

COMMONWEALTH OF KENTUCKY

BEFORE THE ELECTRIC GENERATION AND TRANSMISSION SITING BOARD

In the Matter of:

ELECTRONIC APPLICATION OF MT OLIVE)
CREEK SOLAR, LLC FOR A CERTIFICATE OF)
CONSTRUCTION FOR AN APPROXIMATELY)
60 MEGAWATT MERCHANT ELECTRIC)
SOLAR GENERATING FACILITY IN RUSSELL)
COUNTY, KENTUCKY PURSUANT TO KRS)
278.700 AND 807 KAR 5:110.)

Case No. 2020-00226

MT OLIVE CREEK SOLAR LLC RESPONSE TO CONSULTANT’S REPORT

Mt Olive Creek Solar, LLC (“MOC Solar”) provides the following response to the Harvey Economics’ Review and Evaluation of the Mt Olive Creek Solar, LLC Site Assessment Report (“Report”). MOC Solar appreciates the thorough review and analysis of the proposed project and proposed location. The Report’s recommendations are generally agreed to with minor recommended clarifications as described below.

Site development plan:

Recommendation:

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, access points or other Project facilities or infrastructure.

Response:

Because site layout has not been finalized and contractors have not been selected, the possibility exists that minor changes to the site layout may occur. MOC recommends that alterations the site

layout that do not impact compliance with setbacks requirements be considered immaterial changes that will not require Siting Board review.

Recommendation:

2. Any change in Project boundaries from the information which formed this evaluation should be submitted to the Siting Board for review.

Response:

Because site layout has not been finalized and contractors have not been selected, the possibility exists that minor changes to project boundaries can occur. MOC Solar recommends that minor alterations of site boundary, i.e., no additional properties added to the project and compliance with setbacks are maintained, be considered immaterial changes that will not require Siting Board review.

Recommendation:

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.

Response:

As explained above, minor variations in boundaries and site development plans may occur. Leaving open the possibility of reassessing mitigation requirements jeopardizes the economic viability of the project. Project financing often depends on the finality of the construction certificate, so leaving open the potential for additional site assessment and new mitigation requirements creates significant implications for a project. MOC Solar recommends that minor

alterations of site boundary and site development plans, be considered immaterial changes that will not require Siting Board review.

Recommendation:

4. A final Project-specific construction schedule, including revised estimates of on-site workers and commuter vehicle traffic, should be submitted to the Siting Board. Deviations from the preliminary construction schedule should be clearly indicated.

Response:

If the final order includes similar conditions to recent orders concerning coordinating traffic impacts with government officials and limitations to the days and times of construction activities, then MOC Solar requests that this recommendation not be adopted.

Recommendation:

5. The Siting Board will determine if any deviation to the construction schedule or workforce estimates is likely to create a materially different pattern or magnitude of impacts. If not, no further action is required. If yes, the Applicant will support the Siting Board's effort to revise its assessment of impacts and mitigation requirements.

Response:

Minor variations in construction schedule and workforce estimates may occur. Leaving open the possibility of reassessing mitigation requirements jeopardizes the economic viability of the project. Project financing often depends on the finality of the construction certificate, so leaving open the potential for additional site assessment and new mitigation requirements creates significant implications for a project. MOC Solar recommends that minor alterations construction schedule and workforce estimates be considered immaterial changes that will not require Siting Board review.

Recommendation:

9. The cemetery located within the Project boundary (north of Sano Road on the western side of the Project site) represents a potential conflict with one of the proposed construction access points, potential construction staging areas and Project infrastructure. The Applicant must inform the owner and living relatives of those interred of the proximate construction and facility plans and secure written approval of their recognition and acceptance of this plan.

Response:

It is impossible to identify the living relatives of those interred in the cemetery. Some of the headstones date back to the 1800's. The owner of the cemetery is a project participant and is fully aware of the details of the project as proposed. Additionally, MOC Solar cannot make the viability of this project dependent on the approval of an unknown and unidentified group of individuals. Access to the cemetery will be maintained throughout the life of the project for those wishing to visit the cemetery. This recommendation should be rejected in its entirety.

