

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF SEBREE	)	
SOLAR II, LLC FOR A CERTIFICATE TO	)	
CONSTRUCT AN APPROXIMATELY 150	)	CASE NO.
MEGAWATT MERCHANT SOLAR ELECTRIC	)	2022-00131
GENERATING FACILITY IN HENDERSON	)	
COUNTY, KENTUCKY PURSUANT TO KRS	)	
278.700 AND 807 KAR 5:110	)	

ORDER

On April 18, 2023, Sebree Solar II, LLC (Sebree Solar II) filed an application with the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) seeking a Construction Certificate to construct an approximately 150-megawatt ground mounted solar photovoltaic electric generating facility (Project) comprising of approximately 900 acres of land in Henderson County, Kentucky located near Robards, Kentucky.

There are no intervenors in this matter. Pursuant to a procedural schedule established on May 15, 2023, Sebree Solar II responded to two rounds of discovery. A site visit was held on June 27, 2023. Siting Board consultant, Wells Engineering (Wells), filed its report (Wells Report) on August 7, 2023. Sebree Solar II submitted its response to the Wells Report on August 11, 2023. A formal hearing was held on August 17, 2023. Sebree Solar II filed its responses to post-hearing requests for information on September 5, 2023. The matter now stands submitted for a decision.

## LEGAL STANDARD

The filing requirements and standard of review for requests to construct a merchant generating facility are set forth in KRS 278.700 –.718.<sup>1</sup> KRS 278.704(1) requires that an application be filed and approved by the Siting Board before the construction of a merchant electric generating facility can commence. KRS 278.706 requires that the application include evidence of public notice and compliance with local planning and zoning ordinances.

KRS 278.708(2) requires Sebree Solar II to prepare a site assessment report (SAR) that includes (1) a detailed description of the proposed site; (2) an evaluation of the compatibility of the facility with scenic surroundings; (3) potential changes in property values and land use resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the site; (4) evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; (5) the impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility; and (6) any mitigating measures suggested by Sebree Solar II to minimize or avoid adverse effects identified in the SAR.

KRS 278.710(1) delineates the criteria on which the Siting Board will grant or deny the certificate, which includes (1) impact on scenic surroundings, property values, and surrounding roads; (2) anticipated noise levels during construction and operation of the

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<sup>1</sup> On June 29, 2023, the Kentucky General Assembly enacted modifications to KRS 278.704–KRS 278.710. The modifications to the statutes were not made retroactive by the General Assembly, so this application is reviewed under the laws as of the filing date.

facility; (3) economic impact on the region and state; (4) whether the proposed facility will meet all local planning and zoning requirements existing on the date the application was filed; (5) impact of the additional load on the reliability of jurisdictional utilities; (6) setback requirements; (7) efficacy of mitigation measures proposed by Sebree Solar II; and (8) whether Sebree Solar II has good environmental compliance history.

### PROPOSED FACILITY

The Project will be located on approximately 1,000 acres in an unincorporated area of Henderson County, near Robards, Kentucky. The Project will contain approximately 400,000 solar photovoltaic panels with associated ground-mounted racking, 51 inverters, and a substation transformer.<sup>2</sup> The Project will tap into an overhead 161 kV transmission line<sup>3</sup> that interconnects with the Big Rivers Electric Corporation (BREC) Reid EHV Substation.<sup>4</sup>

### DISCUSSION AND FINDINGS

#### **I. KRS 278.708: SAR Filing Requirements and Mitigation Measures**

##### Mitigation Measures Proposed by Sebree Solar II and Siting Board Consultant

As required by KRS 278.708(4), Sebree Solar II proposed various mitigation measures consistent with the statutes regarding traffic, noise, roadway preservation,

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<sup>2</sup> Application, Exhibit 2, unnumbered at 2.

<sup>3</sup> See Case No. 2021-00072, *Electronic Application of Sebree Solar, LLC for a Certificate to Construct an Approximately 250 Megawatt Merchant Solar Electric Generating Facility and An Approximately 4.5 Mile Nonregulated Electric Transmission Line in Henderson County, Kentucky and Webster County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:100*, (Ky. PSC Feb. 9, 2022), Order, for the Certificate of Construction for the nonregulated transmission line for which Sebree Solar II will interconnect.

<sup>4</sup> Application, Exhibit 2, unnumbered at 2.

permitting, setbacks, public safety, water protection, and scenic preservation.<sup>5</sup> In accordance with KRS 278.708(5), Wells recommended mitigation measures in the following areas: site development planning; compatibility with scenic surroundings; noise levels during construction and operation; road traffic and degradation; economic impacts; decommissioning; public outreach; and complaint resolution programs.<sup>6</sup> Sebree Solar II agreed with the mitigation measures recommended by Wells.<sup>7</sup>

The Siting Board has reviewed the mitigation measures proposed by Sebree Solar II and Wells, and finds that, in addition to those Sebree Solar II initially proposed, the mitigation measures set forth in Appendix A and discussed throughout this Order are appropriate and reasonable because they achieve the statutory purpose of mitigating the adverse effects identified in the SAR and the Wells Report in accordance with KRS 278.708.

#### Detailed Site Description

KRS 278.708(3)(a)(1–6) requires that the detailed site description in the SAR include a description of (1) surrounding land uses for residential, commercial, agricultural, and recreational purposes; (2) the legal boundaries of the proposed site; (3) proposed access control to the site; (4) the location of facility buildings, transmission lines, and other structures; (5) location and use of access ways, internal roads, and railways; and (6) existing or proposed utilities to service the facility.

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<sup>5</sup> Application, Exhibit 12, Attachment A, SAR at 11–12.

<sup>6</sup> Sebree II Solar Final Report from Wells Engineering (Wells Report) (filed Aug. 7, 2023) at 34.

<sup>7</sup> Sebree Solar II Response to Wells Report (filed Aug. 11, 2023).

Sebree II submitted the required SAR with its application.<sup>8</sup> The SAR contained a preliminary site plan,<sup>9</sup> which was updated during the pendency of the proceedings.<sup>10</sup> The site plan included participating parcels, existing roadways, transmission lines, gas pipelines, existing structures, and wetland features. The site plan also contained proposed features of the project including solar arrays, perimeter fencing, collector substation, visual screening, facility entrances, and access roads.<sup>11</sup> The substation will be located on the grounds of the Sebree Solar I project.<sup>12</sup> Sebree Solar II will interconnect to the Sebree Solar I substation with a collection system and collector substation.<sup>13</sup>

An approximately seven-foot security fence meeting the National Electrical Safety Code (NESC) will enclose the site.<sup>14</sup> A proposed vegetative buffer, approximately 20,127 feet in total length, will be planted in areas adjacent to non-participating residential properties and other areas around project boundary. The vegetative screening will include a mix of native trees and shrubs selected for the site conditions.<sup>15</sup>

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<sup>8</sup> Application, SAR, Exhibit 12, Attachment A.

<sup>9</sup> Application, Exhibit 12, Attachment A, Exhibit 3.

<sup>10</sup> Sebree II Solar's Responses to Siting Board Staff's Second Request for Information (Staff's Second Request) (filed July 21, 2023), Item 4.

<sup>11</sup> Application, Exhibit 12, Attachment A, Exhibit 3.

<sup>12</sup> See Case No. 2021-00072, *Electronic Application of Sebree Solar, LLC for a Certificate to Construct an Approximately 250 Megawatt Merchant Solar Electric Generating Facility and an Approximately 4.5 mile Nonregulated Transmission Line in Henderson County, Kentucky and Webster County, Kentucky Pursuant to KRS 278.700 and 807 KRS 5:100.*

<sup>13</sup> Application, Exhibit 7.

