

**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 OF)
CONSTRUCTION FOR AN APPROXIMATELY)
200 MEGAWATT MERCHANT ELECTRIC) Case No. 2020-00387
SOLAR GENERATING FACILITY IN)
BRECKINRIDGE AND MEADE COUNTY,)
KENTUCKY, PURSUANT TO KRS 278.700)
AND 807 KAR 5:110)

**GREEN RIVER SOLAR, LLC'S
APPLICATION FOR DECLARATORY ORDER**

Comes now Green River Solar, LLC, (“Green River”), by and through counsel, and does hereby respectfully move the Kentucky Siting Board on Electric Generation and Transmission Siting (“Siting Board”) for an order declaring that: (1) Green River is not required to obtain Siting Board approval for anticipated financing transactions, or in the alternative to approve the anticipated financing transactions; and, (2) Green River is not required to obtain Siting Board approval for anticipated industrial revenue bond transactions, or in the alternative to approve the asset transfer of Green River’s electric solar generating facility, pursuant to agreement between Green River and Meade County for an industrial revenue bond. Due to the timing issues involved for the construction timeline, Green River is requesting expedited review of this **Application and respectfully requests a decision from the Siting Board no later than November 17, 2023**. In support of this motion, Green River states as follows:

I. BACKGROUND

Green River tendered its application to construct a 200 MW merchant electric solar generating facility in Breckinridge and Meade County (the “Project”) with the Siting Board on June 30, 2021. Following two rounds of information requests and a visit to the site of the proposed solar facility, a hearing was held in this case on November 1, 2021. At the hearing, Green River presented the testimony of five witnesses. Following an additional round of post-hearing data requests, the case stood ready for adjudication on November 15, 2021. The Siting Board issued its Final Order on December 22, 2021. The Siting Board granted rehearing in part and denied rehearing in part on August 12, 2022 and denied a motion for clarification in an Order on September 20, 2022. There is currently an action pending in Meade County Circuit Court on a small portion of the Siting Board’s Final Order.

II. ARGUMENT

A. Tax Equity Financing

Transfers may need to occur between Green River and affiliates to obtain funding for the Project through one or more tax equity investors. These tax equity investors would have a non-controlling, passive interest in the Project. The rights and obligations under the construction certificate will not be transferred. In order to achieve this, certain transfers on the corporate level will need to be completed.

Prior to achieving commercial operation, a to-be-formed wholly-owned direct or indirect subsidiary of ESI Energy, LLC (“ESI”), a Delaware limited liability company, which is a wholly-owned indirect subsidiary of NextEra Energy, Inc. (“NEE”), a Florida corporation, may seek to syndicate a portion of the economic ownership (but not operational control) of Green River to one

or more tax equity investors. It is currently expected that any such syndication would occur in a two-step process.

First, ESI would form one or more wholly-owned subsidiaries that are Delaware limited liability companies (each a “Holding Company”, collectively the “Holding Companies”), followed by a contribution of Green River to the Holding Companies. Other renewable energy projects owned by ESI may be contributed into the Holding Companies to form a portfolio of renewable energy projects to facilitate financing. Second, in exchange for the contribution of Green River, one or more tax equity investors would exchange cash, representing an interest in a portion of the economics in respect of one or more Holding Company for non-controlling ownership interests of one or more Holding Company. This syndication would allow financing from such tax equity investors to fund or reimburse construction costs of Green River. A wholly-owned indirect subsidiary of NEE will continue to own all of the Class A Units of the applicable Holding Companies, and a wholly-owned NEE subsidiary would continue to be responsible for the day-to-day operation and management of Green River. The tax equity investors’ Class B Units would receive customary protections given to minority investors in renewable energy projects (e.g., veto rights over certain major decisions made by such Holding Company), but would not receive control over the operations or management of Green River or the Holding Companies.

