

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 8, 2025, Sebree Solar II, LLC (Sebree Solar II) 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 II stated the transactions are necessary to obtain funding for tax equity financing, construction financing, and back leverage financing.¹

Sebree Solar II filed an application to construct an approximately 150-megawatt (MW) merchant solar generating facility in Henderson County, Kentucky on April 18, 2023.² During the pendency of the case: Sebree Solar II responded to two rounds of discovery;³ a site visit was conducted; the Siting Board hired a consultant who issued a

¹ Sebree Solar II's Application for Declaratory Order (filed April 8, 2025) at 1.

² Application (filed Apr. 18, 2023).

³ Sebree Solar II's Response to Siting Board Staff's First Request for Information (Staff's First Request) (filed June. 16, 2023) and Sebree Solar II's Response to Siting Board Staff's Second Request for Information (Staff's Second Request) (filed July 21, 2023).

report about the project;⁴ Sebree Solar II responded to the consultant's report;⁵ and a hearing was held August 17, 2023. The Siting Board evaluated the entire record before issuing the final Order on October 12, 2023. Sebree Solar II filed a motion for rehearing that requested the Siting Board reconsider Mitigation Measure 11, 15, 18, 28 in the October 12, 2023 final Order. The Siting Board declined to remove Mitigation Measure 11 and 28 and continued to require Siting Board approval for transfers of the project.⁶ The Siting Board granted the motion for rehearing on Mitigation Measure 15 and 18 and made changes to those Mitigation Measures.⁷

On April 8, 2025, Sebree Solar II filed a motion and requested that the Siting Board issue a declaratory order in anticipation of three transfers that may need to occur in order to obtain funding during the construction of the project.⁸ Sebree Solar II requested a declaratory order that the transaction does not require Siting Board approval. In the alternative, should the Siting Board find the transaction does require approval, Sebree Solar II requested Siting Board approval for the anticipated transfer.⁹

DISCUSSION AND FINDINGS

Sebree Solar II stated that, to obtain funding for the project, through construction financing, tax equity financing, and back leverage financing.¹⁰ Certain transfers of

⁴ Wells Engineering Report (filed Aug. 7, 2023).

⁵ Sebree Solar II's Response to Consultant Report (filed Aug. 11, 2023).

⁶ Order (Ky. Siting Board Dec. 15, 2023).

⁷ Order (Ky. Siting Board Dec. 15, 2023).

⁸ Sebree Solar II's Application for Declaratory Order.

⁹ Sebree Solar II's Application for Declaratory Order at 1.

¹⁰ Sebree Solar II's Application for Declaratory Order at 2.

ownership interest in Sebree Solar II will need to occur. The proposed construction financing is estimated to close in August 2025.¹¹ Sebree Solar II is a wholly owned subsidiary of NextEra Energy, Inc. (NextEra).¹² In order for the construction financing to occur a newly formed, wholly owned ESI Energy, LLC (ESI) subsidiary would enter into a Revolving Credit Facility as a borrower, and the membership interests in the Borrower will be pledged as collateral for the revolving loan.¹³ Sebree Solar II stated that project level assets will not be pledged as collateral to the lenders.¹⁴ Therefore, Sebree Solar II's assets are not pledged as collateral for the loan.¹⁵ Sebree Solar II would remain indirectly, wholly owned by ESI, which is a wholly owned NextEra subsidiary.¹⁶ NextEra would retain control of all management and operation of Sebree Solar II.¹⁷

The proposed tax equity financing is estimated to close in May 2026.¹⁸ Sebree Solar II is a wholly owned subsidiary of NextEra.¹⁹ ESI is also a wholly owned subsidiary of NextEra.²⁰ According to the motion, ESI will create a wholly owned subsidiary (Holding Company).²¹ Sebree Solar II would then be transferred into the Holding Company. After

¹¹ Sebree Solar II Response to Staff's First Request, Item 2.

¹² Sebree Solar II's Application for Declaratory Order at 3.

¹³ Sebree Solar II Response to Staff's First Request, Item 2.

¹⁴ Sebree Solar II Response to Staff's First Request, Item 2.

¹⁵ Sebree Solar II Response to Staff's First Request, Item 2.

¹⁶ Sebree Solar II Response to Staff's First Request, Item 2.

¹⁷ Sebree Solar II's Application for Declaratory Order at 15.

¹⁸ Sebree Solar II Response to Staff's First Request, Item 2.

¹⁹ Sebree Solar's Application for Declaratory Order at 3.

²⁰ Sebree Solar II's Application for Declaratory Order at 2-3.

