

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

**In the Matter of the Application of AEUG Fleming )  
Solar, LLC, for a Construction Certificate to Construct ) Case No. 2020-00206  
a Merchant Electric Generating Facility )**

---

**RESPONSE TO CONSULTANT'S REPORT**

---

AEUG Fleming Solar, LLC (“AEUG Fleming”), by counsel, hereby provides its response to the Report prepared by Harvey Economics. AEUG Fleming appreciates the ultimate conclusion of Harvey Economics’ report, as the report recommends that the Siting Board approve the application for a certificate to construct the solar facility, but there are certain mitigation measures recommended by Harvey Economics that should be amended.<sup>1</sup> AEUG Fleming addresses those mitigation measures in this Response. Ultimately, it encourages the Siting Board to approve the certificate of construction for its proposed facility with limited conditions, as discussed below.

**I. BACKGROUND**

AEUG Fleming proposes to construct a 188-megawatt alternating current photovoltaic (PV) electricity generation facility, situated on land in Fleming County near the City of Flemingsburg. It filed an application for a certificate to construct this solar-energy project with the Siting Board on November 25, 2020.

---

<sup>1</sup> AEUG Fleming has also noticed certain discrepancies or inconsistent characterizations between Harvey Economics’ Report and the information that has been filed in the record of the case. AEUG Fleming has only noted these discrepancies or inconsistencies in this Response that are material to its discussion of the recommended mitigation measures.

AEUG Fleming has communicated with neighbors and local community leaders throughout its planning process within the constraints dictated by the Covid-19 safety measures. In order to comply with statutory requirements,<sup>2</sup> AEUG Fleming held a public meeting on August 7, 2020, to inform the public about the Project and receive comments from them.<sup>3</sup> Notice of this meeting was provided to the public through publication in the *Flemingsburg Gazette*. All adjoining landowners—more than 100—were mailed individual notices of the meeting.<sup>4</sup> In addition to the public meeting, AEUG Fleming held a virtual community meeting on Wednesday, July 22, 2020. Neighbors were invited to pick up dinner through a drive-thru BBQ, followed by an online virtual presentation about the Project. The dinner was well attended with 40 dinners distributed and three dozen participants attending the online virtual presentation.<sup>5</sup>

After the Application was filed, AEUG Fleming has engaged in other community relations. It has donated \$2,500 to both the Licking Valley Community Action Program and the Flemingsburg Volunteer Fire Department. More recently, AEUG Fleming coordinated with the local Dairy Queen to provide information sheets about the project and free Blizzards to nearly 900 individuals. Along with this promotion, it reached over 1,000 Facebook users in Flemingsburg. In addition, it has procured pollinator seed packs to distribute in the community and plans to consider partnerships with community gardens.

Consistent with KRS 278.708(5), the Siting Board retained Harvey Economics to review the site assessment report (“SAR”) filed by AEUG Fleming and provide recommendations concerning the adequacy of the SAR and proposed mitigation measures. Pursuant to subsection

---

<sup>2</sup> KRS 278.706 (2)(f).

<sup>3</sup> See Application, Vol. 1, Section 6 – Public Notice Report.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

(2)(a) of that statute, the SAR is required to have a description of the proposed facility, including surrounding land uses, legal boundaries, proposed access controls, location of structures on the property, location of roadways, location of utility infrastructure, setbacks, and anticipated noise.

The SAR must also include evaluation of four aspects of the project:

1. the compatibility of the facility with scenic surroundings,
2. potential changes in property values and land use resulting from the proposed facility for property owners adjacent to the facility,
3. anticipated peak and average noise levels associated with the facility's construction and operation, and
4. impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust and any anticipated degradation of roads and lands.

KRS 278.708(2)(b)-(e). Harvey Economics focused on these four aspects of the project in preparing its report, as well as AEUG Fleming's proposed development plan, economic benefits, and decommissioning. For each section, it discussed its findings and made certain recommendations.