Green River does not believe the above transaction requires Siting Board approval pursuant to KRS 278.710 or Mitigation Measure 28 from the Siting Board’s December 21, 2021 Order in this proceeding, since there would be no transfer or change of control of the construction certificate or the operations or management of the solar Project. These anticipated transactions will not interfere with Green River’s ability to operate or control the Project and will not interfere with Green River’s ability to continue to comply with the Siting Board’s Order and the requirements of

its construction certificate. A wholly-owned indirect subsidiary of NEE will continue to be the entity responsible for the day-to-day operations and the management of the Project. That is the same as what was proposed and approved in the application for a construction certificate with the Siting Board.

Although Green River does not believe that the above-described transaction requires Siting Board approval, if the Siting Board disagrees, Green River requests approval of the anticipated transactions. The transactions described above show that the ultimate operational and managing control of the project will not change. Green River will still be responsible for complying with the terms of its construction certificate, with an indirect wholly-owned NEE subsidiary being responsible for supplying the appropriate staff necessary to comply with the terms of the construction certificate. This remains unchanged from the time the construction certificate was granted. The only change has been, as the Siting Board is aware and was disclosed by Green River's sister company, Sebree Solar II, that ESI pled guilty to three violations of the Migratory Bird Treaty Act and agreed to pay fines and restitution.¹ Green River is not aware of any other environmental violations. No controlling interest in the Project will transfer, only non-controlling, passive interests will be obtained by the tax equity investors.

B. Industrial Revenue Bond Financing

In addition to the tax equity transactions described above, Green River also seeks approval of the agreement between Meade County and Green River for issuance of an industrial revenue bond ("IRB" or "bond"). Issuance of the IRB by Meade County will require Green River to transfer title of the tangible personal property (which does not include the construction certificate)

¹ See, *In the Matter of Electronic Application of Sebree Solar II, LLC, for a Certificate to Construct an Approximately 150 Megawatt Merchant Solar Electric Generating Facility in Henderson County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2022-00131, Order, pp. 18-19, (Ky. P.S.C. Oct. 13, 2023).

to Meade County and for Green River to lease those assets back from Meade County for a period of up to thirty years. Since this transaction involves the transfer of title of the tangible assets, Green River seeks approval of same. However, Green River will retain ownership of the construction certificate and control of the operations and management of the Project during the term of the IRB. Once the bond matures and is paid off, Green River's lease of the assets terminates and title to the assets will be transferred back to Green River.

Meade County Fiscal Court adopted a bond inducement resolution on July 11, 2023 supporting the issuance of an IRB in connection with the construction of the Project. This was done as an incentive for Green River to develop the Project. The resolution provided that the IRB would be issued in an amount not to exceed \$350,000,000. After construction has started, Meade County will adopt and publish an ordinance approving the execution of the bond documents, issuance and sale of the IRB and the lease of the assets to Green River. Green River anticipates executing the necessary documents and Meade County issuing the IRB during the construction phase of the project, at least one month prior to completion of construction. Meade County's ordinance will contain all the necessary approvals, acceptances, etc., to effectuate the transaction. Meade County will also follow all rules regarding the number of readings on the ordinance and the publication of same.

Green River does not believe approval is required under KRS 278.710 but seeks approval from the Siting Board, if the Siting Board believes that due to the transfer of title that will be required for the issuance of the IRB, that Siting Board approval is required. Although title will transfer, the everyday operations and control of the project will not change. Green River will also retain economic ownership of the project. The issuance of the IRB will not change any of the fundamental facts contained in Green River's construction certificate application and upon which

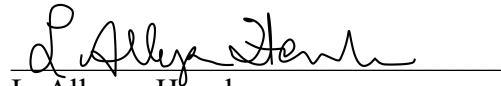
the Siting Board based its decision to approve Green River's construction certificate since it will simply lease rather than own the tangible asset comprising the project.

CONCLUSION

WHEREFORE, based on the foregoing, Green River respectfully requests an Order from the Siting Board declaring that the anticipated tax equity financing transactions do not require Siting Board approval, or in the alternative that the Commission grant approval for the anticipated transactions to assist Green River in obtaining financing for the project. In addition, Green River respectfully requests the Siting Board to approve the transfer of title to Green River facilities to Meade County, pursuant to the County's issuance of the IRB.

This 18th day of October, 2023.

Respectfully submitted,



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