<sup>14</sup> Application, Exhibit 2 and Wells Report, Attachment A at 2.

<sup>15</sup> Application, SAR, Exhibit 12, Attachment A at 5.

The area has been used for agricultural and forestry purposes. The project will be bordered by agricultural land and scattered residential properties.<sup>16</sup> The SAR contained legal descriptions of the project's boundaries and participating parcels.<sup>17</sup> Currently the leases for the property to be used in the project are held by Sebree Solar I and Sebree Solar II.<sup>18</sup> Sebree Solar I intends to transfer the remaining landowner agreements to Sebree Solar II before construction on the project begins.<sup>19</sup> There are no residential neighborhoods within a two-mile radius of the project boundary. There are no hospitals or nursing homes within a two-mile boundary of the project, there is one school. However, the distance between the school and the project boundary does not necessitate any additional mitigation measures.

Having reviewed the record of this proceeding, the Siting Board finds that Sebree Solar II has complied with the requirements for describing the facility and a site development plan as required by KRS 278.708. However, the Siting Board finds that it is necessary to impose specific mitigation measures and requirements related to the description of the facility and the proposed site development plan. The Siting Board will require that Sebree Solar II keep the Siting Board apprised of changes throughout the development of the Project and, as such, will order Sebree Solar II to provide the final site plan before the commencement of construction. The final site plan should indicate and highlight any change, including those to the design and boundaries of the Project, from

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<sup>16</sup> Wells Report, Attachment A at 1.

<sup>17</sup> Application, Exhibit 2 and Wells Report, Attachment A at 2.

<sup>18</sup> Sebree Solar II's Response to Siting Board Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request) (filed Sept. 5, 2023), Item 6.

<sup>19</sup> Sebree Solar II's Response to Siting Board Staff's Post-Hearing Request, Item 6.

the proposed site plan provided to the Siting Board during the pendency of this matter. The Siting Board will also require Sebree Solar I to assign the leases to Sebree Solar II to ensure that the entity responsible for the mitigation measures is also the entity that holds the leases for the property to be used in the Project. Based on the findings and the recommendations contained in the Wells Report, the Siting Board finds that additional mitigation measures are required. These mitigation measures are outlined in Appendix A to this Order and, in particular, mitigation measures 1 through 9.

Additionally, even though this application was filed prior to June 29, 2023, the Siting Board shall require Sebree Solar II to comply with all the recently enacted requirements in KRS 278.710.<sup>20</sup> These new requirements that will be monitored by the Kentucky Energy and Environment Cabinet (EEC) and are related to decommissioning and continued compliance with all the mitigation measures in this order. However, the new requirements do not impose any additional burden on Sebree Solar II. The Siting Board's conditional approval of the construction certificate includes compliance with all mitigation measures in Appendix A, many of which mirror the new requirements in KRS 278.710.

#### Compatibility with Scenic Surroundings

Sebree Solar II indicated that the Project site is in an agricultural area of Henderson County.<sup>21</sup> The site is located on flat level terrain.<sup>22</sup> The view will be impacted primarily by solar panels. Sebree Solar II has indicated it will mitigate the visual impacts of the

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<sup>20</sup> See KRS 278.710 for all of the post-construction monitoring requirements of the Kentucky Energy and Environment Cabinet.

<sup>21</sup> SAR at 5.

<sup>22</sup> SAR at 5.

facility by utilizing the topography of the land and the addition of vegetative buffers.<sup>23</sup> There will also be a seven-foot security fence behind the vegetative screening to further mitigate the view of the panels.<sup>24</sup> Wells concluded the facility will be compatible with the scenic surroundings by adding vegetative buffers and other proposed mitigation.<sup>25</sup>

Having reviewed the record, the Siting Board finds that, while there will always be an impact on the scenery of neighboring properties, the impact of this Project will be minimal. The proposed vegetative buffer, along with other mitigation measures proposed by Sebree Solar II and Wells, will minimize the effect that the proposed facility will have on the scenic surroundings of the site. However, the Siting Board will require mitigation measures in addition to those proposed by Sebree Solar II. Those are set forth in Appendix A to this Order and, in particular, mitigation measures 10 through 14.

#### Impact on Property Values

Sebree Solar II submitted a property value impact report conducted by CohnReznick LLP (CohnReznick).<sup>26</sup> CohnReznick completed a paired sales analysis and a comparative study analyzing data from numerous solar facilities across the country of property values near solar facilities, and determined that this Project would not have an impact on the property values of abutting or adjacent residential or agricultural properties.<sup>27</sup> CohnReznick found no negative impact to property value for properties near

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<sup>23</sup> SAR at 5.

<sup>24</sup> SAR at 5.

<sup>25</sup> Wells Report at 32.

<sup>26</sup> See SAR, Attachment A, Exhibit 1-A; SAR Attachment A, Exhibit 1-B; and SAR, Attachment A, Exhibit 1-C.

<sup>27</sup> SAR, Attachment A, Exhibit 1-A at 4.



a solar farm, in either the short or long term.<sup>28</sup> CohnReznick indicated that the solar facility would function in a harmonious manner with the nearby surroundings, which is mostly agricultural, and that operation of the solar facility would not generate the level of noise, odor, or traffic impacts to negatively impact the nearby surroundings as compared to a fossil fuel generating facility or other industrial facility.<sup>29</sup>

Wells hired Clark Toleman, MAI-SRA to evaluate the report generated by CohnReznick.<sup>30</sup> Mr. Toleman analyzed the paired sales analysis prepared by CohnReznick and he found the proximity to a solar facility has a neutral impact on adjoining property values when proper setbacks and landscaped buffers are utilized.<sup>31</sup> Overall, the Wells Report found CohnReznick analysis to be credible and representative of the market conditions that would exist should the project be constructed.<sup>32</sup>

Having reviewed the record, the Siting Board finds that sufficient evidence to conclude that the proposed Sebree Solar II facility will not have any significant adverse impact on nearby property values as long as proper mitigation measures are implemented. The characteristics of the solar facility's operations are passive, and the facility will be temporary, with the land returned to its natural state after a few decades of operation. The facility does not produce any air, noise, waste, or water pollution, nor does it create any traffic issues during operations.

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<sup>28</sup> SAR, Attachment A, Exhibit 1-C at 135.

<sup>29</sup> SAR, Attachment A, Exhibit 1-C at 127.

<sup>30</sup> Wells Report, Attachment B.

<sup>31</sup> Wells Report, Attachment B at 7.

<sup>32</sup> Wells Report, Attachment B at 2.

### Anticipated Noise Level

Sebree Solar II's Noise Impact Assessment was completed by Environmental DNV Energy USA Inc. (DNV).<sup>33</sup> Construction of the Project will be conducted in phases: demolition/site preparation, pile driving, and foundation installation.<sup>34</sup> DNV used representative sound levels to evaluate the project from the United Kingdom Department for Environment construction noise prediction.<sup>35</sup> DNV estimated maximum equipment noise levels during construction will occur during pile driving, and is estimated to be less than 86.6 dBA at the nearest noise receptor.<sup>36</sup> Sebree Solar II stated construction and maintenance activities will generally occur from 8 a.m. through 6 p.m. Monday through Saturday and non-noise causing activities 6 a.m. through 10 p.m., Monday through Sunday.<sup>37</sup> Sebree Solar II makes reference to notifying residents in the vicinity about the start of construction and potential noise as their noise mitigation.<sup>38</sup>

DNV found operational noise will emanate from project solar inverters and the substation transformer.<sup>39</sup> DNV calculated sound levels for operational noise using the International Organization for Standardization standards.<sup>40</sup> DNV found operational sound

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<sup>33</sup> SAR, Attachment A, Exhibit 4.

