

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

In the Matter of:

ELECTRONIC APPLICATION OF NORTHERN)
BOBWHITE SOLAR LLC FOR A CERTIFICATE)
OF CONSTRUCTION FOR AN APPROXIMATELY)
96 MEGAWATT MERCHANT SOLAR ELECTRIC) Case No. 2020-00208
GENERATING FACILITY IN MARION COUNTY,)
KENTUCKY PURSUANT TO KRS 278.700 AND)
807 KAR 5:110)

**NORTHERN BOBWHITE SOLAR LLC’S
MOTION FOR CLARIFICATION**

Northern Bobwhite Solar LLC (“Bobwhite”) moves the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) for clarification of certain portions of its June 18, 2021 Order in this case (“Order”). The Order conditionally granted Bobwhite a certificate to construct an approximately 96 MW merchant solar electric generation facility in unincorporated Marion County, Kentucky (the “Project”) and granted Bobwhite’s motion to deviate from the setback requirements in KRS 278.704. The Order requires Bobwhite to comply with mitigation measures and conditions prescribed in Appendix A to the Order. Clarification of the Order is necessary to allow Bobwhite to fully comply with the conditions imposed by the Siting Board.

REQUEST FOR CLARIFICATION

Bobwhite respectfully requests clarification by the Siting Board of the conditions described below. The conditions are included in italics for ease of reference.

1. Conditions Relating to the Timing of Construction Activities.

Conditions 23, 29, 32, and 36 of the Order all establish time limits for when Bobwhite is authorized to conduct construction activities:

23. *Northern Bobwhite shall 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.*
29. *Pile driving activities shall cease by 6 p.m. each day. Since the area is largely rural, a constant pounding during evening hours has the potential to upset the natural tranquility of the area and severely annoy residents.*
32. *Construction and pile driving activities are limited to 8 a.m. to 6 p.m., but within 1,000 feet of a non-participating home pile driving shall begin no earlier than 9 a.m. and shall cease by 5 p.m. each day.*
36. *Setbacks for solar equipment from roads and property lines, with increased setbacks for certain equipment, and additional setbacks from the non-participating residential homes that are located relatively close to property lines. Northern Bobwhite proposes the following setbacks for solar equipment: 100 feet from adjacent roadways, 50 feet from the boundary of any non-participating properties. Applicant proposes the following additional setback for central inverters, and energy storage systems: at least 300 feet from any residence. Project construction activities will only occur between the hours of 7 a.m. and 10 p.m.*

Conditions 23, 29, and 32 all establish a time limit of 8 a.m. to 6 p.m. for construction activities with a further restriction of 9 a.m. to 5 p.m. for pile driving activities within 1,000 feet of a non-participating home. Condition 37, however, states that “Project construction activities will only occur between the hours of 7 a.m. and 10 p.m.” Bobwhite requests clarification of the time limit for construction activities.

Additionally, the conditions relating to construction activity timing do not define “construction activities.” Bobwhite seeks clarification regarding the definition of “construction activities” and, specifically, (1) whether the time limit for construction activities applies only to noise-causing construction activities and (2) whether activities that do not produce noise, such as pre-shift safety briefings, can occur outside of the time limits.

2. Conditions Relating to Setbacks of Project Components.

Conditions 35 and 36 describe setback requirements for Bobwhite Project components:

35. *Northern Bobwhite shall place panels, inverters and substation equipment no closer to noise receptors (homes) than indicated in Northern Bobwhite's noise and traffic study, but additional mitigate measures are required for anticipated noises levels of certain facilities. Specifically, based on the noise information provided by the Applicant the Siting Board has three mitigation measures beyond that recommended in the noise and traffic study: (1) the Central Inverter no closer to a noise receptor than 450 feet, (2) the String Inverter no closer to a noise receptor than 150 feet, and (3) Solar Panels no closer to a noise receptor than 150 feet.*
36. *Setbacks for solar equipment from roads and property lines, with increased setbacks for certain equipment, and additional setbacks from the non-participating residential homes that are located relatively close to property lines. Northern Bobwhite proposes the following setbacks for solar equipment: 100 feet from adjacent roadways, 50 feet from the boundary of any non-participating properties. Applicant proposes the following additional setback for central inverters, and energy storage systems: at least 300 feet from any residence. Project construction activities will only occur between the hours of 7 a.m. and 10 p.m.*

Condition 36 identifies a 300-foot setback for central inverters and for energy storage systems. This conflicts with the 450-foot setback for central inverters identified in Condition 35. Bobwhite seeks clarification regarding the apparently conflicting setback requirements included in Conditions 35 and 36.

