

**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                        )**

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**PETITION FOR RECONSIDERATION, CLARIFICATION AND FOR A FORMAL  
CONFERENCE WITH THE MEMBERS OF THE SITING BOARD**

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AEUG Fleming Solar, LLC (“AEUG Fleming”), by counsel, hereby respectfully submits this Petition for Reconsideration, Clarification and for a formal conference with the members of the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) to address certain issues arising out of the Siting Board’s orders issued on May 24, 2021 and July 26, 2021 (the “Order”).

**BACKGROUND**

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

Having reviewed the Siting Board’s mitigation measures, AEUG Fleming requests reconsideration and clarification of certain mitigation measures. Additionally, AEUG Fleming requests a formal conference with the members of the Siting Board to discuss certain of the conditions.

AEUG Fleming has reviewed the Siting Board’s proposed mitigation measures in detail, and the majority of the measures are acceptable to AEUG Fleming. This Petition is designed to

seek changes and clarifications to a small group of mitigation measures that may inhibit the ability of the Project to move forward. Because some of the conditions are ambiguous, there is an increased risk during construction and operation of potential litigation based on the ambiguity. Further clarity will help ensure compliance and reduce the risk of litigation.

The requests are organized below based on the order of how they appear in the Siting Board's list of mitigation measures. For the Siting Board's consideration, AEUG Fleming has proposed language for the revised mitigation measures, which it believes addresses the concerns of the Siting Board, while also maintaining flexibility for AEUG Fleming to optimize the Project within the Siting Board's parameters. This "marked"<sup>1</sup> versions of the language, showing the specific revisions, are included at the end of each section of this Petition addressing the specific mitigation measure.

Finally, AEUG Fleming requests that a formal, public conference be scheduled to have dialogue on these specific mitigation measures so that the issues are more fully developed.

## **I. REQUESTED MODIFICATIONS**

### **1. Project Boundaries and Location of Project Infrastructure**

The Siting Board's third mitigation measure relates to the project boundaries and the location of project infrastructure as identified in the initial site development plan. It requires the following:

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 that is the case, AEUG Fleming will support the Siting Board's effort to review its assessment of impacts and mitigation requirements.

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<sup>1</sup> With respect to the marking, strikethrough text represents deletions, and underlined text represents insertions.

The Siting Board’s requirements in this mitigation measure do not limit changes to those that bring the project facilities or infrastructure closer to adjoining businesses or residences, which suggests that AEUG Fleming must get future Siting Board approval even if it were to adjust the site development plan in a way that would provide additional distance between the project infrastructure and property boundaries. AEUG Fleming understands the Siting Board’s concerns about subsequent changes to the design, but does not believe that the Siting Board intends to review all internal changes of layout shown in the initial site development plan that do not negatively impact noise levels or external view. The mitigation measure currently in place could be interpreted as requiring an evaluation of any small change to the site development plan. Additionally, the Siting Board is aware that AEUG Fleming’s design has changed since it originally submitted its Application. AEUG Fleming presumes that the Siting Board is only interested in reviewing those changes that materially change the project, as noted above. Accordingly, AEUG Fleming would request the following amendment:

***Requested Revised Mitigation Measures***

3. The Siting Board will determine if any deviation in the boundaries (as set forth in Mitigation Measure 2) is likely to create a materially different pattern or magnitude of impacts. If not, no further action is required; but if that is the case, AEUG Fleming will support the Siting Board’s effort to review its assessment of impacts and mitigation requirements. If AEUG Fleming modifies its site development plan from the version originally submitted with its Application in a manner that negatively impacts noise levels or external view, such as moving project infrastructure closer to adjoining neighbors, then it will similarly submit such information to the Siting Board for review as specified above.

**2. Vegetation Removal**

The Siting Board’s seventh mitigation measure deals with vegetation removal:

7. AEUG Fleming will not remove any existing vegetation unless the existing vegetation needs to be removed for placement of solar panels.

The current wording for this mitigation measure is problematic because it would prohibit the removal of any existing vegetation for any work on the project other than placement of the solar panels. In other words, AEUG Fleming could not remove grass for internal roadways or the substation. AEUG Fleming does not believe that this broadly worded measure was the intent of the Siting Board, as demonstrated in other decisions by the Siting Board.

AEUG Fleming recommends that the Siting Board remove this mitigation measure 7, which would be consistent with the Siting Board's decision for AEUG Fleming's sister project involving AEUG Madison Solar LLC ("AEUG Madison") in Case No. 2020-00206. In both cases, the Siting Board included a mitigation measure that "Existing vegetation between the solar arrays and the residences will be left in place, to the extent practicable, to help screen the solar facility and reduce visual impacts from the adjacent homes." This measure makes mitigation measure 7 from AEUG Fleming superfluous, which may explain why that mitigation measure was not included in the AEUG Madison case.

