

**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)

**MOTION FOR EXPEDITED REVIEW
AND TO WITHDRAW REQUEST FOR FORMAL CONFERENCE**

AEUG Madison Solar, LLC (“AEUG Madison”), by counsel, respectfully moves for expedited review of certain issues addressed in its Petition for Reconsideration and Clarification and to withdraw its request for formal conference with the Siting Board members (“Petition for Reconsideration”). In support of its motion, AEUG Madison states as follows:

On June 9, 2021, the Siting Board approved a certificate to construct an approximately 100-megawatt alternating current photovoltaic electricity generation facility situated on land in Madison County (the “Project”), requiring compliance with certain mitigation measures. On July 9, 2021, AEUG Madison submitted a Petition for Reconsideration, Clarification and for a formal conference with the members of the Siting Board, in order to seek clarification of certain conditions presented in the Siting Board’s Order.

AEUG Madison is projected to start construction of the Project in November 2021. In order to minimize risks at the outset of construction, AEUG Madison needs clarity on certain issues presented in its Petition for Reconsideration. It recognizes the heavy docket currently existing before the Siting Board, and accordingly, it respectfully requests expedited review of certain issues from its Petition for Reconsideration such that the Siting Board issue a decision on the matters

addressed herein no later than October 15, 2021. All other issues presented in the Petition for Reconsideration can be reserved to a later date for decision.

In order to expedite the Siting Board’s review of these issues, AEUG Madison moves to withdraw its request for formal conference with the Siting Board.¹

AEUG Madison respectfully requests an expedited review on the following three issues.

1. 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.

The June 9, 2021, Order in this matter indicates that the Siting Board’s primary concern leading to this condition is to “ensure that nearby property owners are not too impacted by the construction activities.” AEUG Madison believes that site arrival, pre- construction meetings, bend-and-stretch activities, and other on-site activities to prepare for construction activities and deliveries will not significantly impact nearby property owners. Accordingly, it requests

¹ As mentioned in the Petition for Reconsideration, AEUG Madison would welcome such a conference to enable a dialogue on these specific mitigation measures. But time is of the essence, and AEUG Madison believes that the Siting Board has sufficient information in the record of this case to grant its requests.

Mitigation Measure 17 to be modified to reflect the following:

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.

2. 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 below is similar to conditions ordered by the Siting Board in Case No. 2020-00242, *Unbridled Solar, LLC* (June 4, 2021) and Case No. 2020-00208, *Northern Bobwhite Solar, LLC* (July 19, 2021).

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.

3. 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.

The Siting Board’s primary concern related to this mitigation measure appears to be noise generated during the operation of the Project because the measure specifically mentions noise receptors. The Conditional Use Permit (“CUP”) issued by the Madison County Board of Adjustments also addresses noise generated during the operation of the project and specifically places an objective standard of 50 decibels at the property boundary.²

² See Conditional Use Permit paragraph 7, as filed in Appendix D to the Application.

The mitigation measure specifically references AEUG Madison’s noise and traffic study, which calculates the anticipated noise level during operation at the property boundary to be 49.3 dBA.³ Accordingly, there would appear to be no significant difference between the locations of panels, inverters and substation equipment considered in the noise and traffic study in comparison to the requirement of the CUP to have noise not to exceed 50 decibels at the property boundary.

To ensure compliance with the CUP and to 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).⁴

Requested Revised Mitigation Measure

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

As discussed above, AEUG Madison respectfully requests expedited review of the three issues from its Petition for Reconsideration that are discussed above. In order to expedite the process, AEUG Madison also moves to withdraw its request for a formal conference with the Siting Board. The attached proposed order is submitted for the Siting Board’s consideration.

³ See Table 2.4-2 on page 9 of the Noise and Traffic Study, which is attached to the Site Assessment Report as Appendix C.

⁴ The proposed mitigation measure identified in the Petition for Reconsideration contains an inadvertent double negative (i.e., “shall not place any inverters, panels, or substation equipment such that the decibel level will not exceed 50 decibels” (emphasis added)). The proposed mitigation measure corrects that error.

Respectfully submitted,



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ATTORNEYS FOR AEUG MADISON SOLAR, LLC

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) Case No. 2020-00219
CERTIFICATE TO CONSTRUCT A MERCHANT)
ELECTRIC GENERATING FACILITY

P R O P O S E D O R D E R

Before the Siting Board are the following matters: (1) a Petition for Reconsideration and Clarification filed on July 9, 2021 (Petition), by AEUG Madison Solar, LLC (AEUG Madison) requesting reconsideration and clarification of certain mitigation requirements imposed by the June 9, 2021 Order (Final Order) and (2) a Motion for Expedited Review and to Withdraw Request for Formal Conference (Motion for Expedited Review).