## **II. DISCUSSION**

### **A. PROPOSED DEVELOPMENT PLAN**

The first facet of the Application that Harvey Economics reviewed was the Project's site development plan. Harvey Economics specifically stated that "the Applicant has generally complied with the legislative requirements for describing the facility and a site development plan, as required by KRS 278.708."<sup>6</sup> It also determined that "[s]ecurity and access control measures appear to be adequate, given the type of facility and its location in a rural area."<sup>7</sup>

---

<sup>6</sup> See Harvey Economics Report at III-16.

<sup>7</sup> *Id.*

Harvey Economics made the following recommended actions for mitigation on this section:

1. A final site layout plan should be submitted to the Siting Board upon completion of the final site design. Deviations from the preliminary site layout plan, which formed the basis for HE's review, should be clearly indicated on the revised graphic. Those changes would include, but are not limited to, location of solar panels, inverters, transformer, the warehouse, substation, operations and maintenance building or other Project facilities or infrastructure.
2. Any change in Project boundaries from the information that formed this evaluation should be submitted to the Siting Board for review.
3. The Siting Board will determine if any deviation in the boundaries or site development plan is likely to create a materially different pattern or magnitude of impacts. If not, no further action is required, but if yes, the Applicant will support the Siting Board's effort to revise its assessment of impacts and mitigation requirements.
4. The Applicant or its contractor will control access to the site during construction and operation. All construction entrances will be gated and locked when not in use.
5. The Applicant's access control strategy should also include appropriate signage to warn potential trespassers. The Applicant must ensure that all site entrances and boundaries have adequate signage, particularly in locations visible to the public, local residents and business owners.
6. According to National Electrical Safety Code regulations, the security fence must be installed prior to any electrical installation work. The substation will have its own separate security fences installed.

AEUG Fleming generally agrees with Harvey Economics' recommendations above.

## **B. COMPATIBILITY WITH SCENIC SURROUNDINGS**

The second facet of the Application that Harvey Economics reviewed was the Project's compatibility with its scenic surroundings. As it described, "This component of the statute

relates to how well the proposed facility will ‘blend-in’ or is compatible with its physical surroundings and associated land uses.”<sup>8</sup> It mentioned that “solar farms are considered to be less visually intrusive, as they are relatively short, and can be effectively visually blocked naturally with topographic variation or intervening vegetation, or through strategic means utilized by an applicant.”<sup>9</sup>

Harvey Economics did not make a specific finding as to whether the Project was generally compatible with the scenic surroundings. The Project is compatible with its scenic surroundings, as demonstrated by its similar surroundings to the Turkey Creek Solar, LLC, facility that was recently approved by the Siting Board.<sup>10</sup> Both AEUG Fleming and Turkey Creek locations are located in a primarily agricultural area that is near the county seat and within 2,000 feet of the County high school. The substations for both projects are largely hidden based on their locations.

Harvey Economics indicated that “operational infrastructure may cause adverse visual impacts to certain residences and businesses since few vegetative buffers are currently planned.” AEUG Fleming highlights the contingent nature of this statement. AEUG Fleming is currently engaged in evaluating areas adjacent to the proposed solar facility to determine the visual impact caused by the solar facility and whether any mitigation measures can be implemented to reduce such visual impacts.<sup>11</sup> Visual impacts can and will be evaluated and appropriate mitigation implemented, on a case-by-case basis.<sup>12</sup> There will likely be locations where buffers are appropriate and reasonable. But there may be other locations that buffering is either not necessary or not reasonable or both, even if the facility can be seen from that location.

---

<sup>8</sup> Report at V-2.

<sup>9</sup> Report at V-8.

<sup>10</sup> *Turkey Creek Solar, LLC*, Case No. 2020-00040 (KSBEGETS Sept. 23, 2020).

<sup>11</sup> AEUG Fleming Response to Siting Board Second Request for Information, Item 5.

