

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

In the Matter of the Application of SR Turkey Creek,)
LLC (f/k/a Turkey Creek Solar, LLC), for a) **Case No. 2020-00040**
Construction Certificate to Construct a Merchant)
Electric Generating Facility

MOTION AND NOTICE OF WITHDRAWAL

SR Turkey Creek, LLC (f/k/a Turkey Creek Solar, LLC) (“Turkey Creek”), by counsel, hereby submits this Motion, respectfully requesting that the Siting Board grant its Petition for Reconsideration in part and deny as moot the Petition for Reconsideration in part.

BACKGROUND

Turkey Creek proposes to construct a 50-megawatt alternating current photovoltaic electricity generation facility situated on land in Garrard County (the “Project”). It filed an application for a certificate to construct the Project with the Siting Board on March 27, 2020. Because of the Covid-19 pandemic, the Siting Board extended the statutory deadline an extra 60 days, such that the statutory deadline was set at September 23, 2020. Notably, no person sought intervention in this matter or filed comments in opposition to the siting of the Project. On September 22, 2020, the Siting Board approved a certificate to construct the Project. As a part of its Order, the Siting Board requires Turkey Creek to comply with certain mitigation measures.

After reviewing the Siting Board’s mitigation measures, Turkey Creek filed a Petition for Reconsideration on October 19, 2020, seeking clarification of certain mitigation measures. On

December 15, 2020, the Siting Board granted Turkey Creek's Petition for Reconsideration for the purposes of further investigation. In that Order, the Siting Board established a procedural schedule with two additional rounds of written discovery requests. Turkey Creek filed its responses to the last set of discovery requests on February 15, 2021.

On March 24, 2021, Turkey Creek filed its Motion for Decision, in which it articulates the need to have a final decision from the Siting Board in order to satisfy certain steps in its process, provide final guidance to its engineering, procurement, and construction (EPC) contractor on mitigation measures, and maintain project development schedule. The Motion for Decision is still pending. In addition, nearly nine months have passed since the initial construction certificate was submitted. Turkey Creek is reluctant to file the present motion, as it understands the challenges facing the Siting Board and its Staff, particularly in light of the influx of other solar-development projects seeking a construction certificate. But Turkey Creek needs a definitive decision from the Siting Board in order to proceed forward.

Turkey Creek has reviewed mitigation measures on which it previously sought reconsideration and determined that there were two mitigation measures that make the project unviable. In the interest of expediting the Siting Board's decision, Turkey Creek will withdraw certain aspects of its Petition for Reconsideration and focus its request for relief on one mitigation measures and one ordering paragraph.

AMENDED REQUESTS

1. Tamping Process

The Siting Board's eighth mitigation measure relates to the tamping of the racking system and vegetative buffer. Specifically, the Siting Board will require the following:

8. Turkey Creek shall implement the modified vegetative buffers to those properties that are within 1,500 feet of the solar facilities' boundary lines before the tamping of the racking panels and Turkey Creek shall schedule the tamping process at these nearby homes so that the tamping will occur at the end of the tamping process period.

This condition was not a recommendation of BBC Consulting, and therefore, Turkey Creek did not have an opportunity to comment on it prior to the Siting Board's initial decision.

Turkey Creek is concerned that this requirement is vague and ambiguous as to the required location of the modified vegetative buffer. The preliminary site plan provided by Turkey Creek in its initial application shows the location of Turkey Creek's proposed vegetative buffers. It is not clear how to apply a modified buffer to benefit properties that are 1,500 feet away, and what that means for the specific location of the proposed vegetative buffer. Additionally, without clarification from the Siting Board, it is also unclear what process Turkey Creek should follow to confirm whether its proposed vegetative buffer locations are deemed to satisfy this mitigation measure because the proposed site layout, including the specific buffer locations, have already been reviewed by the Siting Board, its consultant, and the community during the public comment process.

In addition, it is not clear why the tamping process close to nearby homes must be scheduled at the end of the tamping process. Residences within 1,500 feet are scattered along various portions of the Project limits. Scheduling all of the tamping near residences within 1,500 feet at the end of the tamping process will be inefficient and likely to cause increased costs, delays, or other unintended consequences during construction with uncertain benefit to the community. Turkey Creek is committed to advising residents within 1,500 feet of the property

boundaries of potential construction noises as required by the eighteenth mitigation measure. However, adjusting the construction schedule in a way that is likely to be inefficient and take longer creates unnecessary burdens on the Project with little to no impact on the temporary noise.

Recent Siting Board decisions do not appear to have the same requirement that other projects must sequence their tamping such that tamping at the nearest homes must occur at the end of the tamping process period.¹ Those decisions have a similar mitigation measure that requires a construction method that will suppress noise from the pile driving process to be implemented when pile driving is within 1,500 feet from a noise sensitive receptor, and Turkey Creek is amenable to this mitigation measure.