Compatibility with scenic surroundings:

Recommendation:

1. The Applicant will not remove any existing vegetation unless the existing vegetation needs to be removed for placement of solar panels.

Response:

MOC intends to maintain the existing vegetation to the maximum extent possible. Some vegetation may need to be removed for construction activities besides simply the placement of solar panels. MOC Solar commits to preserving existing vegetation where logistically feasible and not in conflict with construction and operation requirements.

Recommendation:

3. The Applicant will work with homeowners and business owners to address concerns related to the visual impact of the Project on its neighbors.

Response:

MOC Solar is happy to discuss concerns and potential mitigation measures with any project neighbors harboring concerns. MOC Solar will offer additional vegetative screening where logistically feasible and not in conflict with construction and operational requirements. Vegetative screening cannot necessarily be added in all project locations.

Recommendation:

4. The Applicant should provide a visual buffer between Project infrastructure and residences or other occupied structures with a line of sight to the facility to the satisfaction of the affected property owners. If vegetation is used, plantings should reach eight feet high within four years. To the extent that an affected property owner indicates to the Applicant that such a buffer is not necessary, Mt Olive Creek will obtain that property owner's written consent and submit such consent in writing to the Siting Board.

Response:

MOC Solar is happy to discuss concerns and potential mitigation measures with any project neighbors harboring concerns. MOC Solar will offer additional vegetative screening where logistically feasible and not in conflict with construction and operational requirements. Vegetative screening cannot necessarily be added in all project locations. Some flexibility is needed with regards to the height plantings shall reach within four years, as a considerable number of variables can impact a trees growth rate. MOC Solar has committed to planting two staggered rows of evergreens that will be a minimum of four feet in height at planting.

Recommendation:

5. The Applicant will follow through on its commitment to providing vegetative buffers at the locations indicated on the Preliminary Project Layout map included in the Application materials. If the final site layout plan deviates from the preliminary plan with regard to the locations of solar panels, inverters, substation or other Project infrastructure, an additional evaluation of the need for vegetative buffers will be conducted and reviewed by the Siting Board.

Response:

As explained above, minor variations in site layout may occur. Leaving open the possibility of reassessing mitigation requirements jeopardizes the economic viability of the project. Project financing often depends on the finality of the construction certificate, so leaving open the potential for additional Siting Board review creates significant implications for a project. MOC Solar recommends that minor alterations of site boundary and site development plans, be considered immaterial changes that will not require Siting Board review.

Recommendation:

7. The cemetery located within the Project boundary along Sano Road represents a potential conflict with regard to scenic compatibility. The Applicant must inform the owner and living relatives of those interred of the proximate construction and facility plans and secure written approval of their recognition and acceptance of this plan.

Response:

The owner of the cemetery is a project participant and has already granted written approval of the location of the project around the cemetery via an executed lease agreement. That lease agreement has an attached map showing the location of the project in relation to the cemetery. To the extent

any written approval from the cemetery owner is necessary, the lease should fulfill that requirement.

It is impossible to identify the living relatives of those interred in the cemetery. Some of the headstones date back to the 1800's. MOC Solar cannot make the viability of this project dependent on the approval of an unknown and unidentified group of individuals. Access to the cemetery will be maintained throughout the life of the project for those wishing to visit the cemetery. This recommendation should be rejected in its entirety.

Recommendation:

9. The Applicant has committed to using anti-glare panels and operating the panels in such a way that glare from the panels is minimized or eliminated. The Applicant will immediately adjust solar panel operations upon any complaint from those living, working or traveling in proximity to the Project. Failing this, the Applicant will cease operations until the glare is rectified.

Response:

MOC Solar is happy to discuss concerns and potential mitigation measures with any project neighbors harboring concerns. MOC will offer additional vegetative screening where logistically feasible and not in conflict with construction and operational requirements. Vegetative screening can not necessarily be added in all project locations. It is unreasonable to require the facility to cease operations based on the complaint of potentially one person traveling near the facility. Furthermore, the benefit of solar generation is the passive nature of the technology. This recommendation should be rejected in its entirety.

Peak and average noise levels:

Recommendation:

1. 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 the start of construction.