Alternatively, if the Siting Board believes that a measure is necessary, AEUG Fleming recommends a modification to ensure that it is not unintentionally broad. In that scenario, AEUG Fleming recommends that the Siting Board adopt the same mitigation measure that is found in the Siting Board's ruling in Case No. 2020-00280 involving Ashwood Solar I, which states that the project, "will not remove any existing vegetation unless the existing vegetation needs to be removed, except to the extent it must remove such vegetation for the construction and operation of Project components."

***Requested Revised Mitigation Measures***

~~7. AEUG Fleming will not remove any existing vegetation, unless the existing vegetation needs to be removed for placement of solar panels, except to the extent it must remove such vegetation for the construction and operation of Project components.~~

**3. Visual Buffers**

The Siting Board’s ninth and tenth mitigation measures relate to the visual buffers.

Specifically, the Siting Board will require the following:

9. AEUG Fleming has committed to working with homeowners and business owners to address concerns related to the visual impact of the solar facility on its neighbors.

10. For residences and other occupied structures that are within 300 feet of the proposed solar facility’s boundary and having an unobstructed line of sight of the facility, AEUG Fleming should provide a buffer to the satisfaction of the affected property owners. If vegetation is used, plantings should reach eight feet high within four years. That vegetation should be maintained or replaced as needed. To the extent an affected property owner indicates to AEUG Fleming that such a buffer is not necessary, AEUG Fleming will need to obtain that property owner’s written consent and submit such consent in writing to the Siting Board.

With respect to Mitigation Measures 9 and 10, AEUG Fleming is concerned that by requiring AEUG Fleming “to address concerns” of the property owners, the property owner could be unreasonable in its demands. AEUG Fleming requests a good faith component as indicated below in the suggested language.

***Requested Revised Mitigation Measures***

9. AEUG Fleming will work in good faith ~~has committed to~~ with homeowners and business owners to address concerns related to the visual impact of the solar facility on its neighbors.

10. AEUG Fleming should provide a visual buffer between the facility and residences and other occupied structures within 300 feet with an unobstructed line of sight to the facility to try to satisfy the affected property owners. ~~For residences and other occupied structures that are within 300 feet of the proposed solar facility's boundary and having an unobstructed line of sight of the facility, AEUG Fleming should provide a buffer to the satisfaction of the affected property owners.~~ If vegetation is used, plants should reach eight feet high within four years. That vegetation should be maintained or replaced as needed. To the extent an affected property owner indicates to AEUG Fleming that such a buffer is not necessary, AEUG Fleming will need to obtain that property owner's written consent and submit such consent in writing to the Siting Board.

#### **4. Glare Study**

The Siting Board's twelfth and thirteenth mitigation measures relate to the issue of potential glare and a glare study to be submitted. Specifically, the Siting Board will require the following:

12. AEUG Fleming has pledged to select anti-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 from those living, working or travelling in proximity to the facility. Failing this, AEUG Fleming will cease operations until the glare is rectified.

13. Regarding AEUG Fleming's commitment to submit a glare study that will confirm that there will be no red glare at key observation points, the Siting Board notes that such a study will not be filed until June 15, 2021, which was approximately three weeks after the issuance of this final Order. Because the Siting Board will not have an opportunity to review the glare study prior to making its decision in this case, the final decision reached in this Order will be conditioned upon the Siting Board's review and approval of the glare study once it is submitted.

The no-glare measure is not technically achievable. The CUP requirement, similar to the FAA, requires that the glare study reflect that there is no red glare. If the glare study reflects red

glare, then that red glare must be eliminated.

The glare study was submitted to the Siting Board on June 15 and approved by Order on July 26, eliminating the thirteenth mitigation measure. Although not expressly mentioned in the Order of July 26, the twelfth measure has also been satisfied and should be removed.

## **5. Potential Damage to Roads**

The Siting Board's fifteenth mitigation measure relates to potential damage to roads. Specifically, the Siting Board will require the following:

15. AEUG Fleming has fully committed to fix or fully compensate the appropriate transportation authorities for any damage or degradation to roads or bridges that it causes or to which it materially contributes.

AEUG Fleming is dedicated to being a good member of the community and not adding additional cost and burden to Fleming County. However, it is unclear from this requirement how road damage will be assessed or allocated to AEUG Fleming and with which regulatory body AEUG Fleming should work to confirm compliance with this mitigation measure. This uncertainty has the potential to add significant cost and risk to AEUG Fleming's construction and transportation contracts.

