

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

**In the Matter of the Application of Ashwood Solar I,            )  
LLC, for a Construction Certificate to Construct a            ) Case No. 2020-00280  
Merchant Electric Generating Facility                            )**

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**PETITION FOR RECONSIDERATION AND CLARIFICATION**

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Ashwood Solar I, LLC (“Ashwood”), by counsel, hereby respectfully submits this Petition for Reconsideration and Clarification to address certain issues arising out of the Kentucky State Board on Electric Generation and Transmission’s (“Siting Board”) Order issued on June 9, 2021 (the “Order”).

**BACKGROUND**

Ashwood proposes to construct an approximately 86-megawatt alternating current photovoltaic electricity generation facility situated on land in Lyon County (the “Project”). It filed an application for a certificate to construct this solar energy project with the Siting Board on December 22, 2020. On June 21, 2021, the Siting Board approved a certificate to construct the Project. As a part of its Order, the Siting Board requires Ashwood to comply with certain mitigation measures.

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

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

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, Ashwood has proposed language for the revised mitigation measures, which it believes addresses the concerns of the Siting Board, while also maintaining flexibility for Ashwood to optimize the Project within the Siting Board's parameters. This proposed language is contained in the "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, Ashwood 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 CLARIFICATIONS**

### **1. Working Hours**

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

20. Ashwood Solar I will be required 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 minimally impacted by the construction activities

Ashwood recognizes that the stated hours minimize the potential impacts from construction activities to adjacent residents; however, there are circumstances that arise during

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

the course of construction that could require some minor activities to occur during extended hours. As an example, concrete pours may need to occur in the evening hours to avoid unfavorable weather conditions (extreme heat, precipitation, etc). Additionally, shipping and traffic delays may result in deliveries arriving after the stated hours. Ashwood would like the opportunity to request that, for good cause such as extended delays arising from unfavorable weather events, extended hours and/or Sunday work be permitted on a case-by-case basis by notifying the Siting Board through the Executive Director of the Public Service Commission in advance.

***Requested Revised Mitigation Measure***

20. Ashwood Solar I will be required to 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 minimally impacted by the construction activities. If necessary, as a result of force majeure type of events such as weather, the working hours may be extended by advance notice to the PSC Executive Director of such need and the reason for said request.

**2 Vegetation Screening**

The Siting Board’s tenth, twenty seventh, twenty eighth, twenty ninth and thirtieth Mitigation Measures relate to vegetative screening and its location. Specifically, the Siting Board will require the following:

10. Ashwood Solar I shall follow through on its commitment to providing vegetative buffers. If vegetation is used, plants should reach eight feet high within four years. The vegetation should be maintained or replaced as needed. To the extent an affected property owner indicates to Ashwood Solar I that such a buffer is not necessary, Ashwood Solar I will need to obtain that property owner’s written consent and submit such consent in writing to the Solar Board.

27. Ashwood Solar I shall implement planting of native evergreen species as a visual buffer to mitigate viewshed impacts. Plantings to primarily be in areas directly adjacent to the Project without existing vegetation.

28. Ashwood Solar I shall plant a vegetative buffer “where there are potential visual impacts created by the facility...” This buffer shall consist of two staggered rows of evergreen shrubs at least three feet high at the time of planting, approximately 15 feet wide.

29. Ashwood Solar I shall complete screening plan agreements with nearby homeowners as stated in Section 2 of the SAR to address their general concerns about viewshed impacts by limited tree clearing and planting vegetative buffers to further buffer viewshed concerns. Vegetative buffering shall be maintained or replaced as needed. To the extent an affected property owner indicates to Ashwood Solar I that such a buffer is not necessary, Ashwood Solar I will need to obtain that property owner’s written consent and submit such consent in writing to the Siting Board.

30. Ashwood Solar I shall carry out the screening plan and make sure the proposed new vegetative buffers are successfully established and develop as expected over time.