Response:

MOC Solar has already undertaken extensive efforts to communicate with neighbors and the community regarding the specifics of the project. Three public meetings have been held by MOC Solar in the community and the Siting Board has scheduled a fourth for later this month. All information regarding the project is available on the Siting Board's website and specifically in this docket. Additional outreach to residents or businesses located within an arbitrary number of feet of the project is excessive and the recommendation should be rejected.

Recommendation:

2. 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. If the noise levels are unduly high or annoying, the Applicant should mitigate those effects as needed.

Response:

MOC Solar believes it has proposed reasonable construction hours with sufficient accommodations and mitigating efforts to ensure minimal disruptions to the surrounding community. MOC Solar respects that the Siting Board has recently established precedent requiring construction only between the hours of 8 AM to 6 PM, Monday through Saturday. MOC Solar

can accept this restriction on construction hours, but the viability of the project would be jeopardized by further restrictions on construction hours.

MOC Solar's assessment is that parking trucks at the perimeter of the site does not seem feasible because there are no roads that could carry a large truck located in the right places around the perimeter of the site. Additionally, the well-established installation companies we contacted had no experience using sound blankets and generally believed it to be an impractical approach to mitigating sound. MOC Solar believes the proposed setback requirements and restriction on construction hours provides sufficient mitigation to pile driving noise. This recommendation should be rejected.

Recommendation:

3. If pile driving activity occurs within 1,500 feet of a noise sensitive receptor, the Applicant should implement a construction method that will suppress the noise generated during the pile driving process (i.e., semi-tractor and canvas method; sound blankets on fencing surrounding the Project site; or any other comparable method).

Response:

MOC Solar's assessment is that parking trucks at the perimeter of the site does not seem feasible because there are no roads that could carry a large truck located in the right places around the perimeter of the site. Additionally, the well-established installation companies we contacted had no experience using sound blankets and generally believed it to be an impractical approach to mitigating sound. MOC Solar believes the proposed setback requirements and restriction on construction hours provides sufficient mitigation to pile driving noise. This recommendation should be rejected.

Recommendation:

4. Pile driving activities should cease by 6pm each day, except for pile driving locations within 1,500 of noise receptors, in which case, pile driving should cease at 5pm. 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.

Response:

MOC Solar believes it has proposed reasonable construction hours with sufficient accommodations and mitigating efforts to ensure minimal disruptions to the surrounding community. MOC Solar respects that the Siting Board has recently established precedent requiring construction only between the hours of 8 AM to 6 PM, Monday through Saturday. MOC Solar can accept this restriction on construction hours, but the viability of the project would be jeopardized by further restrictions on construction hours.

Recommendation:

5. The Applicant should limit the construction activity, process, and deliveries to the hours of 8am to 6pm, Monday through Saturday. No construction work should be conducted on Sundays. These hours represent a reasonable timeframe to ensure that nearby property owners are not unduly impacted by construction activities.

Response:

MOC Solar believes it has proposed reasonable construction hours with sufficient accommodations and mitigating efforts to ensure minimal disruptions to the surrounding community. MOC Solar respects that the Siting Board has recently established precedent requiring construction only between the hours of 8 AM to 6 PM, Monday through Saturday. MOC Solar

can accept this restriction on construction hours, but the viability of the project would be jeopardized by further restrictions on construction hours.

Road and rail traffic, dust, and road degradation:

Recommendation:

1. The Applicant should work with the Kentucky road authorities and the Russell County Road Department (RCRD) to perform road surveys, before and after construction activities, on all roads to be used by construction vehicles.

Response:

MOC Solar commits to working with local officials to address any concerns regarding damage to existing road networks and to repairing damage substantially caused by traffic related to MOC Solar.

Recommendation:

5. The Applicant will comply with any road use agreement executed with the RCRD. Such an agreement might include special considerations for overweight loads, routes utilized by heavy trucks, road weight limits and bridge weight limits.

Response:

MOC Solar commits to working with local officials to address any concerns regarding damage to existing road networks and to repairing damage substantially caused by traffic related to MOC Solar. Additionally, all necessary permits and approvals will be secured in a timely fashion.

