

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

This matter is before the Siting Board upon a motion for rehearing filed on October 31, 2023, by Sebree Solar II, LLC (Sebree Solar II) for reconsideration and clarification of certain mitigation requirements imposed by the Siting Board’s October 12, 2023 Order (Final Order) that conditionally approved a certificate to construct an approximately 150-megawatt (MW) merchant solar generating facility in Henderson County. Sebree Solar II indicated rehearing on four 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

Vegetative Buffers

Sebree Solar II requested rehearing of Mitigation Measure 11, which requires Sebree Solar II to provide a vegetative buffer to the reasonable satisfaction of the affected adjacent property owners. Sebree Solar II argued that this requirement should be removed because it will limit confusion, align with Henderson City-County Planning Commission requirements, and decrease the administrative burden of developing the

project. Sebree Solar II also argued that the language in Mitigation Measure 11 adds subjectivity that could cause Sebree Solar II to have to deviate from the specific requirements to satisfy different property owners and could cause unnecessary litigation.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that the language “to the reasonable satisfaction of affected adjacent property owners,” shall not be removed from Mitigation Measure 11. The local ordinances can provide different requirements than the Siting Board’s Order that Sebree Solar II 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 with the vegetative buffer by neighboring landowners was an important consideration in the granting of the certificate of construction and now will not change the mitigation measure solely because the local county ordinance also requires 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 II feels are unreasonable demands, then Sebree Solar II 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 II requested rehearing of Mitigation Measure 15 which relates to construction hours. Mitigation Measure 15 directs that construction activities that create a higher level of noise, such as piling driving, be limited to 9 a.m. to 5 p.m. local time,

Monday through Friday. Sebree Solar II requested that this requirement be removed or modified because it will prolong the pile-driving construction activity. Sebree Solar II also stated that removing the heightened requirement would permit consistency in solar projects in the area. Sebree Solar II referenced that Sebree Solar is being developed on an adjacent property and that it has a different mitigation measure related to construction noise.¹

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that Mitigation Measure 15 should be amended to permit noise causing activities from 8 a.m. through 6 p.m. Mitigation Measure 15 will have the same requirements for noise causing activities as Case No. 2021-00072, a case with an affiliate of Sebree Solar II and in the same geographic area.²

Mitigation Measure 18

Sebree Solar II requested rehearing of Mitigation Measure 18, in which the Siting Board approved Sebree Solar's II proposed setback from residences of 350 feet from any panel or string inverter. Sebree Solar II argued that the setback should be 150 feet because that was the distance proposed in the Application, responses to requests for information, and testimony at the formal hearing. Further Sebree Solar II stated that 150 feet is consistent with the Henderson County zoning regulations instead of the 350 feet in the Mitigation Measure 18.

¹ 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 5:110* (Ky. Siting Board Aug. 26, 2022), Order.

² Case No. 2021-00072, August 26, 2023 Order.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that Mitigation Measure 18 should be amended from a 350-foot setback from any panel or string inverter to 150 feet setback from any panel or string inverter. The record of the proceedings, and the body of the Final Order³, indicate the Siting Board intended a 150-foot set back consistent with the Henderson City-County Zoning regulations that Sebree Solar II proposed in the proceedings.

Mitigation Measure 28

Sebree Solar II requested reconsideration of Mitigation Measure 28 which applies to future transfers of ownership, control, or the right to control the Project. Sebree Solar II argued that Mitigation Measure 28 conflicts with KRS 278.710 (7) because the intent of the legislature was to address any Siting Board orders that conflict with the restriction to transfer ownership. Sebree Solar II argued that that Siting Board erred in determining the modifications to KRS 278.710(6) were not retroactive. Sebree Solar II also argued that under KRS 278.710 that the intent of the legislature was to place monitoring jurisdiction with the Kentucky Energy and Environment Cabinet (EEC) post construction and the mitigation measure as written appears to allow the Siting Board to retain control over the project during operations.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 28 should not be modified. Person holding construction certificates and their related 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

³ Final Order at 18.

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 person holding the construction certificate, the construction certificate could effectively be transferred to a company without the 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 of the person holding a certificate shall remain. KRS 278.710(6), even as modified, addresses post-construction transfers of the project, not transfers of the person holding a Certificate of Construction. Sebree Solar II is contemplating being sold prior to construction of the project. Sebree Solar II can file a motion with the Siting Board for tax equity transfers that will be considered by the Siting Board.

IT IS THEREFORE ORDERED that:

1. Sebree Solar II's motion for rehearing is granted in part and denied in part.
2. Sebree Solar II's motion for rehearing on Mitigation Measure 11 and Mitigation Measure 28 are denied.
3. Sebree Solar II's motion for rehearing on Mitigation Measure 15 is granted. Mitigation Measure 15 in Appendix A to the Final Order is stricken and shall be replaced with the following:

Sebree Solar II 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

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

4. Sebree Solar II's motion for rehearing on Mitigation Measure 18 is granted.

Mitigation Measure 18 in Appendix A to the Final Order is stricken and shall be replaced with the following:

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 150 feet from any panel or string inverter. 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. Appendix A Page 5 of 9 Case No. 2022-00131 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.

5. 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

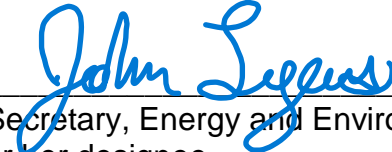


Vice Chairman, Public Service Commission



Commissioner, Public Service Commission

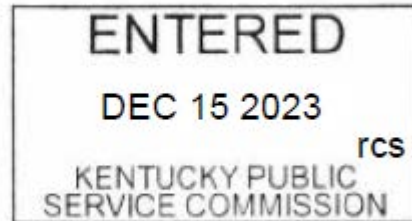
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Secretary, Energy and Environment Cabinet,
or her designee



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

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