

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF SEBREE	)	
SOLAR, LLC FOR A CERTIFICATE TO	)	
CONSTRUCT AN APPROXIMATELY 250	)	
MEGAWATT MERCHANT SOLAR ELECTRIC	)	
GENERATING FACILITY AND AN	)	CASE NO.
APPROXIMATELY 4.5 MILE NONREGULATED	)	2021-00072
ELECTRIC TRANSMISSION LINE IN	)	
HENDERSON COUNTY, KENTUCKY AND	)	
WEBSTER COUNTY, KENTUCKY PURSUANT	)	
TO KRS 278.700 AND 807 KAR 5:110	)	

ORDER

This matter is before the Siting Board upon a motion for rehearing filed on March 1, 2022, by Sebree Solar, LLC (Sebree Solar) for reconsideration and clarification of certain mitigation requirements imposed by the Siting Board's February 9, 2022 Order (Final Order) that conditionally approved a certificate to construct an approximately 250-megawatt (MW) merchant solar generating facility in Henderson and Webster counties. Sebree Solar indicated rehearing on eight of the conditions in the Final Order is necessary to prevent unnecessary costs, delay, or inefficiency in the development of the project.

DISCUSSION AND FINDINGS

Compatibility with Scenic Surroundings

Mitigation Measure 8 requires Sebree Solar to plant native evergreen species as a visual buffer to mitigate viewshed impacts. Sebree Solar requested this mitigation measure be amended to recognize the fact that the Henderson City-County Planning

Commission has already approved of the site plan, including changes that were made after consulting with the Henderson County Codes Administrator.<sup>1</sup> Sebree Solar requested additional language be added to this mitigation measure to state that the vegetative screening plan be consistent with the local regulations and the site plan approved by the Henderson City-County Planning Commission.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board in reviewing this mitigation measure, declines to amend Mitigation Measure 8. The mitigation measure as it appears in the Final Order is the baseline of what Sebree Solar must provide in its vegetative screening. The fact that the local regulations require a more stringent vegetative screening does not necessitate the Siting Board changing its Order. Additionally, if the local requirements are changed to eliminate a requirement for vegetative screening, then the mitigation measure as ordered will continue to minimize viewshed impacts to neighboring landowners.

Sebree Solar also requested reconsideration of Mitigation Measure 10, which requires Sebree Solar to provide a vegetative buffer “to the satisfaction of” the affected property owners with a line of sight to the solar facility. Sebree Solar argued that the Henderson City-County Planning Commission process was designed to give neighboring landowners the ability to participate and voice their concerns with the vegetative screening. Sebree Solar stated that if the Siting Board does not amend the condition of satisfying neighboring landowners, then the Siting Board undermines the local government process. Sebree Solar also argued that creating a vegetative buffer to the

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<sup>1</sup> Motion for Rehearing (filed Mar. 1, 2022) at 3.

satisfaction of the neighboring property owners could lead to having to satisfy unreasonable demands of neighbors.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that “to the reasonable satisfaction of affected adjacent property owners” shall not be removed from Mitigation Measure 10. The process and local ordinances can provide different requirements that Sebree Solar must comply with in order to construct the solar facility. The Siting Board is not required to substitute its judgment for that of Henderson City-County Planning Commission and make all of the mitigation measures exactly the same. The Siting Board found in the Final Order that the satisfaction of neighboring landowners with the vegetative buffer is an important consideration in the granting of the certificate of construction and will not change the mitigation measure solely because the local counties also require a vegetative screening plan. The Siting Board notes that issues arising from the obligation to provide a visual buffer can be brought back to the Siting Board by motion. If a nearby landowner is making what Sebree Solar feels are unreasonable demands, then Sebree Solar can file a motion with the Siting Board to determine whether the visual buffer proposed is in compliance with the mitigation measure.

#### Construction Limitations

Sebree Solar requested rehearing of Mitigation Measure 12, which relates to construction hours. Mitigation Measure 12 allows non-noise causing activities to occur between 7 a.m. through 10 p.m. Sebree Solar requested that non-noise causing activities be permitted to begin at 6 a.m.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that Mitigation Measure 12 should be amended to permit non-noise causing activities from 6 a.m. through 10 p.m. As opposed to other mitigation measures and issues dealt with in both the Siting Board's Final Order and the local requirements, hours of construction are a general issue that does not require specific experience and expertise. The local governing body may be given precedence on this issue.

Sebree Solar requested that the Siting Board delete Mitigation Measure 14 from the Final Order. Mitigation Measure 14 requires noise suppression if pile-driving occurs within 1,500 feet of a noise sensitive receptor. Sebree Solar requested that its mitigation measure of only notifying neighboring residents of pile-driving be implemented instead. Sebree Solar indicated that if it is required to use noise suppression during pile driving, then it would incur millions of dollars in additional construction costs. Sebree Solar also stated that the benefits of sound blankets are uncertain and the terrain with existing vegetation will provide sound mitigation.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 14 shall not be deleted or modified. KRS 278.701(1)(b) directs the Siting Board to consider the noise level during construction as a factor for the grant of a construction certificate. Throughout the application, site assessment report (SAR), the discovery process, and at the Formal Hearing Sebree Solar had opportunities to present evidence for the cost of various noise mitigation measures and its preference on which measure to use. Sebree Solar never presented any evidence

regarding sound mitigation<sup>2</sup> and merely stated in the Motion for Rehearing that using sound blankets or fencing would cost millions of dollars without any supporting information or evidence.<sup>3</sup> The Siting Board provided Sebree Solar with an alternative to these sound mitigation measures if it feels sound blankets or fencing is too costly, using an alternative racking system of ground mounting.

