 'G. Veit'.

Georg Veit
Manager
Great Blue Heron Solar LLC
Georg.veit@geenexsolar.com
(408) 353-0010

Cc:

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Exhibit 1

drobichaud@qf-solutions-llc.com

From: David Crews <David.Crews@ekpc.coop>
Sent: Friday, March 10, 2017 4:15 PM
To: Georg Veit
Cc: allison.speaker@sutherland.com; Frank, Dan; David Smart; Donna Robichaud; David Samford
Subject: Great Blue Heron Solar LLC and Blue Jay Solar LLC

Dear Mr. Veit – Thank you for your March 8 letters regarding the requests of Blue Jay Solar LLC and Great Blue Heron Solar LLC to sell their output to EKPC. As you know, EKPC has applied to FERC to terminate EKPC’s obligation to purchase power from QFs larger than 20 MW. While EKPC’s petition is pending with FERC, EKPC’s purchase obligation is temporarily suspended.

Blue Jay Solar LLC’s QF project has a net capacity of 60 MW, according to its Form 556 notice of QF self-certification. Accordingly, EKPC is not obligated to purchase power from Blue Jay Solar at this time.

Great Blue Heron Solar LLC’s QF project has a net capacity of 20 MW, according to its Form 556 notice of QF self-certification. EKPC’s purchase obligation is not suspended for QF projects that are 20 MW or less. As a result, and in accordance with its obligations under PURPA, EKPC is willing to discuss a power purchase agreement for the purchase of Great Blue Heron Solar’s electrical output. Please contact me to arrange a date and time to meet at EKPC’s offices in Winchester, KY to discuss PPA terms.

Please let me know if you have any questions.

Kind regards,
David Crews



Geenex Solar LLC
1910 Abbott Street
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704-817-0397

August 3, 2017

Mr. David Crews
East Kentucky Power Cooperative Inc.
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Winchester, KY 40392
David.Crews@ekpc.coop

RE: Great Blue Heron Solar LLC – Purchase of Electric Output

Dear Mr. David Crews,

I received your letter dated July 13, 2017. Although your letter says that it “reiterates” EKPC’s position, we were previously unaware that EKPC does not recognize Great Blue’s Legally Enforceable Obligation (“LEO”). We disagree with this position; Great Blue created an LEO through the written letter sent to EKPC dated March 8, 2017. Given that you put this statement of EKPC’s position before you confirmed and expanded on our prior discussions of terms and conditions for a PPA, we think that it is important to understand what EKPC considers to be an LEO or how it is created. Please let us know as soon as possible, so that our negotiations may continue efficiently and effectively.

Regards,

A handwritten signature in cursive script that reads 'Douglas Schulte'.

Douglas Schulte
Director
Geenex Solar LLC

Exhibit 3



August 16, 2017

Via E-mail

Douglas Schulte
Geenex Solar LLC
1910 Abbott St., Suite 200
Charlotte, NC 28203

Re: Great Blue Heron Solar LLC – Purchase of QF Output

Dear Mr. Schulte:

Thank you for your letter dated August 4, 2017. In your letter, you state that Great Blue Heron Solar LLC (“Great Blue”) created, by Great Blue’s March 8, 2017 letter, a legally enforceable obligation (“LEO”) for East Kentucky Power Cooperative, Inc. (“EKPC”) to purchase Great Blue’s QF output, and you request that EKPC provide you with what EKPC considers to be an LEO or how one is created. EKPC acknowledges that it continues to have an obligation under the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”) to purchase the electrical output made available by QFs with a net capacity of 20 MW or less (like Great Blue, as shown in its Form 556 self-certification of QF status), but a letter expressing an intent to sell and preliminary discussions over possible power purchase agreement (“PPA”) terms do not constitute an LEO under applicable federal and state law.

Please let us know if you have any questions or wish to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Crews', written over a light blue horizontal line.

David Crews
Sr. Vice President, Power Supply

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Exhibit 4