<sup>12</sup> AEUG Fleming Response to Siting Board First Request for Information, Item 3b.

Moreover, there is no requirement that merchant generating facilities be completely hidden from all neighboring properties. In fact, the Siting Board has previously approved projects that were visible. *See, e.g., Kentucky Power Energy, LLC*, Case No. 2002-00312 (KSBEETS Nov. 10, 2003)(approving a 540-megawatt electric gasification combined cycle generation station that had tall cooling tower plumes that could be visible 8 miles away).

Harvey Economics proposed five action items for mitigation measures related to the Project's compatibility with the scenic surroundings, which are as follows:

1. The Applicant will not remove any existing vegetation unless the existing vegetation needs to be removed for placement of solar panels.
2. Existing vegetation between the solar arrays and the residences will be left in place, to the extent practicable, to help screen the Project and reduce visual impacts from the adjacent homes.
3. The Applicant has committed to working with homeowners and business owners to address concerns related to the visual impact of the Project on its neighbors. The Applicant should provide a visual buffer between the facility and residences and other occupied structures with a line of sight as requested by these property owners. If vegetation is used, plantings should reach at least eight feet high within four years.

That vegetation should be maintained or replaced as needed. The Applicant should coordinate with existing adjacent property owners that have a line of sight to Project infrastructure to determine how this should be accomplished.

4. Applicant will cultivate at least six acres of native pollinator-friendly species within the solar facility site, among the solar panels. At least 0.5 acres of pollinator-friendly species will be planted in the western, noncontiguous parcel of the Project.
5. The Applicant has pledged to select non-glare panels and operate the panels in such a way that all glare from the panels is eliminated. Applicant will provide proof that glare will not occur from the facility or immediately adjust solar panel operations upon any complaint about glare from those living,

working or traveling in proximity to the facility. Failing this, the Applicant will cease operations until the glare is rectified.<sup>13</sup>

With respect to mitigation measures 1 and 2 above, AEUG Fleming generally agrees. The first mitigation measure may be unintentionally narrow, depending on its interpretation. AEUG Fleming does not plan to remove any existing vegetation unless the existing vegetation needs to be removed for placement of solar panels, which would include effective implementation of the project. This concept is already included within the proposed mitigation measure.

With respect to mitigation measure 3, AEUG Fleming believes that the measure should be modified. It will commit to working with residents and businesses and consider concerns related to the visual impact on the facility's neighbors. But it is impractical to provide a visual buffer between the facility and every residence and other occupied structure with a line of sight as requested by those property owners. For example, given certain circumstances, eight-foot tall trees may not block a view of the facility if the viewpoint elevated 30 feet above the project. Moreover, there is no explanation as to the significance of why trees should be eight-feet tall within four years of planting.

Accordingly, AEUG Fleming proposes to replace the third mitigation measure in this section with the following:

3. AEUG Fleming will coordinate with neighboring homeowners and businesses who raise concerns with AEUG Fleming about the visual impact of the Project to provide visual buffering when it is appropriate and reasonable.

With respect to mitigation measure 4 above, Harvey Economics did not provide any rationale for the need to cultivate at least six acres of native pollinator-friendly species, including

---

<sup>13</sup> *Id.*

at least 0.5 acres planted in the western, noncontiguous parcel of the Project. In addition, as a part of its commitment to sustainability, AEUG Fleming has procured pollinator seed packs to distribute in the community and plans to consider partnerships with community gardens. Because Harvey Economics did not explain why cultivation of six acres of pollinators is necessary, AEUG Fleming respectfully requests removal of this mitigation measure.

With respect to mitigation measure 5 above, the comments on glare need to be clarified. AEUG Fleming is not aware of “non-glare” panels. Panels that are typically utilized are considered “anti-glare,” as they are designed to absorb light. But it is not possible to completely eliminate glare. Even minimizing the effects of glare by manipulating the angles of the panels may not completely eliminate glare depending on the position of the sun throughout the year and throughout a particular day. But reasonable glare should be permissible; even the FAA allows some glare near airports.