For the reasons explained above, Turkey Creek respectfully requests a modification of the above-mentioned mitigation measure as identified below:

Requested Revised Mitigation Measure

~~8. Turkey Creek shall implement the modified vegetative buffers to those properties that are within 1,500 feet of the solar facilities' boundary lines before the tamping of the racking panels and Turkey Creek shall schedule the tamping process at these nearby homes so that the tamping will occur at the end of the tamping process period.~~

8. If the pile driving activity occurs within 1,500 feet of a noise sensitive receptor, Turkey Creek should 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).

2. Setback for Inverters

In its Order, the Siting Board approved Turkey Creek's motion for deviation from the setback requirements with one exception: "that the inverters be located at least 626 feet from the

¹ See, e.g., *AEUG Madison Solar, LLC*, Case No. 2020-00219 (K.S.B. June 9, 2021); *AEUG Fleming Solar, LLC*, Case No. 2020-00206 (K.S.B. May 24, 2021).

closest residence and the Garrard County High School given that the application provided that the location of the inverters at least at such a distance.” This inclusion of 626 feet was actually based on a mistake Turkey Creek made in referencing this distance in its Application and Exhibits thereto. Further, any requirement that inverters be located no closer than 626 feet to the closest residence may threaten the viability of solar development projects in Kentucky, including Turkey Creek. Accordingly, Turkey Creek requests the Siting Board reconsider this requirement.

Turkey Creek acknowledges that there were imprecise statements in its original application materials regarding the distance of any inverters to the closest residence and apologizes for the inconsistent statements in the application materials regarding the inverter setbacks. The Pond Noise and Traffic Assessment that was filed with the Application incorrectly mentions that the preliminary site plan would have the distance of the closest inverter to a residence at a minimum of 626 feet. In Section 4 of the Site Assessment Report (“Anticipated Noise Levels at Property Boundary”), Turkey Creek incorrectly quoted the Pond Noise and Traffic Assessment and suggested that the closest inverter to a residence would be 626 feet away. The identification of the 626-foot distance was based on a preliminary plan that was not intended to be rigid for the purposes of exact placement of infrastructure inside the project’s planned footprint.²

² The description of the project contained in the Order includes a statement that “[e]xact locations of some solar panels and the locations of the inverters and transformer have not been finalized by Turkey Creek but will be located at least 150 feet from the property boundaries.” Turkey Creek presumes that the reference to 150 feet derived from statements in Case No. 2020-00043. Although exact locations of Turkey Creek’s solar panels, inverters, and transformers have not been determined, because Turkey Creek’s site characteristics and amount of land available allow for larger setbacks, Turkey Creek is committed to its position that facility infrastructure will be no closer than 200 feet from the project’s external property boundaries and 300 feet from neighborhoods.

Turkey Creek submits that the general setback limits of 200 feet from the external property boundaries and 300 feet from neighborhood properties are sufficient to address the Siting Board's noise concerns. Even with these setbacks, the nearest residence is approximately 400 feet away.³ As indicated on the Noise Addendum attached as Exhibit 1, the noise level of a central inverter (the type of inverter included in the preliminary site plan) at 400 feet is less than 47 dB, which is less than noise levels associated with normal conversation or ambient noise at an urban residence.

Turkey Creek also requests that the Siting Board consider additional information in the Noise Addendum attached as Exhibit 1 regarding operational noise. In addition to providing information on central inverters, the Noise Addendum also explains the difference in operational noise between central inverters and string inverters. As the addendum indicates, string inverters are installed at the end of rows of solar panels and, therefore, are located on the edges of the footprint, which for Turkey Creek is at least 200 feet from the property boundary. But because string inverters produce less noise compared to a central inverter, there would actually be a reduction in the amount of noise at the nearest noise receptor 100 feet away from a string inverter, compared to 150 feet away from a central inverter. Both central and string inverters are commonly used in the solar industry, and Turkey Creek seeks flexibility in the use of either type of inverter.

Based on the foregoing information, Turkey Creek requests that the Siting Board amend its requirement that the inverters be located at least 2,000 feet from the closest residence such

³ See Pond Noise and Traffic Assessment (Mar. 19, 2020) filed with the Site Assessment Report in the Application ("According the proposed plan, the dwelling nearest to any proposed solar structure is located approximately 400 feet away from the nearest solar panel"); Turkey Creek's Responses to Siting Board's Supplemental Request for Information (filed July 20, 2020) ("The approximate 400 ft distance from solar panel to dwelling is correct.").

that the minimum setback of inverters be the same as other facility infrastructure that will be no closer than 200 feet from the project's external property boundaries and 300 feet from neighborhoods.⁴ This amendment is critical in order for Turkey Creek to proceed towards financing and construction.