AEUG Fleming or its vendors will be required to obtain necessary transportation permits. AEUG Fleming or its vendors would be liable for citations if the applicable permits were not acquired from the Kentucky Transportation Cabinet prior to any shipments within or into Kentucky. Those potential assessments associated with failing to comply with the permit requirements presumably encompass all concerns of the Kentucky Transportation Cabinet and other agencies regulating transportation. Accordingly, AEUG Fleming requests a clarification that this mitigation measure would require that AEUG Fleming fix or pay for damage resulting from any of its or its subcontractors' vehicle transport to the project site as may be required by the

applicable transportation permits obtained from State and local road authorities. The suggested language requested is similar to that ordered by the Siting Board in the Unbridled Solar, LLC, Case No. 2020-00242.

***Requested Revised Mitigation Measure***

15. AEUG Fleming shall fix or pay for damage resulting from any vehicle transport to the project site that it causes or to which it materially contributes in accordance with all transportation permits obtained from state and local road authorities. ~~AEUG Fleming has fully committed to fix or fully compensate the appropriate transportation authorities for any damage or degradation to roads or bridges that it causes or to which it materially contributes.~~

**6. Miscellaneous Roads and Traffic Measures**

The Siting Board’s twentieth mitigation measure deals with certain additional traffic issues as follows:

20. AEUG Fleming should avoid Lazy Oaks Lane during construction and operations. The bridge under Lazy Oaks Lane is structurally deficient and near a railroad crossing.

The Siting Board’s rationale for this condition appears to be based on the statement that Lazy Oaks Lane is rated for 44,000 pounds and that the bridge is structurally deficient. *See* Order at 20. The road itself may be used occasionally by workers performing work (either during construction or operations) for the project, and such workers will have vehicles under the aforementioned rating. Currently, Lazy Oaks Lane is open for other traffic, and AEUG Fleming respectfully requests similar treatment as the general public, which would allow use of Lazy Oaks Lane to the extent permitted by law.

Moreover, the Siting Board’s fifteenth mitigation measure that AEUG Fleming proposes be revised as follows, “AEUG Fleming shall fix or pay for damage resulting from any vehicle



transport to the project site that it causes or to which it materially contributes in accordance with all transportation permits obtained from state and local road authorities” will ensure that roads damaged by AEUG Fleming will be repaired.

Accordingly, AEUG Fleming respectfully requests modification to the mitigation measure that would use terms such as “minimize” and “divert,” which is consistent with the Siting Board’s seventeenth mitigation measure for AEUG Fleming involving Neptune Road.

***Requested Revised Mitigation Measures***

20. AEUG Fleming should ~~avoid~~ minimize use of Lazy Oaks Lane during construction and divert traffic to other roads. ~~operations.~~ The bridge under Lazy Oaks Lane is structurally deficient and near a railroad crossing.

**7. Working Hours**

The Siting Board’s twenty-second and twenty-third mitigation measures relate to the permissible hours that activities can take place at the site. Specifically, the Siting Board will require the following:

22. To further ensure that traffic impacts during construction are kept to a minimum, AEUG Fleming should develop a traffic management plan to minimize the impacts of any traffic increase and keep traffic safe. Any such traffic management plan should also identify any noise concerns during the construction phase and develop measures that would address those noise concerns. The Siting Board will also require AEUG Fleming to limit the construction activity, process, and deliveries to the hours of 8 a.m. and 6 p.m. Monday through Saturday. These hours represent a reasonable timeframe to ensure that nearby property owners are not too impacted by the construction activities.

23. AEUG Fleming should avoid a variable daily construction schedule and implement a consistent construction schedule, which will offer certainty and relief during the construction period. AEUG’s proposed fall schedule be adopted year round; no earlier start than 8 a.m. with a construction stop at 6 p.m. Monday through Saturday.

Because the word “process” is not defined and “activity” is quite generic, AEUG Fleming requests clarification that “process” and “activity” does not include arriving on site or pre-construction meetings and other on-site activities to prepare for the delivery of equipment.

Twenty-three below should replace numbers twenty-two and twenty-three because they are duplicative.

***Requested Revised Mitigation Measures***

~~22. To further ensure that traffic impacts during construction are kept to a minimum, AEUG Fleming should develop a traffic management plan to minimize the impacts of any traffic increase and keep traffic safe. Any such traffic management plan should also identify any noise concerns during the construction phase and develop measures that would address those noise concerns. The Siting Board will also require AEUG Fleming to limit the construction activity, process, and deliveries to the hours of 8 a.m. and 6 p.m. Monday through Saturday. These hours represent a reasonable timeframe to ensure that nearby property owners are not too impacted by the construction activities.~~

23. AEUG Fleming should limit the construction activity and deliveries to the hours of 8 a.m. and 6 p.m. Monday through Saturday. These hours represent a reasonable timeframe to ensure that nearby property owners are not too impacted by the construction activities. Pre-construction meetings, arrival on site, and other on-site activities to prepare for the delivery of equipment are permitted to occur before 8:00 a.m.