In order to address the concern of glare, AEUG Fleming will commit to filing with the Siting Board a glare study to confirm that there will be no red glare at key observation points. It anticipates that it can file that glare study within 30 days. Accordingly, AEUG Fleming proposes to replace the fifth mitigation measure in this section with the following:

5. AEUG Fleming will commit to filing a glare study to confirm that there will be no red glare at key observation points.

### **C. POTENTIAL CHANGES IN PROPERTY VALUES**

The third facet of the Application that Harvey Economics reviewed was the Project’s potential impact on the changes in property values for adjacent property owners. Harvey Economics addressed how the “magnitude, timing, and duration of increased traffic volume,

noise, odor, visual impairments, or other emissions associated with the facility can influence the marketability and value of nearby properties.”<sup>14</sup>

Harvey Economics concluded “that property values in Fleming County are unlikely to be affected by the siting of the AEUG Fleming solar facility.”<sup>15</sup> Relying on information submitted by Richard Kirkland, Harvey Economics mentioned that there is a potential for a range of positive or negative effects to property values.<sup>16</sup> But it is important to note that the vast majority of matched pair sets resulted in a positive impact to property values. To the extent that there is a range of positive or negative range, it approximately three times more likely that property values would see a positive impact.<sup>17</sup>

Because Harvey Economics concluded that it was unlikely there would be impacts to property values, it found that there were no necessary mitigation efforts needed for this component.

#### **D. ANTICIPATED NOISE LEVELS**

The fourth facet of the Application that Harvey Economics reviewed was the Project’s noise levels associated with construction and operation of the proposed AEUG Fleming facility. Harvey Economics indicated that there could be up to twelve months of construction with intermittent, “potentially annoying” noises that will not be permanently impactful to nearby residents.<sup>18</sup> It indicated that a variable construction schedule throughout the year could aggravate nearby residents. Harvey Economics also indicated that some residences may experience noise levels above 50 dBA, which would be “moderately annoying.”

---

<sup>14</sup> Report at V-8.

<sup>15</sup> *Id.* at V-16.

<sup>16</sup> *Id.* at V-14.

<sup>17</sup> *Id.* at V-14, Exhibit 5-3.

<sup>18</sup> *Id.* at V-21. In contrast, the Siting Board has previously approved projects with far longer construction schedules of 24-30 months. *See, e.g., SunCoke Energy South Shore LLC*, Case No. 2015-00220 (KSBEGETS 2014-00162); *Kentucky Pioneer Energy, LLC*, Case No. 2002-00312 (KSBEGETS Nov. 10, 2003).

Based on these findings, Harvey Economics made the following recommendations:

1. A consistent construction schedule will offer certainty and relief during the construction period, so we recommend avoiding a variable daily construction schedule. HE suggests that the Applicant's proposed Fall schedule be adopted year-round: no earlier start than 7:30am with a construction stop at 7:00pm.
2. HE suggests that the Applicant consider eliminating construction work on Sundays. The church in the vicinity and the residents living nearby will likely appreciate the respite from construction noise.
3. The Applicant should notify residents and businesses within 2,400 feet of the Project boundary about the construction plan, the noise potential, and the mitigation plans at least one month prior to construction start.
4. The Applicant should remain in contact with nearby residents to confirm that noise levels are not unduly high or annoying after the pounding and placement of the solar panel racking begins.
5. HE proposes that the Applicant coordinate with the local school district officials about concentrating all noise-inducing construction activity in the vicinity of the high school to the summer and during non-school periods.
6. The Applicant should coordinate with and plan for noise buffering as needed for at least the 23 residences (and potentially the Hunters Trace neighborhood) estimated to experience noise levels of 50 dBA or greater during facility operations. Additional vegetative buffering or fencing should be considered on an as-needed basis for residents who experience annoying and verifiable high noise levels during operations.