<sup>34</sup> SAR, Attachment A, Exhibit 4 at 11.

<sup>35</sup> SAR, Attachment A, Exhibit 4 at 11.

<sup>36</sup> SAR, Attachment A, Exhibit 4, Noise Impact Assessment at 20.

<sup>37</sup> Sebree Solar II's Response to Staff's First Request, Item 23.

<sup>38</sup> SAR, Attachment A at 11

<sup>39</sup> SAR, Exhibit 12, Attachment A, Exhibit 4, Noise Impact Assessment at 14.

<sup>40</sup> SAR, Exhibit 12, Attachment A, Exhibit 4, Noise Impact Assessment at 14.

would range from 32.3 dBA to 51.1 dBA at the closest noise receptors.<sup>41</sup> DNV concluded that assumptions made in both the construction and operation assessment methodology can be considered conservative as actual measured sound levels from the Project's activities are expected to be generally lower.<sup>42</sup> Wells evaluated the noise study conducted by DNV and concluded that the Project's construction phase will produce the highest noise levels and that the noise generated from the operational phase of the project will produce 51.1 dBA at the nearest noise receptor.<sup>43</sup>

The Siting Board finds that noise from the construction phase will be intermittent and temporary but will be significant to the nearest residences. As indicated by both DNV and Wells Engineering, the noise will be loudest during the construction phase but will not be permanently damaging to nearby residents. The Siting Board further finds that the operational noise from inverters and the main transformer should have little-to-no effect on residences in the area.

Based on the case record, the Siting Board finds that Sebree Solar II's application is in compliance with the statutory requirements in disclosing noise levels. However, the Siting Board further finds that based on the entire record, to ensure the impact of construction noise does not unduly impact nearby residents, Sebree Solar II will be required to implement specific mitigation measures to ensure the impact of construction noise does not unduly impact nearby residents. The mitigation measures implemented by the Siting Board are designed to limit the effects of construction noise by controlling

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<sup>41</sup> SAR, Exhibit 12, Attachment A, Exhibit 4, Noise Impact Assessment at 20.

<sup>42</sup> SAR, Exhibit 12, Attachment A, Exhibit 4, Noise Impact Assessment at 20.

<sup>43</sup> Wells Report, Recommendations & Mitigations Measures, Mitigation Measures.

the hours of construction in general, as well as the time and manner in which pile driving can occur. The Siting Board will require Sebree Solar II to mitigate construction noise up to 1,000 feet to ensure the surrounding community is not negatively impacted by the construction noise. Sebree Solar II may forego noise suppression if it employs a panel installation method that does not involve pile driving, so long as the method does not produce noise levels similar to pile driving. These mitigation measures are further outlined in Appendix A to this Order and, in particular, mitigation measures 15 through 17.

#### Impact on Roads, Railways, and Fugitive Dust

Construction is anticipated to take 18 months.<sup>44</sup> During the construction period there will be additional traffic in the project area. There are three major roadways that will be used to access the project: Kentucky Highway 416 (KY 416) running east-west through the project site; Kentucky Highway 283 (KY 283) running north-south through the project site; and Kentucky Highway 1299 (KY 1299) running north-south through the project site.<sup>45</sup> Large delivery trucks and workers will travel to the site daily. Sebree Solar II stated these trucks, and the additional traffic from workers traveling to the site, should not degrade the roads around the project.<sup>46</sup> Sebree Solar II indicated it will adhere to all local and state requirements related to the repair of road infrastructure at the completion of construction.<sup>47</sup>

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<sup>44</sup> Sebree Solar II's Response to Commission Staff's First Request for Information (Staff's First Request) (filed June 16, 2023), Item 3.

<sup>45</sup> SAR, Attachment A, Exhibit 6 at 1.

<sup>46</sup> SAR, Attachment A, Exhibit 6 at 5.

<sup>47</sup> SAR, Attachment A, Exhibit 6 at 5.

During the operational phase of the project, a small maintenance crew will regularly travel through the area with pickup trucks.<sup>48</sup> Little to no impact on traffic is expected during operations.<sup>49</sup>

The Siting Board finds that traffic and road degradation issues can be addressed with Sebree Solar II's mitigation measures, the additional mitigation measures proposed by Wells, and mitigation measures set forth in Appendix A to this Order and, in particular, mitigation measures 19 through 27.

The Siting Board anticipates some fugitive dust from the construction phase. Sebree Solar II stated it will mitigate the dust from construction by revegetation, covering soil piles, and application of water as necessary.<sup>50</sup> Dust will not be a factor during the operations phase. The Siting Board requires additional mitigation to reduce any potentially harmful effects on the area, which are outlined in Appendix A to this Order. The Siting Board will require Sebree Solar II to inform the Siting Board and EEC of the date construction will commence 30 days prior to ensure the proper permits have been obtained and whether proper steps have been taken to comply with the mitigation measures set forth in Appendix A to this Order.

## **II. KRS 278.710(1) – Criteria**

### **Economic Impact on Affected Region and the State**

According to Sebree Solar II's economic impact report, the proposed solar facility will generate significant, positive, short-term, and long-term financial and fiscal impacts

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<sup>48</sup> SAR, Attachment A, Exhibit 6 at 6.

<sup>49</sup> SAR, Attachment A, Exhibit 6 at 6.

<sup>50</sup> SAR at 10.

on the affected region and the entire state. Such impacts include the creation of hundreds of construction jobs, expanding the local tax base, and the benefits of having a long-term employer and corporate citizen in the region that has a track record of investing in the communities it serves. The estimated capital cost of the facility is approximately \$225 million.<sup>51</sup>

During the Project construction phase, Sebree Solar II estimates that up to 200 workers will be hired over the 1.5-year construction period with a direct payroll of \$10 million. The indirect and induced effects are estimated to be an additional 58 jobs with an estimated payroll of \$1.48 million.<sup>52</sup> The vast majority of these jobs will be filled by craft workers and contractors, including managers, electricians, heavy equipment operators, installers, and fencers.<sup>53</sup> The Project contractor will optimize labor costs and leverage local labor market availability. The total direct, indirect, and induced economic impact is estimated to be 258 total full-time equivalent jobs in the county and new payroll of \$11.48 million.

The ongoing economic impact from the Project's operational phase is estimated to be very small relative to the one-time effects from the construction phase. The continuing operational phase of the project is expected to support two permanent full-time jobs with an estimated average annual wage of \$119,000 to Henderson County, compared to the average wage of \$42,892 for the jobs in the county. Over the estimated 35-year life of

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<sup>51</sup> Application, Exhibit 10, Attachment A at 2.

<sup>52</sup> Application, Exhibit 10, Attachment A at 3 and 12.