On December 11, 2020, AEUG Madison Solar, LLC (AEUG Madison) filed an application requesting a Certificate of Construction to construct an approximately 100-megawatt alternating current (MWac) solar photovoltaic electric generating facility to be located in Madison County, Kentucky. The Siting Board’s Final Order approved AEUG Madison a Certificate of Construction to construct the proposed solar facility subject to AEUG Madison complying with the mitigation requirements that were discussed in the Final Order and set forth in Appendix A to the Final Order.

In its Motion for Expedited Review, AEUG Madison advises that the Project intends to begin construction in November 2021, and that it seeks expedited review of

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three issues addressed in its Petition to minimize risks at the outset of construction. AEUG Madison also withdrew its request for a formal conference to accelerate the Siting Board's determination.

AEUG Madison seeks modification of mitigation measure 17, as provided in the Final Order, which stated therein:

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.

AEUG Madison seeks clarification of this mitigation measure, particularly on the scope of what construction "activity" and "process" would be. AEUG Madison seeks confirmation that pre-construction meetings, arrival on site, bend-and-stretch activities, and other on-site activities to prepare of construction activities and deliveries may occur prior to 8 a.m. Monday through Saturday.

In its Final Order, the Siting Board implemented this mitigation measure to ensure that noise from construction activity would not unreasonably impact nearby property owners. Activities such as arrival on site, pre-construction meetings, and bend-and-stretch activities should not result in unreasonable noise for nearby property owners. Accordingly, the Siting Board finds that AEUG Madison's proposed modification is reasonable.

AEUG Madison seeks modification of mitigation measure 18, as provided in the Final Order, which stated therein:

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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.

In support of its requested modification of mitigation measure 18, AEUG Madison points to a recent Siting Board decisions that have a similar mitigation measure that requires fixing or paying for damage resulting from any vehicle transport to the project site in accordance with all applicable transportation permits obtained from State and local road authorities.¹ The Siting Board finds that this modification is reasonable.

AEUG Madison seeks modification of mitigation measure 24, as provided in the Final Order, which stated therein:

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 support of its requested modification of mitigation measure 24, AEUG Madison references the Conditional Use Permit ("CUP") issued by the Madison County Board of Adjustments that addresses noise generated during the operation of the project and specifically places an objective standard of 50 decibels at the property boundary.² AEUG Madison's noise and traffic study calculates the anticipated noise level during operation

¹ Case No. 2020-00242, Electronic Application of Unbridled Solar, LLC, for a Certificate of Construction for Approximately 160 Megawatt Merchant Electric Solar Generating Facility and Nonregulated Electric Transmission Line in Henderson and Webster Counties, Kentucky, at Appendix A, page 2 (K.S.B. June 4, 2021); Case No. 2020-00208, Electronic Application of Northern Bobwhite Solar, LLC for a Certificate of Construction for Approximately 160 Megawatt Merchant Electric Solar Generating Facility in Marion County, Kentucky, Pursuant to KRS 278.700 and 807 KAR 5:110 at 2 (K.S.B. July 19, 2021).

² See Conditional Use Permit paragraph 7, as filed in Appendix D to the Application.

at the property boundary to be no more than 49.3 dBA, which is not significantly different than the Siting Board's initial mitigation measure.³ Accordingly, the Siting Board finds that this modification is reasonable.⁴

IT IS THEREFORE ORDERED that:

1. AEUG Madison's Petition for Reconsideration filed on July 9, 2021, is granted in part as described below.

2. The seventeenth mitigation measure in the Siting Board's Order of June 9, 2021, is hereby eliminated and replaced with the following 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.

3. The eighteenth mitigation measure in the Siting Board's Order of June 9, 2021, is hereby eliminated and replaced with the following 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.

³ See Table 2.4-2 on page 9 of the Noise and Traffic Study, which is attached to the Site Assessment Report as Appendix C.

⁴ In its Petition, AEUG Madison also noted the redundancy of mitigation measures 24 and 27.

4. The twenty fourth mitigation measure in the Siting Board's Order of June 9, 2021, is hereby eliminated and replaced with the following mitigation measure:

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

5. The twenty seventh mitigation measure in the Siting Board's Order of June 9, 2021, is hereby eliminated as redundant.

6. AEUG Madison's Motion for Expedited Review and to Withdraw Request for Formal Hearing is granted.

7. Matters presented in AEUG Madison's Petition for Reconsideration that are not addressed in this Order shall be reserved by the Siting Board and an order regarding those issues shall be issued at a later date.

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