AEUG Fleming is fully committed to being a good neighbor. It recognizes that elevated noise levels could create concerns to nearby residents. But contrary to Harvey Economics' conclusions, AEUG Fleming believes that its proposed facility does not create unacceptable levels of noise, as demonstrated by an Environmental Protection Agency ("EPA") study.

AEUG Fleming identified a total of 23 noise sensitive areas (NSAs) that may experience day and night noise levels (Ldn) of 50 dBA or more if the project is completed as currently

planned. The maximum impact was estimated as 54.7 Ldn. As discussed in the Noise and Traffic Study, in 1974 the EPA published “Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin on Safety.” In this publication, the EPA evaluated the effects of environmental noise with respect to health and safety and determined a Ldn of 55 dBA to be the maximum sound level that will not adversely affect public health and welfare by interfering with speech or other activities in outdoor areas. In the 1974 EPA document, EPA defines public health and welfare as “complete physical, mental and social well-being and not merely the absence of disease and infirmity.” This definition considers sub-clinical and subjective responses (e.g., annoyance and other adverse psychological reactions) of the individual and the public. The phrase “health and welfare” also includes personal comfort and well-being and the absence of mental anguish and annoyance. Therefore, based on the above definition, no NSAs should be regularly annoyed by operations of the inverters as the maximum estimated noise level was determined to be under 55 dBA Ldn.<sup>19</sup> In addition to support from the EPA report, the Siting Board has previously approved projects with similar levels of operational noise. The SunCoke plant was projected to have average noise levels of 58 dBA. *SunCoke Energy South Shore LLC*, Case No. 2015-00220 (KSBEGTS 2014-00162).

It is also worth pointing out that there has not yet been an ambient noise study prepared. An ambient noise study may show that noises during the facility’s operation do not exceed the noise levels currently existing in the absence of the facility.

With respect to mitigation measure 1 above, AEUG Fleming does not agree that a uniform construction schedule based on time of day would necessarily offer certainty or relief

---

<sup>19</sup> Harvey Economics cites an article by the World Health Organization, which suggests a lower threshold. There is no indication that the EPA has amended its standard, and therefore, it should still be considered reasonable.

during construction.<sup>20</sup> Nevertheless, it is willing to agree to certain limitations, with a slightly longer daily working period. AEUG Fleming requests a slightly longer working period than what is recommended by Harvey Economics, which will help keep the construction progress timely. An earlier start will also reduce impact to traffic for most high schools. Accordingly, it proposes to replace mitigation measure 1 above with the following:

1. AEUG Fleming will begin construction activities no earlier than 7:00 a.m. with employees arriving on site by 6:30 a.m. and cease construction activities by 7:00 p.m.

With respect to mitigation measure 2 above, AEUG Fleming understands that nearby residents, businesses, and organizations may have concerns about noise during construction. However, limitations on the days of the week that construction can take place may affect the duration of the construction phase of the project. AEUG Fleming submits that it is equally beneficial for construction to last a shorter duration from start to finish in comparison to a longer duration but having intermittent days off. Limitations on days can negatively impact construction schedules and PPA commitments. Accordingly, AEUG Fleming requests no limitations on the days of the week on which construction can occur.

With respect to mitigation measure 3 above, AEUG Fleming is willing to send a letter prior to construction to residents and businesses within 2,400 feet of the project boundary, informing them about the construction plan and noise potential. This could be beneficial, as the specific timing of construction start is dependent on the completion of the interconnection agreement/studies. But there does not seem to be any specific need to advise those individuals as to any possible mitigation plan, nor is it clear what information would be included that relates to

---

<sup>20</sup> Relatedly, consider homeowners who anticipate noise from neighborhood children playing outside to dissipate when the streetlights turn on because the children are going inside. Those lights may turn on at 5pm in December, but not until 9pm in July.

a mitigation plan. Accordingly, it proposes to replace mitigation measure 3 above with the following:

3. AEUG Fleming will notify residents and businesses within 2,400 feet of the Project boundary about the construction plan and the noise potential prior to construction start.

