

**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 )

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

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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: Green River is not required to obtain Siting Board approval for the below anticipated financing transactions, or in the alternative to approve the anticipated financing transactions. 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 December 20, 2024. 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.<sup>1</sup> Green River responded to two rounds of requests for information,<sup>2</sup> a site visit was conducted, and a hearing was held in this case on November 1, 2021.<sup>3</sup> 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.<sup>4</sup> The Siting Board granted a Certificate of Construction and subsequently Green River asked for clarification on several mitigation measures.<sup>5</sup> Since the grant of the Certificate of Construction, Green River was also granted approval for tax equity financing.<sup>6</sup>

## **II. ARGUMENT**

### **A. Construction Financing**

Transfers may need to occur between Green River and affiliates to obtain funding during construction for the Project from one or more commercial lenders. These commercial lenders would be granted a pledge of the equity interests of the direct or indirect parent of Green River, and other affiliates, as collateral for loans to be made under a revolving credit facility. The rights and obligations under the construction certificate will not be transferred. In order to achieve this funding, 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-

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<sup>1</sup> Application (filed June 30, 2021).

<sup>2</sup> Green River Solar, LLC’s Response to Staff’s First Information Request and Motion for Confidential Treatment (filed August 27, 2021); and, Responses to Staff’s Second Request for Information (filed September 23, 2021).

<sup>3</sup> Hearing Video Testimony of the November 1, 2021 Hearing.

<sup>4</sup> Response to Post-Hearing Data Request Part I, Part II, and Part III (filed November 15, 2021).

<sup>5</sup> December 22, 2021 Order (Ky SB Dec. 22, 2021); August 12, 2022 Order (Ky SB Aug. 12 2022); and, September 20, 2022 Order (Ky. SB Sept. 8, 2023).

<sup>6</sup> November 9, 2024 Order (Ky. SB Nov. 9, 2023).

owned indirect subsidiary of NextEra Energy, Inc. (“NEE”), a Florida corporation, may seek to finance the costs of developing and constructing Green River and other affiliates by entering into, as borrower (the “Borrower”), a secured, revolving credit facilities with a group of commercial lenders (the “Construction Revolving Credit Facility”).

To facilitate and secure the loans to be made under the Construction Revolving Credit Facility, first, ESI would form one or more wholly-owned subsidiaries that are Delaware limited liability companies (each a “Holding Company”, collectively the “Holding Companies”), and one of the Holding companies would be the Borrower under the Construction Revolving Credit Facility. The formation of the Holding Companies would be followed by a contribution of Green River to the Borrower and other Holding Companies, such that Green River would be indirectly owned by the Borrower. Other renewable energy projects owned by ESI may be contributed into the Holding Companies (including the Borrower) to form a portfolio of renewable energy projects to facilitate the financing. Thereafter, Borrower would enter the Construction Revolving Credit Facility with commercial lenders and pledge its ownership interests, directly or indirectly, in the portfolio of renewable energy projects, including Green River, to the commercial lenders as collateral for the loans to be borrowed under the Construction Revolving Credit Facility. The proceeds of the loans would provide funds or be used to reimburse ESI (or its affiliates), for construction costs of Green River and the other renewable projects in the renewable project portfolio.

A wholly-owned indirect subsidiary of NEE will continue to own all of the applicable Holding Companies (including Borrower), and Green River, and would continue to be responsible for the day-to-day operation and management of Green River. On or around the time that Green River achieves or will achieve commercial operation, the portion of the loans allocable to Green

River would be repaid and refinanced with the proceeds of a tax equity financing transaction previously approved by the Siting Board.<sup>7</sup>

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. No controlling interest in the Project will transfer, only non-controlling, passive interests will be obtained by the tax equity investors.

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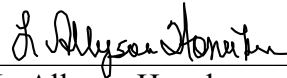
<sup>7</sup> See, November 9, 2023 Order.

**CONCLUSION**

WHEREFORE, based on the foregoing, Green River respectfully requests an Order from the Siting Board declaring that the anticipated construction 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 construction financing for the project.

This 22<sup>nd</sup> day of November, 2024.

Respectfully submitted,



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