Additionally, Condition 36 references energy storage systems which Bobwhite did not include in its application materials. Bobwhite respectfully requests that the Siting Board remove references to energy storage systems from the Order and Appendix A.¹

3. Conditions Relating to Decommissioning Obligations.

Conditions 43 and 45 of the Order describe Bobwhite's decommissioning obligations for the Project:

43. *The Applicant should develop an explicit decommissioning plan. This plan should commit the Applicant to removing all facility components from the Site and from Marion County at the cessation of operations.*
45. *Northern Bobwhite shall file a bond, equal to the amount necessary to effectuate the explicit or formal decommissioning plan naming Marion County as a third-party beneficiary, in addition to the lessors of the subject property insofar as the*

¹ Additional references to storage are found in the Order on pages 28 and 34.

leases contain a decommissioning bonding requirement, so that Marion County will have the authority to draw upon the bond to effectuate the decommissioning plan. The bond shall be in place at the commencement of operation. The bond amount shall be reviewed every five years at Northern Bobwhite'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 or removal or decommissioning of electric generating facilities. Certification of this review shall be provided to the Siting Board or its successors and the Marion 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.

Bobwhite seeks clarification regarding the requirement in Condition 43 that it remove all facility components from Marion County at the cessation of operations. In particular, Bobwhite requests confirmation of whether that requirement prohibits Bobwhite from disposing of project components at properly permitted landfills within Marion County, with scrap metal recyclers within the county, or with other legal means of disposing refuse within Marion County. A requirement to transfer components out of the county that could, if not from the Project, be legally disposed of within Marion County will impact the cost of decommissioning.

Additionally, Condition 45 requires Bobwhite to file a bond in the amount necessary to effectuate the decommissioning plan but does not identify the entity Bobwhite must file the bond with. Bobwhite seeks clarification as to which entity it must file the bond with.

4. Requested Corrections.

In addition to the clarifications sought above, Bobwhite respectfully requests that the Siting Board make certain corrections to the conditions included in Appendix A to Order.

Condition 34 references "Unbridled" instead of Northern Bobwhite. Bobwhite requests that the reference to Unbridled be changed to Northern Bobwhite.

34. *Northern Bobwhite shall implement a Customer Resolution Program to address any complaints from surrounding landowners. Northern Bobwhite should also submit annually a status report associated with its Customer Resolution Program, providing, among other things, the individual complaints, how Unbridled addressed those complaints, and the ultimate resolution of those complaints identifying whether the resolution was to the complainant's satisfaction.*

The Order also includes six pairs of conditions that appear to be duplicates or substantially identical: Conditions 9 and 14, Conditions 11 and 15, Conditions 21 and 26, Conditions 27 and 30, and Conditions 28 and 31. For ease of compliance, Bobwhite requests that the duplicate conditions be consolidated into single conditions.

9. *Northern Bobwhite will not remove any existing vegetation unless the existing vegetation needs to be removed for placement of solar panels.*
14. *Northern Bobwhite 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.*
11. *Northern Bobwhite shall follow through on its commitment to providing vegetative buffers for 15 houses with sight lines within 500 feet of the solar panels, and for 1.85 miles of roadways within 300 feet of the solar panels. 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 Northern Bobwhite that such a buffer is not necessary, Northern Bobwhite will need to obtain that property owner's written consent and submit such consent in writing to the Siting Board.*
15. *Northern Bobwhite shall follow through on its commitment to providing vegetative buffers for 15 houses with sight lines within 500 feet of the solar panels, and for 1.85 miles of roadways within 300 feet of the solar panels. 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 Northern Bobwhite that such a buffer is not necessary, Northern Bobwhite will need to obtain that property owner's written consent and submit such consent in writing to the Siting Board.*
21. *The Applicant will properly maintain construction equipment and follow best management practices related to fugitive dust throughout the construction process. This should keep dust impacts to a minimal level.*
26. *Northern Bobwhite shall properly maintain construction equipment and follow best management practices related to fugitive dust throughout the construction process. This should keep dust impacts off-site to a minimal level.*
27. *Northern Bobwhite shall 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 the start of construction.*

30. *Northern Bobwhite shall 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.*
28. *Northern Bobwhite shall 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. If the noise levels are unduly high or annoying, the Applicant should mitigate those effects as needed.*
31. *Northern Bobwhite shall 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.*

WHEREFORE, Northern Bobwhite Solar LLC respectfully requests the Siting Board enter an Order:

1. Clarifying the portions of the Order described herein; and
2. Granting Bobwhite all further relief to which it may be entitled.

Respectfully submitted,



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