With respect to mitigation measure 4 above, AEUG Fleming agrees to that condition.

With respect to mitigation measure 5 above, AEUG Fleming notes that it has already contacted local school district officials regarding the project. It will maintain an open dialogue with the school system regarding construction activities. But it is not clear what Harvey Economics means by suggesting that all noise-inducing construction activity of the high school should be limited to non-school periods. More importantly, there does not appear to be any evidence that such a requirement is even necessary. For example, the Siting Board did not make such a requirement in the project involving Turkey Creek Solar, LLC, which had a high school approximately at the same distance from its project location.<sup>21</sup> Accordingly, AEUG Fleming proposes to replace mitigation measure 3 above with the following:

5. AEUG Fleming will remain in contact with school officials regarding construction and how it may impact the high school.

With respect to mitigation measure 6 above, AEUG Fleming relies on the EPA study that supports its position that the anticipated operational noise levels will not be annoying. Accordingly, AEUG Fleming requests that this mitigation measure not be adopted.

---

<sup>21</sup> See *Turkey Creek Solar, LLC*, Case No. 2020-00040 (K.S.B.E.G.T.S. Sept. 23, 2020).

## **E. EFFECT ON ROAD TRAFFIC**

The fifth facet of the Application that Harvey Economics reviewed was the Project's impact on road and rail transportation, including traffic, fugitive dust, and road degradation. Harvey Economics identified certain areas of traffic congestion that may occur during construction, but indicated that there would be no noticeable traffic impacts during operations. It discussed the potential for road and bridge degradation. It also determined that fugitive dust should not be a problem in light of AEUG Fleming's plans.

With respect to these conclusions, Harvey Economics made the following recommendations:

1. HE suggests that the Applicant work with the Commonwealth road authorities and the Fleming County Road Department to perform a road survey, before and after construction activities, for KR-32, KR-11, KR-559, KR-170, and Nepton Road. This road survey should include any bridges along these routes.
2. The Applicant has committed to fix or fully compensate the appropriate transportation authorities for any damage or degradation to roads or bridges that it causes or materially contributes to.
3. The Applicant should develop special plans and obtain necessary permits before bringing heavy loads, especially the transformer, onto state or county roads in the vicinity. Heavy loads over state-designated deficient bridges should be avoided.
4. Additional heavy truck trips along Nepton Road should be minimized or diverted to disperse the weight of vehicles on the roadway to less than 44,000 pounds to remain under the weight limit around the western (noncontiguous) parcel of the Project site.
5. The Applicant should meet with the Fleming County High School Board to ensure proper road safety measures are designed and implemented. The Applicant should utilize appropriate signage and safety equipment along KR-32 to aid the flow of traffic in the vicinity of Fleming County High School.

6. As needed, Applicant will place a temporary stop light at the intersection of KR-32 and Lantern Ridge Drive during construction.

7. Lazy Oaks Lane should be avoided at all times during construction and operations. The bridge that carries Lazy Oaks Lane is structurally deficient and near a railroad crossing.

8. The Applicant will properly maintain construction equipment and follow BMPs related to fugitive dust throughout the construction process. This should keep dust impacts off-site to a minimal level.

AEUG Fleming submits that these mitigation measures can be streamlined. AEUG Fleming and its vendors will be required to comply with laws and regulations, which are primarily focused on federal and state highways. With respect to County roads, AEUG Fleming will be entering into a Road Use Agreement with the County, which will set forth certain obligations and expectations for any necessary County road modifications and usage. Accordingly, AEUG Fleming would propose to modify the above-mentioned mitigations measures.

With respect to mitigation measures 1, 2, 3, 4, and 7, AEUG Fleming proposes to replace them with the following:

1. AEUG Fleming will comply with laws and regulations regarding the use of roadways, including obtaining necessary permits.
2. AEUG Fleming will comply with any Road Use Agreement executed with the County.