Recommendation:

6. The Applicant should fix or fully compensate the appropriate transportation authorities for any damage or degradation to roads that it causes or to which it materially contributes to, regardless of its status as a KY Route or local road.

Response:

MOC Solar commits to working with local officials to address any concerns regarding damage to existing road networks and to repairing damage substantially caused by traffic related to MOC Solar.

Recommendation:

9. The Applicant will develop a fugitive dust control plan and follow best practices to suppress fugitive dust emissions. The Applicant will monitor dust emissions occurring during construction or operations and adjust activities, if necessary, to minimize dust emissions.

Response:

MOC Solar commits to following the state's regulations pertaining to fugitive dust control.

Economic impacts:

Recommendation:

1. Socioeconomic impacts of the Mt Olive Creek 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.

Response:

The assertion that the economic benefits to the local area are small and largely temporary are objectively false. The IRB with the County alone guarantees payments to the county over several decades. While MOC Solar prefers to hire local workers and contractors, the number of qualified local applicants will greatly impact how many local workers are hired.

Decommissioning:

Recommendation:

1. The Applicant, its successors, or assigns shall decommission the entire site if the Project ceases producing electricity for a period of more than twelve (12) months. Decommissioning shall involve the removal of all solar panels, racking, and equipment including concrete pads and trenched electrical wiring. Fencing and internal access roads shall also be removed unless the landowner states in writing that they prefer fencing and internal roads to remain in place.

Response:

MOC Solar commits to complying with the decommissioning plan filed in this matter on July 15th.

Recommendation:

4. The Applicant's Decommissioning Plan, including all decommissioning activities, conditions, and requirements, shall apply to all properties within the Project site, including both leased properties and purchased properties.

Response: MOC Solar commits to complying with the decommissioning plan filed in this matter on July 15th, which is valid for both, leased and purchased properties.

Recommendation:

5. The Applicant will provide Decommissioning Security equal to the amount necessary to complete site decommissioning activities, naming Russell County as the Secondary Beneficiary of that Security.

Response:

MOC Solar commits to complying with the decommissioning plan filed in this matter on July 15th.

Recommendation:

6. The Decommissioning Cost Estimate should be updated every five years at the expense of the Applicant and the amount of the Decommissioning Security should be adjusted at the same time.

Response:

MOC Solar commits to complying with the decommissioning plan filed in this matter on July 15th.

Recommendation:

7. If the Applicant proposes to retrofit the current proposed facility, it shall demonstrate to the Siting Board that the retrofit facility will not result in a material change in the pattern or magnitude of impacts compared to the original project. Otherwise, a new Site Assessment Report will be submitted for Siting Board review.

Response:

Over the life of the facility, some components are likely to be replaced or even upgraded. Retrofit is a vague and undefined term that, if adopted into a condition by the Siting Board, would inject uncertainty regarding MOC Solar's ability to repair, replace, and upgrade facility equipment over the life of the project. MOC Solar recommends that repairs, replacements, and upgrades of facility equipment that maintain compliance with setback requirements and do not create additional visual impacts be considered immaterial changes that will not require Siting Board review.

Complaint resolution program:

Recommendation:

1. The Applicant should develop a Complaint Resolution Program that describes the process for filing complaints during construction and during operations; how the complaint will be addressed; the timeframe in which a complainant can expect a response; and an explanation of how resolution will be determined if the complainant is not satisfied with the response from the Applicant.

Response:

Mt Olive Creek will have full-time representation on site during construction, including a construction monitoring team, health and safety personnel, as well as quality control staff. Contact information including phone numbers will be posted on the project fence so that residents can reach out with complaints at any time. Complaints will be addressed on site immediately or relayed to project management staff to identify a quick and practical solution.

Recommendation:

2. The Applicant should submit to the Siting Board, annually, a status report associated with the Complaint Resolution Program, providing the individual complaints, how the Applicant addressed those complaints and the ultimate resolution of those complaints, identifying whether or not the resolution was to the complainant's satisfaction.

Response

MOC Solar is confident that complaints can and will be addressed to the satisfaction of the concerned citizen. As such, MOC Solar recommends that an annual filing not be required.

Respectfully submitted,



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