

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

In the Matter of the Application of AEUG Madison)
Solar, LLC, for a Construction Certificate to Construct) **Case No. 2020-00219**
a Merchant Electric Generating Facility)

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

AEUG Madison Solar, LLC (“AEUG Madison”), 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 Order issued on June 9, 2021 (the “Order”).

BACKGROUND

AEUG Madison proposes to construct an approximately 100-megawatt alternating current photovoltaic electricity generation facility situated on land in Madison County (the “Project”). It filed an application for a certificate to construct this solar energy project with the Siting Board on December 11, 2020. Previously, the Madison County Board of Adjustment (“Madison Board”) approved a Conditional Use Permit (“CUP”) on December 3, 2020, with 20 conditions. On June 9, 2021, the Siting Board approved a certificate to construct the Project. As a part of its Order, the Siting Board requires AEUG Madison to comply with certain mitigation measures.

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

AEUG Madison has reviewed the Siting Board’s proposed mitigation measures in detail, and the majority of the measures are acceptable to AEUG Madison. 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 Madison has proposed language for the revised mitigation measures, which it believes addresses the concerns of the Siting Board, while also maintaining flexibility for AEUG Madison to optimize the Project within the Siting Board’s parameters. This proposed language is contained in the Appendix attached hereto, and “marked”¹ 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 Madison 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. Visual Buffers

The Siting Board’s eighth and ninth mitigation measures relate to the visual buffers. Specifically, the Siting Board will require the following:

¹ With respect to the marking, strikethrough text represents deletions, and underlined text represents insertions.

8. AEUG Madison will work with homeowners and business owners to address concerns related to the visual impact of the solar facility on its neighbors.

9. AEUG Madison should provide a visual buffer between the facility and residences and other occupied structures with a line of sight to the facility 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 Madison that such a buffer is not necessary, AEUG Madison will need to obtain that property owner's written consent and submit such consent in writing to the Siting Board.

With respect to Mitigation Measure 8, AEUG Madison is concerned that by requiring that AEUG "to address concerns" of the property owners, the property owner could be unreasonable in its demands. AEUG Madison request a reasonable and good faith component as indicated below in the suggested language.

With respect to Mitigation Measure 9, in addition to requesting a good faith and reasonableness component, AEUG Madison notes that the CUP has a similar requirement, and this particular requirement may be seen to conflict and/ or override the CUP requirement. Thus, there needs to be clarity on how conflicts are resolved between the Siting Board's list of mitigation measures and the CUP.

Requested Revised Mitigation Measures

8. AEUG Madison will work in good faith with homeowners and business owners to try in good faith to address concerns related to the visual impact of the solar facility on its neighbors.

9. AEUG Madison should provide a visual buffer between the facility and residences and other occupied structures with a line of sight to the facility to try to satisfy 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 Madison that such a buffer is not necessary, AEUG Madison will need to obtain that property owner's written consent and submit such consent in writing to the Siting Board. If there is a conflict between this requirement and the requirement of the CUP, the CUP shall control.

2. Glare Study

The Siting Board's tenth mitigation measure relates to the issue of potential glare and a glare study to be submitted. Specifically, the Siting Board will require the following:

10. AEUG Madison has pledged to select anti-glare panels and operate the panels in such a way that all glare from the panels is eliminated. AEUG Madison shall 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 Madison will cease operations until the glare is rectified.

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.

Requested Revised Mitigation Measure

10. AEUG Madison has pledged to select panels designed to absorb glare and operate the panels in such a way that all red glare from the panels is eliminated. AEUG Madison shall provide proof in a study that red 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 Madison will cease operations until the red glare is rectified.

3. Working Hours

The Siting Board’s seventeenth mitigation measure relates to the permissible hours that activities can take place at the site. Specifically, the Siting Board will require the following:

17. AEUG Madison should 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.

Because the word “process” is not defined and “activity” is quite generic, AEUG Madison requests clarification that “process” and “activity” does not include arriving on site, pre-construction meetings, bend-and-stretch activities and other on-site activities to prepare for construction activities and deliveries.