<sup>53</sup> Application, Exhibit 10, Attachment A at 10.

the Project, this equals a payroll of \$5.6 million.<sup>54</sup>

This project is also expected to generate tax revenue for both Henderson County and the state of Kentucky. Sebree Solar II has not sought a Payment-in-Lieu of Taxes (PILOT) agreement with Henderson County or any tax abatement at the state level and plans to update the Siting Board if these agreements are finalized.<sup>55</sup> Sebree II Solar estimates an average property (personal and real estate) tax payment of \$390,000 annually, with approximately half going to support schools. Over the project's life, roughly \$15.5 million will be paid in property taxes.<sup>56</sup> In addition, Sebree Solar II estimates approximately \$966,000 in sales tax revenues will be generated, though this estimate is preliminary.<sup>57</sup>

Wells Engineering evaluated the economic impact of the Project after a review by Watters Unclaimed Property Consulting, LLC (Watters' Report).<sup>58</sup> The Watters' Report found some flaws in the analysis Sebree Solar II used to calculate the economic impact of the Project. However, the Watters' Report concluded there would be a positive economic impact on the state from the Project.<sup>59</sup>

Having reviewed the record, the Siting Board finds that the Sebree Solar II facility will have a positive economic impact on the region.

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<sup>54</sup> Application, Exhibit 10, Attachment A at 12.

<sup>55</sup> Sebree Solar II's Responses to Staff's Second Request, Item 7.

<sup>56</sup> Application, Exhibit 10, Attachment A at 14.

<sup>57</sup> Sebree Solar II's Responses to Staff's Second Request, Item 10a.

<sup>58</sup> Wells Report, Attachment C, Review of the Applicant's Economic Impact Analysis by Watters Unclaimed Property Consulting LLC.

<sup>59</sup> Wells Report, Attachment C, Review of the Applicant's Economic Impact Analysis by Watters Unclaimed Property Consulting LLC at 1.

### Existence of Other Generating Facilities

Sebree Solar II indicated there are no existing facilities near the proposed site that generate electricity.<sup>60</sup> Sebree Solar II stated the location was selected because the Sebree Solar project already has approval for a transmission line with which it can interconnect.<sup>61</sup> This eliminates the need for another transmission line and reduces the overall footprint of the project.<sup>62</sup> The transmission line will then interconnect with BREC Reid EHV 161 kV switchyard in Webster County, Kentucky.<sup>63</sup>

### Local Planning and Zoning Requirements

Henderson County has enacted regulations for the development of merchant solar facilities. Section 30.02 of the Henderson County Regulations requires setbacks of 25 feet from the perimeter property lines of the project area and 100 feet from any residential structure.<sup>64</sup> Sebree Solar II indicated that its site plan is in compliance with the Henderson County Regulations.<sup>65</sup> The Siting Board finds that the Project as proposed appears to comply with the Henderson County Regulation.

### Impact on Transmission System

The Project is located within the territory of the Midcontinent Independent System Operator (MISO). Sebree Solar II will interconnect with the 4.85-mile nonregulated

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<sup>60</sup> Application, Exhibit 7, unnumbered at 2.

<sup>61</sup> Application, Exhibit 7, unnumbered at 2.

<sup>62</sup> Application, Exhibit 7, unnumbered at 2.

<sup>63</sup> Application, Exhibit 7, unnumbered at 2.

<sup>64</sup> Application, Exhibit 4.

<sup>65</sup> Application, Exhibit 4 unnumbered at 2.



transmission line that was granted a certificate of construction in Case No. 2021-00072.<sup>66</sup> That transmission line will have a point of interconnection at the BREC Reid EHV Substation. Sebree Solar II filed an application with MISO for interconnection into the transmission system with BREC as the transmission owner.<sup>67</sup> An initial deliverability study was issued in 2022 for all 2020 que positions.<sup>68</sup> The deliverability study identified preliminary overloads and an estimate of upgrade costs.<sup>69</sup> MISO conducted a Definitive Planning Phase (DPP) study.<sup>70</sup> A feasibility study and a system impact study will also be completed by MISO.<sup>71</sup>

Based upon the case record, the Siting Board finds that Sebree Solar II has satisfied the requirements of KRS 278.710(f) and that the additional load imposed upon the electricity transmission system by the generation of electricity at the Sebree Solar II facility will not adversely affect the reliability of service for retail customers of electric utilities regulated by the Kentucky Public Service Commission. This finding is based upon Sebree Solar II's commitment to the interconnection process and protocols consistent with the requirements of KRS 278.212.

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<sup>66</sup> See Case No. 2021-00072, Feb. 9, 2022 Order at 20-24 for a discussion of the nonregulated transmission line.

<sup>67</sup> Application, Exhibit 9, unnumbered at 2.

<sup>68</sup> Application, Exhibit 9, unnumbered at 2.

<sup>69</sup> Application, Exhibit 9, unnumbered at 2.

<sup>70</sup> Sebree Solar II's Response to Staff's Post-Hearing Request, Item 3.

<sup>71</sup> Application, Exhibit 9, unnumbered at 2.

### Compliance with Setback Requirements

Henderson County has established local setbacks for the project. Therefore, Sebree Solar II has not requested a deviation, pursuant to KRS 278.704, from the statutory setback requirements for the Project. Sebree Solar II has committed to the setbacks required by the Henderson County regulations of 25 feet from perimeter property lines and 100 feet from any residential structure.<sup>72</sup> Sebree Solar II stated the nearest solar panel will be 131 feet from the nearest nonparticipating residence.<sup>73</sup> Nevertheless, the Siting Board finds that Sebree Solar II shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church, or school, 25 feet from non-participating adjoining parcels, and 50 feet from adjacent roadways. Sebree Solar II shall not place a central inverter and, if used, energy storage systems closer than 450 feet from a residence, church, or school. Exceptions to these setbacks for participating landowners are included in Appendix A.

### History of Environmental Compliance

In the Application, Sebree Solar II stated that neither it, nor anyone with an ownership interest in it, has violated any environmental laws, rules, or administrative regulations that resulted in criminal confiscation, or a fine greater than \$5,000.<sup>74</sup> During the pendency of these proceedings, Sebree Solar II stated that it has made a significant oversight and the entity with a 100 percent interest in it, ESI Energy, LLC (ESI Energy)

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<sup>72</sup> Application, Exhibit 4 unnumbered at 2.

<sup>73</sup> Hearing Video Testimony (HVT) of the August 17, 2023 Hearing at 10:54:02.

<sup>74</sup> Application, Exhibit 11 at unnumbered page 2.

has violated the Migratory Bird Treaty Act.<sup>75</sup> ESI Energy pled guilty to three violations of the Migratory Bird Treaty Act and as part that plea of agreed to pay fines and restitution. ESI Energy also agreed to apply for 51 eagle permits at wind energy facilities across the United States in exchange for a settlement of all past and future accidental eagle mortalities.<sup>76</sup>

### Transfer of Ownership

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 review, the Construction Certificate is conditionally granted on the condition of full compliance with all mitigation measures, some of which continue into the operation of the project. As noted in the preceding section, the Siting Board not only reviews the history and abilities of the Person<sup>77</sup> seeking the Certificate, but also the entities that have an ownership interest in the Project. Here, the applicant has no resources or employees of its own, and instead depends on the resources and employees of affiliates or entities with an ownership interest in it. NextEra Energy Resources, LLC will employ the persons responsible for compliance with the construction certificate during construction<sup>78</sup> and NextEra Energy Operating Services, LLC will employ the persons responsible for the continued

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<sup>75</sup> Sebree Solar II's Response to Staff's Post-Hearing Request, Item 8.

<sup>76</sup> Sebree Solar II's Response to Staff's Post-Hearing Request, Item 8.

<sup>77</sup> KRS 278.700(3) defines a person as any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity.