With respect to mitigation measures 5, 6, and 8, AEUG Fleming will agree to these measures.

## **F. ECONOMIC IMPACTS AND DECOMMISSIONING**

Harvey Economics also commented on a few other features of AEUG Fleming's site assessment report. In addressing economic benefits, Harvey Economics concluded:

Construction and operation of the AEUG Fleming solar facility will provide some limited economic benefits to the region and to the Commonwealth. Overall, the AEUG Fleming Project will result in measurable, but temporary, positive economic effects to the region during the construction phase. Construction activity will generate regional employment and income opportunities; those effects will be temporary, but local hires will increase employment and incomes to an area that needs it.<sup>22</sup>

Although exact future impact is impossible to predict, including specific tax amounts, AEUG Fleming appreciates Harvey Economics' recognition that this project will have economic benefit to the region. Based on its review, Harvey Economics made the following recommendation:

Socioeconomic impacts of the AEUG Fleming solar facility represent a positive contribution to the region. However, the economic benefits to the local area are small and largely temporary. The Applicant should attempt to hire local workers and contractors to the extent they are qualified to perform the construction and operations work. The Applicant should consider other opportunities to optimize local benefits. For example, the Fleming County High School would welcome the opportunity for its students to learn more about solar energy and skills in this industry.

AEUG Fleming agrees with these recommendations.

Harvey Economics also considered decommissioning in its Report. AEUG Fleming agrees that decommissioning is an important component of the project, which is why it has addressed these issues in its lease agreements with the property owners. AEUG Fleming respectfully disagrees with any characterization that decommissioning is necessary to "return the

---

<sup>22</sup> *Id.* at V-35.

land to a productive use and property value” to the extent that there is any suggestion that the solar facility will not be a productive use of the land or provide value to the landowner.

Based on its review of information, Harvey Economics recommended the following:

1. As applicable to individual lease agreements, the Applicant, its successors, or assigns will abide by the specific land restoration commitments agreed to by individual property owners as described in each signed lease agreement.
2. The Applicant should develop an explicit decommissioning plan. This plan should commit the Applicant to removing all facility components from the Project site and Fleming County at the cessation of operations.

AEUG Fleming agrees with the first mitigation measure above. It also agrees to develop an explicit decommissioning plan. But a requirement to remove all facility components from the Project site and Fleming County at the cessation of operations is unnecessary and premature. Many developments may occur over the next thirty or more years, such that this type of condition would not be appropriate or reasonable. In addition, the property owners who would be impacted by the condition of their property have used their good judgment and negotiated minimum requirements for decommissioning. Accordingly, AEUG Fleming requests that the Siting Board not adopt a requirement that all facility components will be removed from the Project site and Fleming County.

### **III. CONCLUSION**

AEUG Fleming appreciates Harvey Economics’ review of the project and its ultimate conclusion that the Siting Board approve the application for a certificate to construct the solar facility. As discussed above, some of Harvey Economics’ recommended mitigation measures are either overly burdensome or unnecessary. Accordingly, AEUG Fleming has explained why certain measures should be amended or eliminated. To the extent that the Siting Board is considering other mitigation measures that are not contained in Harvey Economics’ report,

AEUG Fleming would respectfully request an informal conference with Staff prior to issuance of any order in order to discuss the feasibility of those measures

Respectfully submitted,



---

STURGILL, TURNER, BARKER & MOLONEY, PLLC  
JAMES W. GARDNER  
M. TODD OSTERLOH  
333 W. Vine Street, Suite 1500  
Lexington, Kentucky 40507  
Telephone No.: (859) 255-8581  
Fax No. (859) 231-0851  
[tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)  
[jgardner@sturgillturner.com](mailto:jgardner@sturgillturner.com)

ATTORNEYS FOR AEUG FLEMING SOLAR, LLC