For the reasons explained above, Turkey Creek respectfully requests a modification of the above-mentioned ordering paragraph as identified below.

Requested Revised Ordering Paragraph

2. Turkey Creek's motion for deviation from the 2,000 feet setback requirement is granted ~~except for the location of the inverters~~. All solar infrastructure shall be at least 200 feet from the project's external property boundaries and 300 feet from any neighborhood.

WITHDRAWN REQUESTS

In its Petition for Reconsideration, Turkey Creek sought modification of eight other mitigation measures. In order to expedite the Siting Board's decision-making process, Turkey Creek will withdraw its request for modification of those mitigation measures because time is of the essence in order to maintain a viable project.

CONCLUSION

As discussed above, Turkey Creek respectfully requests modification of mitigation measure number 8 and ordering paragraph number 2. If these modifications are approved by the Siting Board, Turkey Creek agrees to withdraw the other previously requested modifications. A proposed order is attached.

⁴ The Siting Board's original limitation included 626 feet from Garrard County High School. Because the school is more than 1,000 feet from the project's external property boundaries, this is not a concern.

Respectfully submitted,

/s/ M. Todd Osterloh

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COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING

ELECTRONIC APPLICATION OF SR TURKEY)
CREEK, LLC (F/K/A TURKEY CREEK SOLAR, LLC),)
FOR A CONSTRUCTION CERTIFICATE TO) Case No. 2020-00040
CONSTRUCT AN APPROXIMATELY 50-)
MEGAWATT MERCHANT ELECTRIC)
GENERATING FACILITY IN GARRARD COUNTY,)
KENTUCKY PURSUANT TO KRS 278.700 AND)
807:110

ORDER

The matter is before the Siting Board upon the following filings: (1) a Petition for Reconsideration and Clarification filed on October 19, 2020 (Petition), by Turkey Creek Solar, LLC (“Turkey Creek”) requesting reconsideration and clarification of certain mitigation requirements imposed by the September 23, 2020 Order (“Final Order”); (2) a Motion for Decision filed on March 24, 2021, and (3) a Motion and Notice of Withdrawal filed on June 15, 2021.⁵

On March 27, 2020, Turkey Creek filed an application requesting a Certificate of Construction to construct a 50-megawatt alternating current (MWac) solar photovoltaic electric generating facility to be located in Lancaster, Garrard County, Kentucky. The Final Order conditionally authorized Turkey Creek a Certificate of Construction to

⁵ In its Motion for Decision, Turkey Creek informed the Siting Board that it filed an Amended Certificate of Authority indicating a change in name from Turkey Creek Solar, LLC, to SR Turkey Creek, LLC. Our reference to Turkey Creek herein is intended to apply to that entity, which has simply changed its name.

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construct the proposed solar facility subject to Turkey Creek complying with the mitigation requirements that were discussed in the Final Order and set forth in Appendix A to the Final Order. Turkey Creek states that it “has reviewed the Siting Board’s proposed mitigation measures in detail, and the majority of the measures are acceptable to Turkey Creek”⁶ and that the instant “[p]etition is designed to seek changes and clarifications to a small group of mitigation measures that will inhibit the ability for solar to be developed in Kentucky, including the ability of the [Turkey Creek solar project] to move forward.”⁷

In order to expedite the process, Turkey Creek filed a Motion and Notice of Withdrawal (“Motion”). In that Motion, Turkey Creek narrowed the scope of its Petition for Reconsideration by withdrawing certain requests from its Petition. It continues to seek modification of one mitigation measure and one ordering paragraph from the Final Order.

The Siting Board finds that the requested modifications identified in the Motion are reasonable. IT IS THEREFORE ORDERED that:

1. Turkey Creek’s Motion and Notice of Withdrawal filed on June 11, 2021, is granted.
2. The eighth mitigation measure in the Siting Board’s Order of September 23, 2020, is hereby eliminated and replaced with the following mitigation measure:
 8. If the pile driving activity occurs within 1,500 feet of a noise

⁶ Petition at 3.

⁷ *Id.*

sensitive receptor, Turkey Creek should 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).

3. The second ordering paragraph on page 40 of the Siting Board's Order of September 23, 2020, is hereby eliminated and replaced with the following ordering paragraph:

2. Turkey Creek's motion for deviation from the 2,000 feet setback requirement is granted. All solar infrastructure shall be at least 200 feet from the project's external property boundaries and 300 feet from any neighborhood.

4. Turkey Creek's Petition for Reconsideration and Clarification filed on October 19, 2020, is granted in part and denied as moot in part, as described above.

5. Turkey Creek's Motion for Decision filed on March 24, 2021, is denied as moot.