Requested Revised Mitigation Measure

17. AEUG Madison should limit the construction activity such as movement and use of heavy machinery 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, bend-and-stretch activities, and other on-site activities to prepare of construction activities and deliveries are permitted to occur before 8:00 a.m.

4. Potential Damage To Roads

The Siting Board's seventeenth mitigation measure relates to potential damage to roads.

Specifically, the Siting Board will require the following:

18. AEUG Madison must commit 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 to.

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

AEUG Madison or its vendors will be required to obtain necessary transportation permits. AEUG Madison 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 Madison requests a clarification that this mitigation measure would require that AEUG Madison fix or pay for damage resulting from any 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 (2020-00242).

Requested Revised Mitigation Measure

18. AEUG Madison shall fix or pay for damage resulting from any vehicle transport to the project site that it causes or to which it materially causes in accordance with all transportation permits obtained from state and local road authorities.

5. Equipment Placement

The Siting Board’s twenty fourth and twenty seventh Mitigation Measure relates to changes in the location of equipment. Specifically, the Siting Board will require the following:

24. AEUG Madison should place panels, inverters and substation equipment no closer to noise receptors than indicated in AEUG Madison’s noise and traffic study.

In order to ensure compliance with the CUP and provide clarity on where the inevitable movement of the solar infrastructure may be located, AEUG Madison requests that the objective standard adopted by the CUP be adopted at the Siting Board as Mitigation Measure 24 (and Mitigation Measure 27 should be deleted in its entirety because Mitigation Measure 27 is identical to 24).

Requested Revised Mitigation Measure

24. & 27. AEUG Madison shall not place any inverters, panels, or substation equipment such that the decibel level will not exceed 50 decibels when measured at the property line of an adjacent nonparticipating property, as required by the CUP.

6. Compliance with CUP Requirements

The Siting Board’s twenty-sixth mitigation measure relates to compliance with CUP requirements. Specifically, the Siting Board will require the following:

26. AEUG Madison must maintain compliance with CUP requirements throughout the entirety of the project's construction and operation.

As noted in part 1 above addressing Mitigation Measure 9, several of the conditions in the CUP conflict or may conflict with the Mitigation Measures. Consistency in the conditions will benefit the neighbors, the county officials and residents. Because the local government has primacy over setback requirements per KRS 278.704(3), it is logical that the local planning and zoning authority also have primacy over those mitigation measures that conflict with the CUP conditions.

Requested Revised Mitigation Measure

26. AEUG Madison must maintain compliance with CUP requirements throughout the entirety of the project's construction and operation and the CUP requirements control, which shall take precedence over these Mitigation Measures in the event of a conflict.

7. Decommissioning Bond

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

30. AEUG Madison shall file a bond, pursuant to the requirements of the CUP, equal to the amount necessary to effectuate the explicit or formal decommissioning plan. The bond amount should be reviewed every five years at AEUG Madison'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 Madison 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.

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

Requested Revised Ordering Paragraph

30. Prior to the beginning of construction, AEUG Madison shall file a bond with the Madison Fiscal Court naming the Madison Fiscal Court as obligee, pursuant to the requirements of the CUP, equal to the amount necessary to effectuate the explicit or formal decommissioning plan. The bond amount should be reviewed every five years at AEUG Madison'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 Madison 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.

II. PUBLIC CONFERENCE MOTION

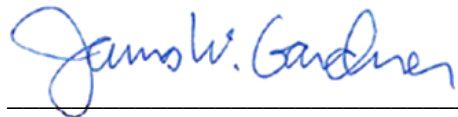
AEUG Madison also requests that the Siting Board set this Motion for Reconsideration and Clarification to be heard at a Formal Conference before the Siting Board. This is the first order from the Siting Board granting a certificate when a local government body also heard this matter and set conditions. As noted above, there are several conditions that may conflict, and AEUG Madison would like the opportunity to discuss with the Siting Board the relationship established between the Siting Board and Board of Adjustment to provide clarity on these potentially conflicting matters.

III. CONCLUSION

AEUG Madison 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 Madison 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 Madison's concerns for clarification and consistency to ensure that the Project is viable. Accordingly, AEUG Madison 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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