<sup>78</sup> Sebree Solar II's Response to Staff's Post-Hearing Request, Item 2.

compliance during operations.<sup>79</sup> Without those other entities, Sebree Solar II would not have the managerial, technical or financial capability necessary to construct or operate the facility, nor to comply with the conditions required herein. As such, the Siting Board will require approval of the transfer of ownership or control of Sebree Solar II, the Person seeking and being granted, with conditions, the Construction Certificate in this matter. The substantial oversight of not disclosing the information regarding the environmental violations of the Sebree Solar II's sole member, causes concern that the project could be transferred to an entity with poor environmental compliance even within the NextEra Energy, Inc. corporate umbrella.<sup>80</sup> Without knowledge of who is providing the resources and employees to Sebree Solar II to ensure ongoing compliance with the measures required herein, there is no way to ensure the requirements are adhered to throughout the life of the Project. To be clear, this condition does not apply to the actual transfer of the facility, but rather the transfer of ownership or control of the Person holding the Certificate to Construct. The measures related to the transfer of ownership or control of the Person holding the Construction Certificate are set forth more fully in Appendix A, mitigation measure 28.

#### Decommissioning

Sebree Solar II submitted a decommissioning plan with the application.<sup>81</sup> The applicable property leases contain covenants to the property owners regarding

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<sup>79</sup> Sebree Solar II's Response to Staff's Post-Hearing Request, Item 2.

<sup>80</sup> See Sebree Solar II's Response to Post-Hearing Request, Item 8 for the complete corporate structure of NextEra Energy, Inc.

<sup>81</sup> SAR, Attachment A, Exhibit 8.

decommissioning.<sup>82</sup> Sebree Solar II indicated that it would comply with the leases to remove all project components, even if the decommissioning plan as written states cabling could be left underground.<sup>83</sup>

The Siting Board finds that Sebree Solar II must return the land to its original use, to the extent possible, at the end of the Project's life. Returning the land back to its original state and use after decades of operation is 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, is 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 requires 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 does today. The Siting Board will also require additional mitigation measures related to decommissioning, which are outlined in Appendix A to this Order, mitigation measures 29 through 31.

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<sup>82</sup> HVT of the Aug. 17, 2023 Hearing at 09:39:20.

<sup>83</sup> HVT of the Aug. 17, 2023 Hearing at 09:39:45.

## CONCLUSION

IT IS THEREFORE ORDERED that:

1. Sebree Solar II's motion for deviation filed on April 18, 2023, for a deviation from KRS 278.706(2)(f) for landowners that were not part of the project during the initial public meetings is granted.
2. Sebree Solar II's application for a Construction Certificate to construct an approximately 150-MW merchant solar electric generating facility in Henderson County, Kentucky, is conditionally granted subject to full compliance with the mitigation measures and conditions prescribed in Appendix A to this Order.
3. Sebree Solar II shall fully comply with the mitigation measures and conditions prescribed in Appendix A to this Order.
4. Sebree Solar I, or its subsidiaries, shall assign the leases for the property where the Project is to be sited to Sebree Solar II within 90 days of the date of service of this Order.
5. In the event mitigation measures within the body of this Order conflict with those prescribed in Appendix A to this Order, the measures in Appendix A shall control.
6. This case is closed and removed from the Siting Board's docket.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

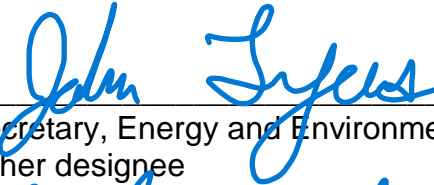


Vice Chairman, Public Service Commission

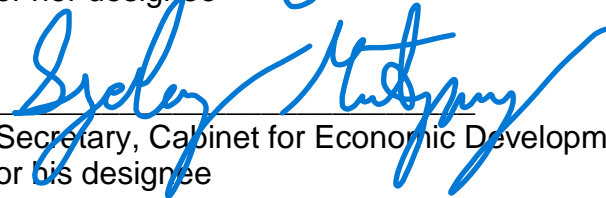


Commissioner, Public Service Commission

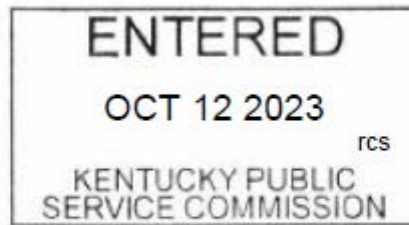
by KAC  
w/ permission



Secretary, Energy and Environment Cabinet,  
or her designee



Secretary, Cabinet for Economic Development,  
or his designee



ATTEST:



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

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION AND TRANSMISSION SITING IN CASE NO. 2022-00131 DATED OCT 12 2023

#### MITIGATION MEASURES AND CONDITIONS IMPOSED

The following mitigation measures and conditions are hereby imposed on Sebree Solar II, LLC (Sebree Solar II) to ensure that the facilities proposed in this proceeding are constructed as ordered.

1. A final site layout plan shall be submitted to the Siting Board upon completion of the final site design. Deviations from the preliminary site layout should be clearly indicated on the revised graphic. Those changes could include, but are not limited to, location of solar panels, inverters, transformers, substation, operation and maintenance building, transmission line route, or other Project facilities and infrastructure.

2. Any change in the Project boundaries from the information that formed this evaluation shall be submitted to the Siting Board for review.

3. The Siting Board will determine whether any deviation in the boundaries or site layout plan is likely to create a materially different pattern or magnitude of impacts.

4. Sebree Solar II shall provide the date construction will commence to the Siting Board and the Kentucky Energy and Environment Cabinet (EEC) 30 days prior to that date.

5. Sebree Solar II shall comply with all requirements in KRS 278.710 for monitoring by EEC.

6. Prior to construction, Sebree Solar II shall provide a finalized Emergency Response Plan to the local fire district, first responders, and any County Emergency



Management Agency. Sebree Solar II shall provide site specific training for local emergency responders at their request. Access for fire and emergency units shall be set up after consultation with local authorities.

7. Sebree Solar II or its contractor will control access to the site during construction and operation. All construction entrances will be gated and locked when not in use.

8. Sebree Solar II's access control strategy shall also include appropriate signage to warn potential trespassers. Sebree Solar II must ensure that all site entrances and boundaries have adequate signage, particularly in locations visible to the public, local residents, and business owners.

9. The security fence must be installed prior to activation of any electrical installation work in accordance with National Electrical Safety Code (NEESC) standards. The substation shall have its own separate security fence and locked access installed in accordance with NEESC standards.

10. Existing vegetation between solar arrays and nearby roadways and homes shall be left in place to the extent feasible to help minimize visual impacts and screen the Project from nearby homeowners and travelers. Sebree Solar II will not remove any existing vegetation except to the extent it must remove such vegetation for the construction and operation of Project components.

11. Sebree Solar II shall implement planting of native evergreen species as a visual buffer to mitigate visual viewshed impacts, in areas where those viewshed impacts occur from residences or roadways directly adjacent to the Project and there is not adequate existing vegetation. If it is not adequate, then vegetation ten feet thick reaching

six feet at maturity (in four years) will be added by Sebree Solar II between Project infrastructure and residences, or other occupied structures, with a line of sight to the facility to the reasonable satisfaction of the affected adjacent property owners. Planting of vegetative buffers may be done over the construction period; however, Sebree Solar II should prioritize vegetative planting at all periods of construction to reduce viewshed impacts. All planting shall be done prior to the operation of the facility.

