

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

On October 18, 2023, Sebree Solar, LLC (Sebree 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. Sebree Solar stated the transaction was necessary to obtain tax equity financing for the project.

BACKGROUND

Sebree Solar filed an application to construct an approximately 250-megawatt (MW) merchant solar generating facility and an approximately 4.5 mile transmission line in Henderson County, Kentucky on August 13, 2021.<sup>1</sup> During the pendency of the case, Sebree Solar responded to two rounds of discovery,<sup>2</sup> a site visit was conducted, the Siting

---

<sup>1</sup> Application (filed Aug. 13, 2021).

<sup>2</sup> Sebree Solar's Response to Siting Board Staff's First Request for Information (filed Oct. 15, 2021) and Sebree Solar's Response to Siting Board Staff's Second Request for Information (filed Nov. 12, 2021).

Board hired a consultant who issued a report about the project,<sup>3</sup> Sebree Solar responded to the consultant's report<sup>4</sup>, and a hearing was held. The Siting Board evaluated the entire record before issuing the final Order on February 9, 2022. Sebree Solar filed several motions that requested the Siting Board reconsider Mitigation Measure 26 in the February 9, 2022 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

Sebree Solar stated that to obtain funding for the project certain transfers of Sebree Solar will need to occur. Sebree 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). Sebree Solar would then be transferred into the Holding Company. After Sebree Solar is transferred into the Holding Company, tax equity investors will purchase the Class B stocks Sebree Solar. ESI, or the Holding Company, will retain all the controlling Class A stocks of Sebree

---

<sup>3</sup> Wells Engineering Report (filed Nov. 24, 2021).

<sup>4</sup> Sebree Solar's Response to Consultant Report (filed Dec. 3, 2021).

<sup>5</sup> Sebree Solar Motion for Rehearing (filed Mar. 1, 2022), Motion for Ruling on Pending Motion on Rehearing (filed Jul. 15, 2022), and Final Request for Clarification (filed Aug. 31, 2022).

<sup>6</sup> August 26, 2022 Order (Ky. Siting Board Aug. 26, 2022) and September 16, 2022 Order (Ky. Siting Board Sept. 16, 2022).

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

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

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 operations of the project.

Sebree Solar stated that NextEra will retain control of the operations and management, and compliance with the Mitigation Measures in the February 9, 2022 Order.<sup>10</sup> Sebree 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> Sebree Solar also stated that a subsidiary of ESI has a violated the Migratory Bird Treaty Act, but it still has a good record of environmental compliance.<sup>12</sup>

Based upon the motion and being otherwise sufficiently advised, the Siting Board finds that the transfer of Sebree 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 Sebree Solar's compliance with mitigation measures today will continue to do so post transfer the Siting Board finds that the proposed transfer of Sebree Solar should be approved subject to the

---

<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.

continuing compliance with the February 9, 2022 Order. The Siting Board further finds that when the transfers of the project occur, Sebree Solar will file proof into the record.

IT IS THEREFORE ORDERED that:

1. Sebree Solar's request to make corporate transfers of the project to allow for tax equity investments is granted.

2. Sebree Solar shall provide proof to the Siting Board when the transaction has been completed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

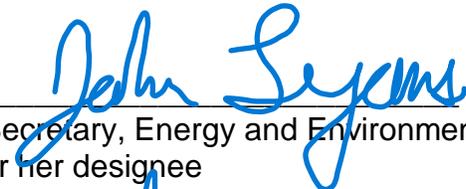


Vice Chairman, Public Service Commission



Commissioner, Public Service Commission

Per KAC  
w/permission



Secretary, Energy and Environment Cabinet,  
or her designee



Secretary, Cabinet for Economic Development,  
or his designee

ENTERED  
NOV 03 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



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

\*L. Allyson Honaker  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 6202  
Lexington, KENTUCKY 40509

\*Stephen R. Henry  
Webster County Judge Executive  
3939 State Route 109 South  
Providence, KENTUCKY 42450