

COMMONWEALTH OF KENTUCKY

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

IN THE MATTER OF:

ELECTRONIC APPLICATION OF GREEN)	
RIVER SOLAR, LLC FOR A CERTIFICATE)	
TO CONSTRUCT AN APPROXIMATELY 200)	
MEGAWATT MERCHANT SOLAR ELECTRIC)	CASE NO.
GENERATING FACILITY IN BRECKINRIDGE)	2020-00387
COUNTY AND MEADE COUNTY, KENTUCKY)	
PURSUANT TO KRS 278.700 AND 807 KAR 5:110)	

**GREEN RIVER SOLAR LLC'S
REQUEST FOR CLARIFICATION**

Comes now Green River Solar LLC, (“Green River”), by and through counsel, and does hereby request clarification on the Kentucky State Board on Electric Generation and Transmission Siting’s (“Siting Board”) August 12, 2022 Order on Rehearing (“Rehearing Order”). Green River understands that this request is not provided for procedurally and also understands that this request does not toll Green River’s time to appeal the Rehearing Order. Green River reserves the right to pursue an appeal within thirty days from the date of the Rehearing Order. However, Green River seeks clarification that Condition 28 does not trigger a Siting Board approval requirement in two situations Green River was originally concerned with. With regards to this request for clarification Green River respectfully states as follows:

I. BACKGROUND

Green River tendered its application to construct a 200 MW merchant electric solar generating facility in Breckinridge and Meade Counties (the “Project”) with the Siting Board on June 30, 2021. The Siting Board issued its Final Order on December 22, 2021, approving the

Project with conditions. Green River filed a Motion for Rehearing on certain of the conditions contained in the Siting Board’s December 22, 2021 Order on January 21, 2022. On August 12, 2022 the Siting Board issued an Order granting in part and denying in part Green River’s Motion for Rehearing (“Rehearing Order”). The language used in the Green River Rehearing Order regarding future transfers (Condition 28) is different than the language used for the same future transfers condition (Condition 26) in the Sebree Solar Rehearing Order.¹ The additional language included in the Sebree Rehearing Order for the future transfers condition leads Green River to believe that the below financing scenarios would not trigger the need for Siting Board approval. However, to ensure compliance with the Final Order, Green River seeks clarification from the Siting Board on this issue.

II. REQUEST FOR CLARIFICATION

Green River is seeking clarification in this filing only for Condition 28 – Restrictions on Future Transfers. Condition 28 from the December 21, 2021 Order states as follows:

If any person shall acquire or transfer ownership of, or control, or the right to control the Project, by sale of assets, transfer of stock, or otherwise, or abandon the same, Green River, or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Meade County Fiscal Court and Breckinridge County Fiscal Court. In any application requesting such abandonment, sale or change of control, the Applicant shall certify its compliance with KRS 278.710(1)(i).

The Siting Board did not clarify this language in its Rehearing Order and stated as follows:

The approval of the construction certificate in the Final Order was conditioned upon full compliance with all the mitigation measures contained in the order. These mitigation measures also continue into the operation of the project. If the Siting Board did not require approval of a potential transfer of ownership, the construction

¹ *In the Matter of: Electronic Application of Sebree Solar, LLC for a Certificate to Construct an Approximately 250-Megawatt Merchant Solar Electric Generating Facility and an Approximately 4.5 Mile Nonregulated Electric Transmission Line in Henderson County, Kentucky and Webster County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Order, (KSB, Aug. 26 2022).

certificate could be transferred to a company without the requisite expertise or resources to comply with the mitigation measures. This would create a situation where a merchant solar generating facility is being constructed and operated outside of the statutory requirements that this Siting Board is empowered to impose.

The Siting Board subsequently issued a Rehearing Order in Sebree's case and added additional language. The Siting Board stated as follows with regards to the condition concerning future transfers:

Solar developments are often **sold** to other companies during the planning, construction, and operation of projects. When a certificate to construct a solar facility is sought the project and the developers are thoroughly evaluated to ensure that the project will comply with all statutory and regulatory requirements. After the review, the construction certificate is granted on the condition of full compliance with all mitigation measures, some of which continue throughout the operation of the facility. Without a requirement for the Siting Board to approve a **potential transfer of ownership** of the project, the **construction certificate could be transferred** to a company without the financial, technical, or managerial capabilities **that are necessary to construct or operate** a solar facility under the imposed requirements, or to an owner without a good environmental compliance history. (*emphasis added*)

Green River is concerned that Condition 28 could be read to limit or prevent the Project from obtaining financing or securing investors for this Project since without clarification the condition may make financing contingent on Siting Board approval. Based on the transfer concerns articulated by the Siting Board in the Sebree Rehearing Order language and the financing needs surrounding the projects, Green River requests the Siting Board clarify that either of the following scenarios does not require Siting Board approval under Condition 28:

Transfers directly or indirectly of ownership interest to (1) affiliates, or (2) debt or equity financing sources; provided that in each of these scenarios a NextEra entity retains control of development and construction of, and continues to operate, the project.

Transfers in connection with an exercise of remedies or foreclosure by debt or equity financing sources; provided any such transfer is to

a person that individually or together with its affiliates has, or is controlled by a person that has, (1) at least three years' experience owning and operating utility-scale, solar-photovoltaic electric generating facilities with an aggregate nameplate capacity of at least 300 MWAC in the United States, or has engaged a person with such experience to operate the project; (2) a consolidated net worth of at least One Hundred Million Dollars (\$100,000,000), and (3) a good environmental compliance history.

Clarification from the Siting Board that Condition 28 is not implicated by these two scenarios would allow Green River to obtain financing for the Project and to be able to transfer interests in the project between affiliates, if necessary. This would in turn allow Green River to construct the Project and proceed with the investment of \$300 million in Kentucky. Green River would provide the Siting Board notice of any transfers under the above two scenarios and would include this language in any relevant financing and investor agreements. The conditions in the above scenarios should give the Siting Board assurance Green River would be operated by a NextEra entity or a qualified company that has the financial, technical, and managerial experience to construct and operate the project. In turn, Siting Board acknowledgement that these scenarios do not trigger the approval provisions of Condition 28 would give Green River's potential investors or financing parties assurances that in the event of foreclosure they would not be prohibited from foreclosing on the assets and finding a qualified buyer for the Project, meeting the requirements contained above, as is customary in financed utility transactions. Green River would give notice to the Siting Board if any of the provisions contained in the language above are implicated and, as per Condition 28, would seek approval from the Siting Board for any transfers outside of the above two scenarios.

WHEREFORE, on the basis of the foregoing, Green River respectfully requests the Siting Board clarify its Rehearing Order as requested herein.

This 31st day of August, 2022.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "L. Allyson Honaker".

L. Allyson Honaker
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com

Counsel for Green River Solar LLC