12. Sebree Solar II shall cultivate at least two acres of native, pollinator friendly species on-site.

13. Sebree Solar II shall carry out visual screening consistent with the plan proposed in its application, SAR, and the maps included, and ensure that the proposed new vegetative buffers are successfully established and developed as expected over time. Should vegetation used as buffers die over time, Sebree Solar II shall replace plantings as necessary.

14. To the extent that an affected adjacent property owner indicates to Sebree Solar II that a visual buffer is not necessary, Sebree Solar II will obtain that property owner's written consent and submit such consent in writing to the Siting Board.

15. Sebree Solar II is required to limit construction activity, process, and deliveries to the hours between 8 a.m. and 6 p.m. local time, Monday through Saturday. The Siting Board directs that construction activities that create a higher level of noise, such as pile-driving, will be limited to 9 a.m. to 5 p.m. local time, Monday through Friday. Non-noise causing and non-construction activities can take place on the site between 7 a.m. and 10 p.m. local time, Monday through Sunday, including field visits, arrival, departure, planning, meetings, mowing, surveying, etc.

16. If the pile-driving activity occurs within 1,500 feet of a noise-sensitive receptor, Sebree Solar II shall implement a construction method that will suppress the noise generated during the pile-driving process (i.e., semi-tractor and canvas method, sound blankets on fencing surrounding the solar site, or any other comparable method). Sebree Solar II can forego using noise suppression measures if it employs a panel installation method that does not use pile driving, so long as that method does not create noise levels similar to pile driving.

17. Sebree Solar II shall notify residents and businesses within 2,400 feet of the project boundary about the construction plan, the noise potential, any mitigation plans, and its Complaint Resolution Program referred to in Item 34 of this Appendix, at least one month prior to the start of construction.

18. Sebree Solar II shall place panels, inverters, and substation equipment consistent with the distances to noise receptors to which it has committed in its maps and site plans. The Siting Board approves Sebree Solar II's proposed setback from residences of 350 feet from any panel or string inverter. The Siting Board also approves a distance of 300 feet between any solar panel or string inverter and any residential neighborhood and 100 feet from any exterior property line. Nevertheless, Sebree Solar II shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church, or school, 25 feet from non-participating adjoining parcels, or 50 feet from adjacent roadways. Sebree Solar II shall not place a central inverter, and if used, energy storage systems, closer than 450 feet from any adjacent residences, church, or school. These further setbacks shall not be required for residences owned by landowners involved in the Project that explicitly agree to lesser setbacks and have done so in writing.

All agreements by participating landowners to lesser setbacks must include language advising the participating landowners of the setbacks otherwise required herein. All agreements by participating landowners to lesser setbacks must be filed with the Siting Board prior to commencement of the Project.

19. Sebree Solar II shall fix or pay for repairs for damage to roads and bridges resulting from any vehicle transport to the site. For damage resulting from vehicle transport in accordance with all permits, those permits will control.

20. Sebree Solar II shall comply with all laws and regulations regarding the use of roadways.

21. Sebree Solar II shall implement ridesharing between construction workers when feasible, use appropriate traffic controls, or allow flexible working hours outside of peak hours to minimize any potential traffic delays during AM and PM peak hours.

22. Sebree Solar II shall consult with the Kentucky Transportation Cabinet (KYTC) regarding truck and other construction traffic and obtain necessary permits from the KYTC.

23. Sebree Solar II shall consult with the Henderson County Road Department (HCRD) regarding truck and other construction traffic and obtain any necessary permits from the HCRD.

24. Sebree Solar II shall develop special plans and obtain necessary permits before transporting heavy loads, especially the substation transformer, onto state or county roads.

25. Sebree Solar II shall comply with any road use agreement executed with HCRD. Such an agreement might include special considerations for overweight loads, routes utilized by heavy trucks, road weight limits, and bridge weight limits.

26. Sebree Solar II shall develop and implement a traffic management plan to minimize the impact on traffic flow and keep traffic safe. Any such traffic management plan shall also identify any traffic-related noise concerns during the construction phase and develop measures that would address those noise concerns.

27. Sebree Solar II shall properly maintain construction equipment and follow best management practices related to fugitive dust throughout the construction process, including the use of water trucks. Dust impacts shall be kept at a minimal level. The Siting Board requires Sebree Solar II's compliance with 401 KAR 63:010.

28. If any Person as defined by KRS 278.700(3) shall acquire or transfer ownership of, or control, or the right to control Sebree Solar II, by sale of assets, transfer of stock, or otherwise, or abandon the same, Sebree Solar II or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Henderson County Fiscal Court. In any application requesting such abandonment, sale, or change of control, Sebree Solar II and any proposed entity with an ownership interest in Sebree Solar II shall certify its compliance with KRS 278.710(1)(i).

29. As applicable to individual lease agreements, Sebree Solar II, its successors, or assigns will abide by the specific land restoration commitments agreed to by individual property owners, as described in each executed lease agreement.

30. Sebree Solar II shall file a complete and explicit decommissioning plan with the Siting Board. This plan shall commit Sebree Solar II to remove all facility components,

aboveground and belowground, regardless of depth, from the Project site. Upon its completion, this plan shall be filed with the Siting Board or its successors. The decommissioning plan shall be completed at least one month before the construction of the Project.

31. Sebree Solar II shall file a bond with the Henderson County Fiscal Court, equal to the amount necessary to effectuate the explicit or formal decommissioning plan naming Henderson County as a third-party obligee (or secondary, in addition to individual landowners) beneficiary, in addition to the lessors of the subject property insofar as the leases contain a decommissioning bonding requirement so that Henderson County will have the authority to draw upon the bond to effectuate the decommissioning plan. For land with no bonding requirement otherwise, Henderson County shall be the primary beneficiary of the decommissioning bond for that portion of the Project. The bond shall be filed with the Henderson County Treasurer or with a bank, title company, or financial institution reasonably acceptable to the county. The acceptance of the county of allowing the filing the bond with an entity other than the Fiscal Court, through the Henderson County Treasurer, can be evidenced by a letter from the Henderson County Judge-Executive, the Henderson County Fiscal Court, or the Henderson County Attorney. The bond(s) shall be in place at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at Sebree Solar II's expense to determine and update the cost of removal amount. This review shall be conducted by an individual or firm with experience or expertise in the costs of removal or decommissioning of electric generating facilities. Certification of this review shall be provided to the Siting Board or its successors and the Henderson County Fiscal Court. Such certificate shall be by letter

and shall include the current amount of the anticipated bond and any change in the costs of removal or decommissioning.

32. Sebree Solar II or its assigns shall provide notice to the Siting Board, if, during any two-year (730 days) period, it replaces more than 20 percent of its facilities. Sebree Solar II shall commit to removing the debris and replaced facility components from the Project site and from Henderson County upon replacement. If the replaced components are properly disposed of at a permitted facility, they do not have to be physically removed from Henderson County. However, if the replaced facility components remain in the County, Sebree Solar II must inform the Siting Board of the location where the components are being disposed.

33. Any disposal or recycling of Project equipment, during operations or decommissioning, shall be done in accordance with applicable laws and requirements.

34. Sebree Solar II shall initiate and maintain the Complaint Resolution Program provided to the Siting Board in the case record to address any complaints from community members. Sebree Solar II shall also submit annually a status report associated with its Complaint Resolution Program, providing, among other things, the individual complaints, how Sebree Solar II addressed those complaints, and the ultimate resolution of those complaints identifying whether the resolution was to the complainant's satisfaction.

