

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF GREEN RIVER	)	
SOLAR, LLC FOR A CERTIFICATE TO	)	
CONSTRUCT AN APPROXIMATELY 200	)	
MEGAWATT MERCHANT SOLAR ELECTRIC	)	CASE NO.
GENERATING FACILITY IN BRECKINRIDGE	)	2020-00387
COUNTY AND MEADE COUNTY, KENTUCKY	)	
PURSUANT TO KRS 278.700 AND 807 KAR	)	
5:110	)	

ORDER

On October 18, 2023, Green River Solar, LLC (Green River Solar) filed a motion for a declaratory order that Siting Board approval is not necessary for an anticipated transaction or, in the alternative, approval of the transaction. Green River Solar stated the transaction was necessary to obtain tax equity financing for the project. Green River Solar also requested approval for transfers necessary for an industrial revenue bond (IRB).

BACKGROUND

Green River Solar filed an application to construct an approximately 200-megawatt (MW) merchant solar generating facility in Meade and Breckinridge counties, Kentucky, on June 30, 2021.<sup>1</sup> During the pendency of the case, Green River Solar responded to

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<sup>1</sup> Application (filed Jun. 30, 2021).

two rounds of discovery,<sup>2</sup> a site visit was conducted, the Siting Board hired a consultant who issued a report about the project,<sup>3</sup> Green River Solar responded to the consultant's report<sup>4</sup>, and a hearing was held on November 1, 2021. The Siting Board evaluated the entire record before issuing the final Order on December 22, 2021. Green River Solar filed several motions that requested the Siting Board reconsider Mitigation Measure 26 in the December 22, 2021 Order that restricts transfers of ownership of the project.<sup>5</sup> The Siting Board declined to remove Mitigation Measure 26 and continued to require Siting Board approval for transfers of the project.<sup>6</sup>

### DISCUSSION AND FINDINGS

Green River Solar stated that to obtain funding for the project certain transfers of Green River Solar will need to occur. Green River Solar is a wholly owned subsidiary of NextEra Energy, Inc. (NextEra).<sup>7</sup> ESI Energy, LLC (ESI) is also a wholly owned subsidiary of NextEra.<sup>8</sup> ESI will create a wholly owned subsidiary (Holding Company). Green River Solar would then be transferred into the Holding Company. After Green River Solar is transferred into the Holding Company, tax equity investors will purchase

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<sup>2</sup> Green River Solar's Response to Siting Board Staff's First Request for Information (filed Aug. 27, 2021) and Green River Solar's Response to Siting Board Staff's Second Request for Information (filed Sept. 23, 2021).

<sup>3</sup> Green River Solar Site Assessment Report by BBC Consulting (filed Sept. 29, 2021).

<sup>4</sup> Green River Solar's Response to Consultant Report (filed Oct. 15, 2021).

<sup>5</sup> Green River Solar's Motion for Rehearing (filed Jan. 21, 2022), Motion for Ruling on Pending Motion on Rehearing (filed July 15, 2022), and Final Request for Clarification (filed Aug. 31, 2022).

<sup>6</sup> August 12, 2022 Order (Ky. Siting Board Aug. 12, 2022) and September 20, 2022 Order (Ky. Siting Board Sept. 20, 2022).

<sup>7</sup> Application for Declaratory Order at 2.

<sup>8</sup> Application for Declaratory Order at 2.

the Class B stocks of Green River Solar. ESI, or the Holding Company, will retain all the controlling Class A stocks of Green River Solar.<sup>9</sup> The tax equity investors financing will fund the construction costs of the project but will not have any interest in the construction or operation of the project.