²¹ Sebree Solar's Application for Declaratory Order at 3.

Sebree Solar II is transferred into the Holding Company, tax equity investors would exchange cash for an interest in the non-controlling ownership interest in Sebree Solar II.²² The cash investment would pay for the construction of the project. ESI, or the Holding Company, will retain all the controlling Class A stocks of Sebree Solar II. The tax equity investors would hold the Class B stock and would not have any control over the operations and management of Sebree Solar II.²³

According to the motion, the proposed back leverage financing is estimated to close in November 2026.²⁴ ESI may seek to finance certain costs for developing and constructing Sebree Solar II by forming and contributing to a Holding Company a portfolio of tax partnerships (including the tax partnerships in which Sebree Solar II is a part).²⁵ The borrower will also be an indirect subsidiary of ESI and will indirectly own Sebree Solar II.²⁶ The membership interests of a Class A member in the tax partnership will be pledged to secure loans under the back leverage credit facility.²⁷ Sebree Solar II stated that NextEra, or its affiliates, will continue to be responsible for the day-to-day operation and management of Sebree Solar II.²⁸ Sebree Solar II stated that NextEra will retain control of the operations and management, and maintain compliance with the Mitigation

²² Sebree Solar II Application for Declaratory Order at 3.

²³ Sebree Solar II Application for Declaratory Order at 4.

²⁴ Sebree Solar II Response to Staff's First Request, Item 2.

²⁵ Sebree Solar II Application for Declaratory Order at 4.

²⁶ Sebree Solar II Application for Declaratory Order at 4.

²⁷ Sebree Solar II Application for Declaratory Order at 4.

²⁸ Sebree Solar II's Application for Declaratory Order at 5.

Measures in the October 12, 2023 Order.²⁹ Sebree Solar II also declared that NextEra, or its affiliates, will be responsible for supplying the necessary staff to comply with all Siting Board requirements.³⁰

Having considered the motion, the Siting Board finds that the motion for a declaratory Order should be denied. This finding is consistent with prior Siting Board Orders³¹ and reflects a desire for the Siting Board to continue to have authority to review transfers in order to ensure compliance with final Order, including any mitigation measures.

Based upon the motion and being otherwise sufficiently advised, the Siting Board finds that the transfer of Sebree Solar II into a holding company for anticipated transaction construction, tax equity and back leverage financing should be approved. NextEra was the original entity with a controlling interest in Sebree Solar II and its information was reviewed in the underlying proceedings. The Siting Board fully investigated its environment compliance history and its financial, technical, and managerial capacity to construct and operate the project. The Siting Board has taken notice from the October 12, 2023 Order that ESI has violated the Migratory Bird Treaty Act, but otherwise has a good record of environmental compliance.³²

²⁹ Sebree Solar II's Application for Declaratory Order at 5.

³⁰ Sebree Solar II's Application for Declaratory Order at 5.

³¹ Case No. 2020-00387, *Electronic Application Of Green River Solar, LLC for a Certificate to Construct an Approximately 200 Megawatt Merchant Solar Electric Generating Facility In Breckinridge County and Meade County, Kentucky Pursuant To KRS 278.700 and 807 Kar 5:110* (Ky. Siting Board Dec. 17, 2024)., Order

³² Order (Ky. Siting Board Oct.12, 2023) at 19.

The Siting Board notes that these transactions are only for financing purposes. The commercial lenders 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 II compliance with mitigation measures today will continue to do so post transfer, the Siting Board finds that the request to obtain funding during the construction for the Project should be approved subject to the continuing compliance with the October 12, 2023 Order.

The Siting Board further finds that when each of the transfers of the project occur, Sebree Solar II should file notice into the record. In addition, when the financing is complete, notice shall be filed listing the lienholder, the amount of indebtedness as well as the portion of indebtedness as it relates to this project. This information should be updated to reflect any financing changes.

IT IS THEREFORE ORDERED that:

1. Sebree Solar II's request for declaratory Order is denied.
2. Sebree Solar II request to obtain transfers between Sebree Solar II and affiliates to obtain funding for the Project through three separate financings is granted.
3. Sebree Solar II shall provide proof to the Siting Board, in post-case correspondence referencing this case number, within 20 days of each of the transaction closing.
4. Sebree Solar II shall provide notice to the Siting Board, in post-case correspondence referencing this case number, of the ultimate lienholder, the total amount

of indebtedness as well as the indebtedness related to this project, within 20 days of the financial transaction closing.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

Vice Chairman, Public Service Commission



Commissioner, Public Service Commission

by AH
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
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