35. Sebree Solar II shall provide the Henderson County Planning & Development Commission contact information for individuals within the company that can be contacted with concerns. This shall include contact information for the general public

to reach individuals that can address their concerns. Sebree Solar II shall update this contact information yearly, or within 30 days of any change in contact information.

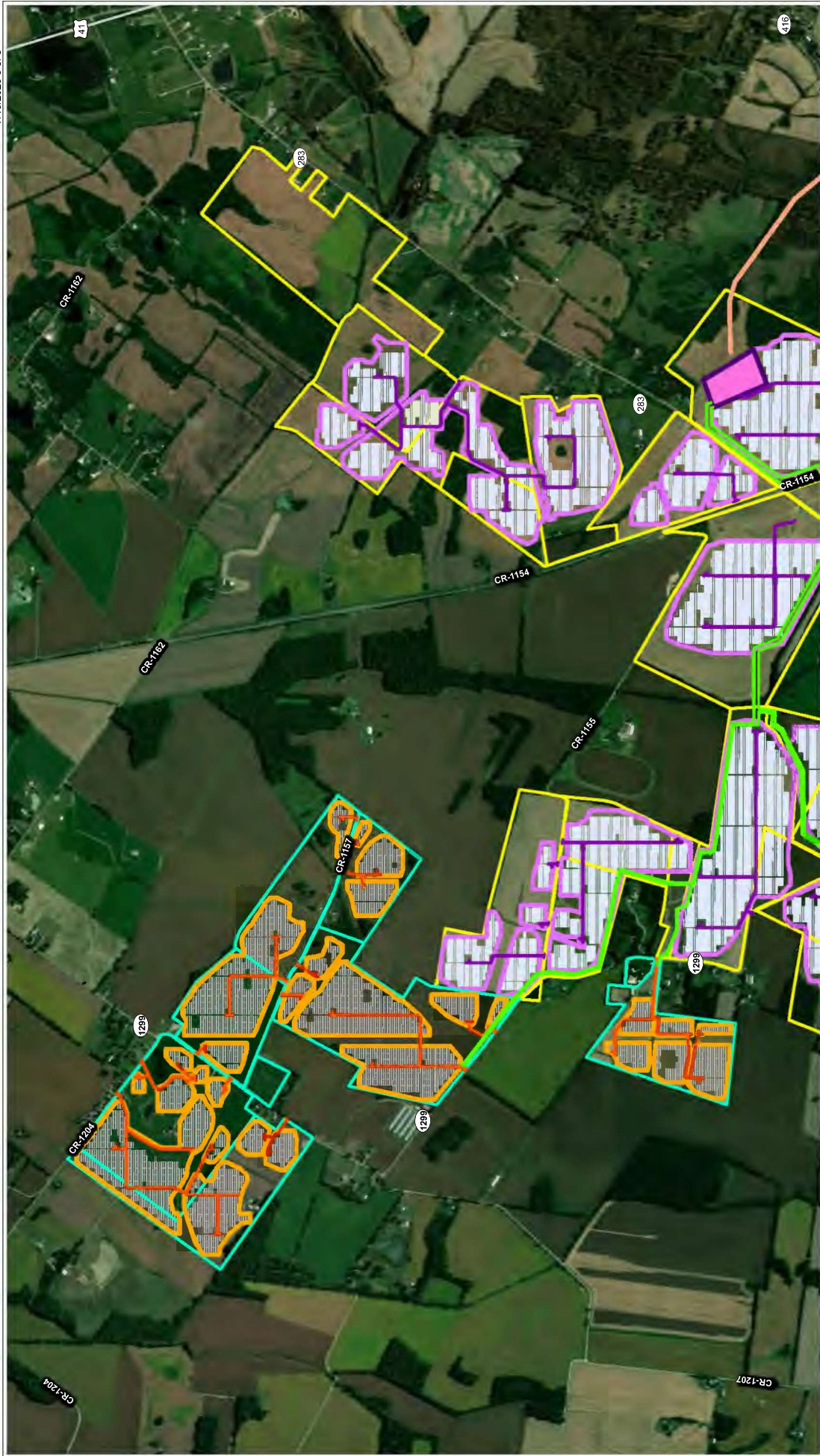
36. Within 30 days of entry, Sebree Solar II shall send a copy of this Order to all the adjoining landowners who previously were required to receive notice of this Project.



APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON  
ELECTRIC GENERATION AND TRANSMISSION SITING IN  
CASE NO. 2022-00131 DATED OCT 12 2023

ONE PAGE TO FOLLOW



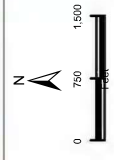
**Legend**

- Substation
- MV Collection Corridor (Seabree Solar and Seabree Solar II)
- Seabree Solar Project Boundary
- Seabree Solar II Project Boundary
- PV Panel

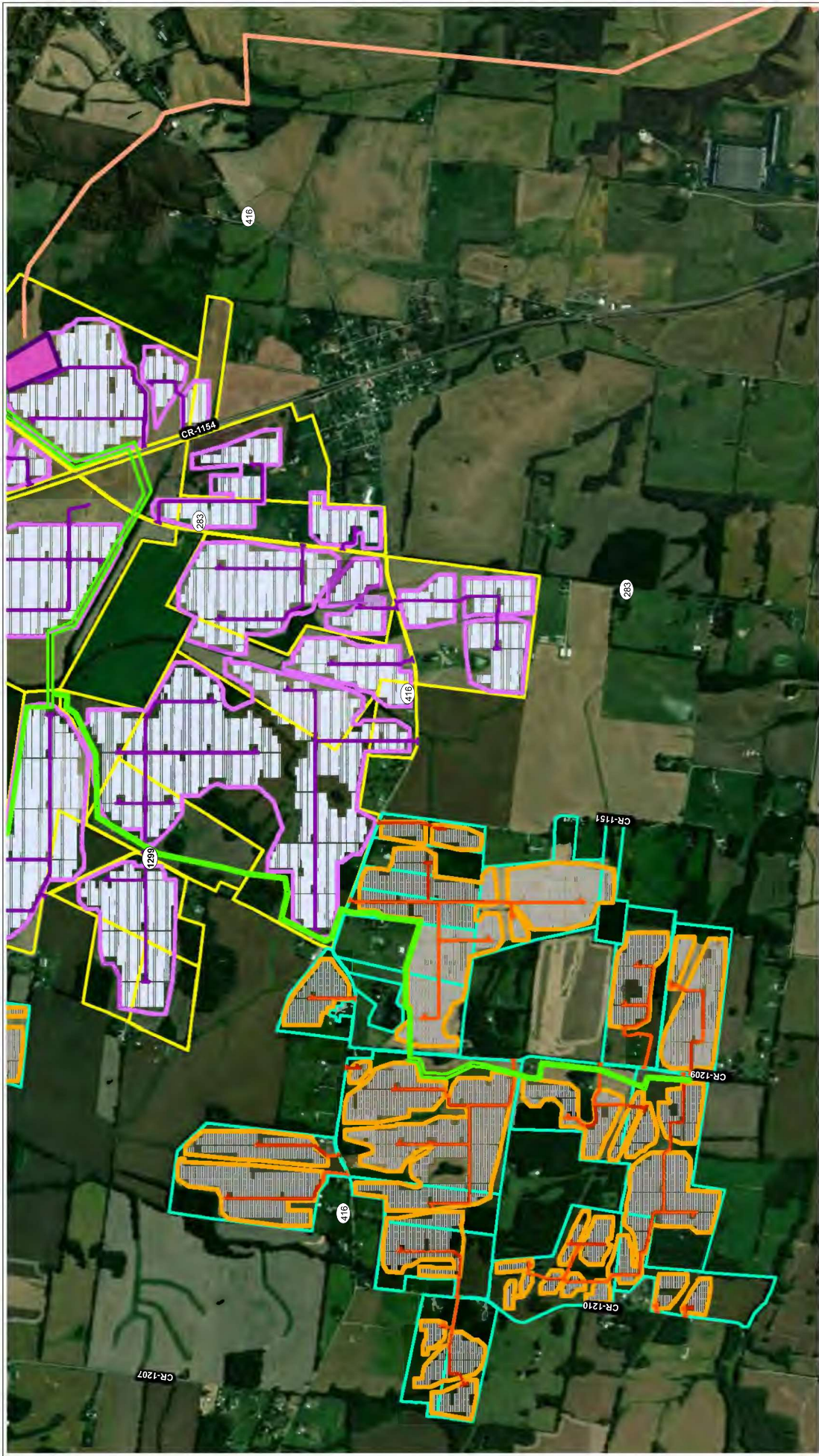
- Fenced Array Area
- Proposed Seabree Collector Substation
- Access Road
- Proposed Gen-Tie Transmission Line