~~23. AEUG Fleming should avoid a variable daily construction schedule and implement a consistent construction schedule, which will offer certainty and relief during the construction period. AEUG’s proposed fall schedule be adopted year round; no earlier start than 8 a.m. with a construction stop at 6 p.m. Monday through Saturday.~~

**8. Noise**

The Siting Board’s twenty-fifth and twenty-seventh Mitigation Measure relates to level of noise. Specifically, the Siting Board will require the following:

25. AEUG Fleming 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 and mitigate those effects as needed.

27. AEUG Fleming should coordinate a plan for noise buffering as needed for at least 23 residences (and 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 noise levels during operations.

AEUG Fleming is concerned that terms like “unduly high” or “annoying” are too subjective and could create future disagreements as to what might be unduly high or annoying noise levels. Accordingly, it recommends that the Siting Board articulate a specific standard, as articulated in the Siting Board’s Orders. For example, AEUG Fleming recommends the twenty-fifth mitigation measure be drafted more similarly to the seventh mitigation measure for Unbridled Solar, in Case No. 2020-00242, which defines “unduly loud” as 120 decibels. Similarly, AEUG Fleming recommends the twenty-seventh mitigation measure be amended to repeat the standard of 50 dBA for operational noise.

AEUG Fleming also suggests that the Siting Board confirm that communications between residents and AEUG Fleming will be through the Customer Resolution Program, which AEUG Fleming established and is the subject of the Siting Board’s thirty-first mitigation measure.

***Requested Revised Mitigation Measures***

25. AEUG Fleming should remain in contact with nearby residents through its Complaint Resolution Program about any complaints related to noise levels to confirm ensure that noise levels are not unduly high ~~or annoying~~ after once the pounding and placement of the solar panel racking begins ~~and mitigate those effects as needed~~. Any noise generator that creates noise levels in excess of 120 decibels at the property boundary will be considered unduly high.

27. AEUG Fleming should coordinate a plan for noise buffering as needed for at least 23 residences (and 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 noise levels of 50 dBA or greater during operations.

**9. Decommissioning Bond**

In its Order, the Siting Board in Mitigation Measure thirty-five set forth its requirements for the posting of a decommissioning bond. The Siting Board will specifically require the following:

35. AEUG Fleming should also be required to file a bond equal to the amount necessary to effectuate the explicit or formal decommissioning plan naming Fleming County as a third-party beneficiary so that Fleming County will have the authority to draw upon the bond to effectuate the decommissioning plan. The bond amount should be reviewed every five years at AEUG Fleming’s expense to determine and update the cost of removal amount.

There are several edits, as shown below, to clarify ambiguities in order provide clear direction to AEUG Fleming.

***Requested Revised Mitigation Measures***

35. Prior to the beginning of construction, AEUG Fleming shall file a bond with the Fleming Fiscal Court naming the Fleming Fiscal Court as obligee, equal to the amount necessary to effectuate the explicit or formal decommissioning plan. The bond amount should be reviewed every five years at AEUG Fleming’s expense to determine and update the cost of removal amount. This review shall be conducted by an individual or firm with experience or expertise in the costs of removal or decommissioning of electric generating facilities. Certification of this review shall be provided to the Siting Board or its successors and the Fleming County Fiscal Court. Such certification shall be by letter and shall include the current amount of the anticipated bond and any change in the costs of removal or decommissioning.

~~35. AEUG Fleming should also be required to file a bond equal to the amount necessary to effectuate the explicit or formal decommissioning plan naming Fleming County as a third party beneficiary so that Fleming County will have the authority to draw upon the bond to effectuate the decommissioning plan. The bond amount should be reviewed every five years at AEUG Fleming’s expense to determine and update the cost of removal amount.~~

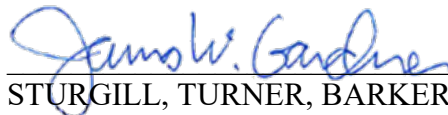
## II. PUBLIC CONFERENCE MOTION

AEUG Fleming also requests that the Siting Board set this Motion for Reconsideration and Clarification to be heard at a Formal Conference before the Siting Board. AEUG Fleming would like the opportunity to provide clarity to the Siting Board as to why the matters requested provide clear guidance to all parties.

## III. CONCLUSION

AEUG Fleming appreciates the opportunity afforded by the Siting Board in this case to explain the Project and the effort of the Siting Board and its consultant in evaluating its proposal. AEUG Fleming understands the concerns of the Siting Board as reflected in the Siting Board's mitigation measures and is hopeful that the Siting Board will understand AEUG Fleming's concerns for clarification and consistency to ensure that the Project is viable. Accordingly, AEUG Fleming respectfully requests the Siting Board approve the above-mentioned amendments and clarifications to the Siting Board's mitigation measures and afford it the opportunity to participate with the Siting Board on this Motion. The proposed language for the mitigation measures is contained in the Appendix.

Respectfully submitted,



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