Green River Solar stated that NextEra will retain control of the operations and management, and compliance with the Mitigation Measures in the December 22, 2021 Order.<sup>10</sup> Green River Solar stated that NextEra, or its affiliates, will be responsible for supplying the necessary staff to comply with all Siting Board requirements.<sup>11</sup> Green River Solar also stated that a subsidiary of ESI has violated the Migratory Bird Treaty Act, but it still has a good record of environmental compliance.<sup>12</sup>

Green River Solar also requested approval to enter into an IRB with the Meade County Fiscal Court. Green River Solar stated that in order to effectuate the agreement, it must transfer tangible personal property to the Meade County Fiscal Court.<sup>13</sup> The Certificate of Construction would not be transferred.<sup>14</sup> Green River Solar will then lease the property from the Meade County Fiscal Court for a term of 30 years. Once the bond matures and is paid off, title will revert to Green River Solar.<sup>15</sup> Meade County Fiscal Court

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<sup>9</sup> Application for Declaratory Order at 3.

<sup>10</sup> Application for Declaratory Order at 3.

<sup>11</sup> Application for Declaratory Order at 3.

<sup>12</sup> Application for Declaratory Order at 3.

<sup>13</sup> Application for Declaratory Order at 4.

<sup>14</sup> Application for Declaratory Order at 4.

<sup>15</sup> Application for Declaratory Order at 5.

adopted a bond inducement resolution on July 11, 2023, that provided the IRB would be issued in an amount not to exceed \$350,000,000.<sup>16</sup>

Green River Solar stated the existence of the IRB will not change the operations and control of the project.<sup>17</sup> Green River Solar also stated it will retain economic control over the project regardless of the IRB.<sup>18</sup> Green River Solar argued the existence of the IRB does not change any of the facts or circumstances originally considered by the Siting Board and it merely being done to finance the project.<sup>19</sup>

Based upon the motion and being otherwise sufficiently advised, the Siting Board finds that the transfer of Green River Solar into a holding company for tax equity financing should be approved. NextEra was an original party to the proceedings and the Siting Board fully investigated its environment compliance history and its financial, technical, and managerial capacity to construct and operate the project. The transaction is only for financing purposes. The tax equity investors that were not party to the original consideration of the case are not going to have a controlling interest in the project and substantially the same entities will ensure compliance with the Siting Board's orders post-transfer as they are today. As the substantially same entities that ensure Green River Solar's compliance with mitigation measures today will continue to do so post transfer the Siting Board finds that the proposed transfer of Green River Solar should be approved subject to the continuing compliance with the December 22, 2021 Order.

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<sup>16</sup> Application for Declaratory Order at 5.

<sup>17</sup> Application for Declaratory Order at 6.

<sup>18</sup> Application for Declaratory Order at 6.

<sup>19</sup> Application for Declaratory Order at 6.

Additionally, the Siting Board finds that the approval for Green River Solar to entered into an IRB agreement with the Meade County Fiscal Court should be approved. Through the IRB, the Meade County Fiscal Court will have title to the project and its assets, however through the lease documents and bond provisions Green River Solar will retain control of the project. The transfer to the Meade County Fiscal Court is only to secure an IRB agreement and Green River Solar, or its corporate parents after the tax equity financing transfers are made, will remain in control of the project and will still be required to comply with all mitigation measures imposed by the Siting Board.

IT IS THEREFORE ORDERED that:

1. Green River Solar's request to make corporate transfers of the project to allow for tax equity investments is granted.
2. Green River Solar's request to enter into an IRB with the Meade County Fiscal Court is granted.
3. Green River Solar shall provide proof to the Siting Board of any transfers of Green River Solar for tax equity financing purposes and a copy of the of the IRBs, lease agreements, assignments, and any other documents related to the agreement with the Meade County Fiscal Court with the Siting Board within 30 days of execution.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission



Vice Chairman, Public Service Commission



Commissioner, Public Service Commission

by KTC  
w/permission



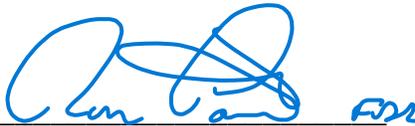
Secretary, Energy and Environment Cabinet,  
or her designee



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

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