- Fenced Array Area
- Access Road

- Seabree Solar II Project Components (Case No. 2022-00131)



KY State Siting Board - Case No. 2022-00131  
 Seabree Solar Project and Seabree Solar II  
 Figure 2A - Project Infrastructure  
 Henderson County, Kentucky  
 Date: 7/12/2023

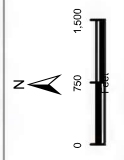


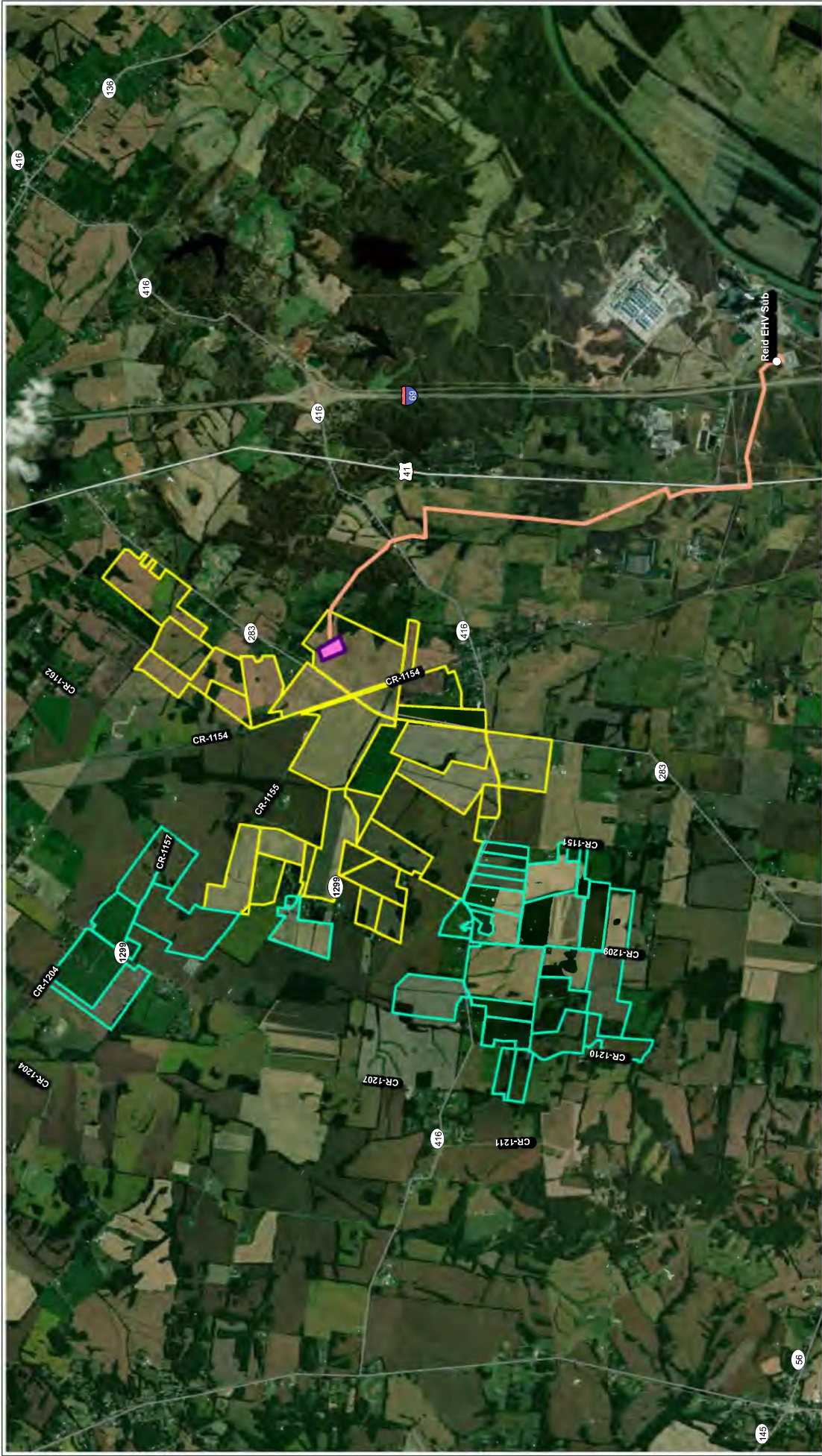
KY State Siting Board - Case No. 2022-00131  
 Sebree Solar Project and Sebree Solar II  
 Figure 2B - Project Infrastructure  
 Henderson County, Kentucky  
 Date: 7/12/2023

- Legend**
- Substation
  - MV Collection Corridor (Sebree Solar and Sebree Solar II)
  - Proposed Sebree Collector Substation
  - Access Road
  - Proposed Gen-Tie Transmission Line
  - Access Road
  - Substation
  - MV Collection Corridor (Sebree Solar and Sebree Solar II)
  - Proposed Sebree Collector Substation
  - Access Road
  - Proposed Gen-Tie Transmission Line
  - Access Road
  - Substation
  - MV Collection Corridor (Sebree Solar and Sebree Solar II)
  - Proposed Sebree Collector Substation
  - Access Road
  - Proposed Gen-Tie Transmission Line
  - Access Road

- Sebree Solar Project Components (Case No. 2021-00072)**
- Fenced Array Area
  - Proposed Sebree Collector Substation
  - Access Road
  - Proposed Gen-Tie Transmission Line
  - Access Road

- Sebree Solar II Project Components (Case No. 2022-00131)**
- Substation
  - MV Collection Corridor (Sebree Solar and Sebree Solar II)
  - Proposed Sebree Collector Substation
  - Access Road
  - Proposed Gen-Tie Transmission Line
  - Access Road





KY State Siting Board - Case No. 2022-00131  
 Sebre Solar Project and Sebre Solar II  
 Figure 4-1 - Project Overview  
 Henderson County, Kentucky  
 Date: 7/12/2023

**Legend**

- Substation
- Sebre Solar Project Components (Case No. 2021-00072)
- Sebre Solar II Project Components (Case No. 2022-00131)
- Sebre Solar Project Boundary
- Sebre Solar II Project Boundary
- Proposed Sebre Collector Substation
- Proposed Gen-Tie Transmission Line



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