Because the different provisions are slightly different while others in these paragraphs are duplicative, Ashwood suggests that paragraphs ten, twenty-seven and thirty be deleted and paragraphs twenty-eight and twenty-nine be amended as indicated below to clarify the requirements.

*Requested Revised Mitigation Measure*

~~10. Ashwood Solar I shall follow through on its commitment to providing vegetative buffers. If vegetation is used, plants should reach eight feet high within four years. The vegetation should be maintained or replaced as needed. To the extent an affected property owner indicates to Ashwood Solar I that such a buffer is not necessary, Ashwood Solar I will need to obtain that property owner's written consent and submit such consent in writing to the Solar Board.~~

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28. Ashwood Solar I shall plant a vegetative buffer "where there are potential visual impacts created by the facility..." This buffer shall consist of two staggered rows of evergreen shrubs at least three feet high at the time of planting, approximately 15 feet wide.

29. Ashwood Solar I shall complete screening plan agreements with nearby homeowners as stated in Section 2 of the SAR to address their general concerns about viewshed impacts by limited tree clearing and planting vegetative buffers to further buffer viewshed concerns. The buffers shall be planted as indicated on the plan attached to the Siting Board's Order of June 21, 2021- as Appendix B. Vegetative buffering shall be maintained or replaced as needed. To the extent an affected property owner indicates to Ashwood Solar I that such a buffer is not necessary, Ashwood Solar I will need to obtain that property owner's written consent and submit such consent in writing to the Siting Board.

~~30. Ashwood Solar I shall carry out the screening plan and make sure the proposed new vegetative buffers are successfully established and develop as expected over time.~~

### **3.. Decommissioning Bond**

In its Order, the Siting Board in Mitigation Measure 37 set forth its requirements for the posting of a decommissioning bond. The Siting Board will specifically require the following:

37. Ashwood Solar I shall be required to file a bond, equal to the amount necessary to effectuate the explicit decommissioning plan naming Lyon County as a third-party beneficiary, in addition to the lessors of the subject property insofar as the leases contain a decommissioning bonding requirement, so that Lyon County will have the authority to draw upon the bond to effectuate the decommissioning plan. The bond shall be in place at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at

Ashwood Solar I'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 amount shall be reviewed every five years at Ashwood Solar I'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 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 Lyon 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 Ashwood. First, substitute the term "obligee" for "third party beneficiary" and second, clarify that the bond must be filed with the Lyon Fiscal Court.

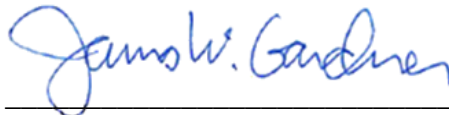
***Requested Revised Ordering Paragraph***

37. Ashwood Solar I shall be required to file a bond with the Lyon County Fiscal Court, equal to the amount necessary to effectuate the explicit or formal decommissioning plan naming Lyon County as an obligee ~~a third party beneficiary~~, in addition to the lessors of the subject property insofar as the leases contain a decommissioning bonding requirement, so that Lyon County will have the authority to draw upon the bond to effectuate the decommissioning plan. The bond shall be in place at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at Ashwood Solar I'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 amount shall be reviewed every five years at Ashwood Solar I'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 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 Lyon 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. CONCLUSION

Ashwood 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. Ashwood 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 Ashwood's concerns for clarification and consistency to ensure that the Project is viable. Accordingly, Ashwood respectfully requests the Siting Board approve the above-mentioned clarifications to the Siting Board's mitigation measures.

Respectfully submitted,



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STURGILL, TURNER, BARKER & MOLONEY, PLLC  
JAMES W. GARDNER  
M. TODD OSTERLOH  
333 W. Vine Street, Suite 1500  
Lexington, Kentucky 40507  
Telephone No.: (859) 255-8581  
Fax No. (859) 231-0851  
tosterloh@sturgillturner.com  
jgardner@sturgillturner.com

ATTORNEYS FOR ASHWOOD SOLAR I, LLC