### Setbacks

Sebree Solar requested rehearing of Mitigation Measure 16, which requires setbacks of 150 feet from a residence, church or school; 25 feet from non-participating adjoining parcels; 50 feet from adjacent roadways; and 450 feet from residences, churches, or schools for the central inverter. Sebree Solar stated these setback requirements are more restrictive than the local ordinances and the local requirements should be given primacy. Additionally, Sebree Solar stated that the leases have already been signed for the project and this mitigation measure will require lease amendments.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that Mitigation Measure 16 shall not be amended. As stated previously, the local ordinances and the certificate to construct the solar facility from the Siting Board can provide different requirements Sebree Solar must comply with in order to construct the solar facility. The Siting Board has consistently required these setbacks in all orders granting a construction certificate regardless of the local county's setback requirements.

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<sup>2</sup> See Site Assessment Report (filed Aug. 13, 2021) at 10, Response to Siting Board Staff's First Request for Information (filed Oct. 15, 2021), Item 15, and Response to Consultant's Report (filed Dec. 12, 2021) at 3, for a discussion about the noise mitigation Sebree Solar requested to use through the pendency of the case.

<sup>3</sup> Motion for Rehearing at 7-8.

### Restriction on Future Transfers

Mitigation Measure 26 requires Sebree Solar to request approval from the Siting Board before ownership of the project is transferred. Sebree Solar argued this will impact NextEra Energy Resources LLC's ability to finance the project through traditional finance and tax equity financing. Sebree Solar argued this mitigation measure impairs the value of the construction certificate. Sebree Solar stated the Siting Board has no authority for this condition and the mitigation measure should be changed to only require notice to the Siting Board.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 26 shall not be modified. Solar developments are often sold to other companies during the planning, construction, and operation of projects. When a certificate to construct a solar facility is sought the project and the developers are thoroughly evaluated to ensure that the project will comply with all statutory and regulatory requirements. After the review, the construction certificate is granted on the condition of full compliance with all mitigation measures, some of which continue throughout the operation of the facility. Without a requirement for the Siting Board to approve a potential transfer of ownership of the project, the construction certificate could be transferred to a company without the financial, technical, or managerial capabilities that are necessary to construct or operate a solar facility under the imposed requirements, or to an owner without a good environmental compliance history. Therefore, the condition of Siting Board approval for a transfer of ownership shall remain.

### Decommissioning Obligations

Sebree Solar requested a modification of Mitigation Measure 28. This mitigation measure requires Sebree Solar to remove all facility components below ground during decommissioning. Sebree Solar stated that the local requirements and the individual leases only require decommissioning up to three feet underground and the decommissioning requirement from the Siting Board should be the same.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 28 shall not be modified. Mitigation Measure 28 was placed in the Final Order to ensure that Sebree Solar returns the land to its original use, to the extent possible, at the end of the Project's life. The returning the land back to its original state after decades of operation was an important part of the Siting Board's finding regarding the impact of the facilities on scenic surroundings, property values, and the economy. The relatively "temporary" nature of the facilities compared to other types of more permanent development, such as thermal merchant generation facilities, industrial operations, or housing, was a prime consideration of the Siting Board in granting a certificate, with conditions, in this matter. An inability or unwillingness to return the land back to its prior state after the life of the facility, including leaving underground facilities in excess of three feet, increases the permanence of the facility. As such, the Siting Board required the removal of all components above and below ground. Removal of all underground components and regrading or recompacting the soil for agricultural use will mitigate any damage to the land, thus returning the land to a state that provides at least as great of an economic impact as it did when the certificate to construct was granted. Sebree Solar presented no law or regulation in its argument that the existence of a local ordinance or leases abrogate the statutory rights

and responsibility of the Siting Board to ensure the proper decommissioning of the facility.<sup>4</sup> The Siting Board will not adopt the local requirements as it relates to decommissioning underground components.

Mitigation Measure 29 requires Sebree Solar to file a bond with the Henderson and Webster counties Fiscal Courts to ensure decommissioning. Sebree Solar requested Mitigation Measure 29 be amended to reflect the fact that there is already a decommissioning bond for the Henderson County portion of the project.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 29 shall not be amended. Mitigation Measure 29 contains the requirement that a bond be filed, with relevant processes and terms, such as the identification of beneficiaries, evidence of acceptance of the bond by the counties, and review of the bonds. There is no material benefit in amending the mitigation measure to reflect that one of the bonds has been posted.

IT IS THEREFORE ORDERED that:

1. Sebree Solar's motion for rehearing is granted in part and denied in part.
2. Sebree Solar's motion for rehearing on Mitigation Measures 8, 10, 14, 16, 26, 28, and 29 is denied.
3. Sebree Solar's motion for rehearing on Mitigation Measure 12 is granted. Mitigation Measure 12 in Appendix A to the Final Order is stricken and shall be replaced with the following:

Sebree Solar is required to limit the construction activity, process, and deliveries to the hours between 8 a.m. and 6 p.m., Monday through Saturday. Non-noise causing and non-construction activities can take place on the site between 6

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<sup>4</sup> Motion for Rehearing at 12.



a.m. and 10 p.m. Monday through Sunday, including field visits, arrival, departure, planning meetings, mowing, surveying, etc.

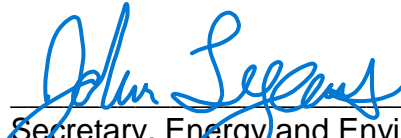
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KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

  
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Vice Chairman, Public Service Commission

  
Commissioner, Public Service Commission


  
Secretary, Energy and Environment Cabinet,  
or her designee

  
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or his designee

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ATTEST:

  
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Public Service Commission  
*on behalf of* the Kentucky State  
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