

**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
MOTION FOR REHEARING**

Comes now Green River Solar LLC, (“Green River”), by and through counsel, and does hereby respectfully request the Siting Board to grant rehearing with regard to nine conditions included in the December 22, 2021 Final Order in this docket, respectfully stating 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 December 22nd Order included thirty-three conditions attaching to the construction certificate awarded to Green River by the Siting Board. Green River has reviewed the conditions set forth in the December 22nd Order and respectfully requests the

Siting Board to grant rehearing with respect to nine of these conditions so as to prevent unnecessary cost, delay or inefficiency in the development of the proposed project, to maintain consistency with the conditions already applicable to the Project by virtue of mandates imposed by the Meade County Board of Adjustments and to avoid what amount to serious impairments of Green River's ability to finance the Project.

II. ARGUMENT

The Siting Board is a creature of statute and, as such, may only act within the scope of its jurisdiction and authority.¹ Per KRS 278.704(1) and KRS 278.710, the purpose of the Siting Board is to review and rule upon applications to “construct” a merchant electric generating facility.² As with other administrative agencies, the Siting Board may not act arbitrarily or capriciously or in a manner inconsistent with law.³ The December 22nd Order imposes a number of conditions upon the Green River Project, the vast majority of which Green River has no concerns. However, nine of the conditions included in the December 22nd Order, though no doubt well-intentioned, would lead to results which are likely unintended or that exceed the scope of the Siting Board's authority. Individually, these conditions make the Project more difficult to bring to completion. In the

¹ See *Fam. Tr. Found. of Kentucky, Inc. v. Kentucky Horse Racing Comm'n*, 620 S.W.3d 595, 601 (Ky. 2020), *reh'g denied* (Jan. 21, 2021) citing *GTE v. Revenue Cabinet*, 889 S.W.2d 788, 792 (Ky. 1994) (“Notwithstanding this broad remit, the Commission, like all administrative agencies, may not exceed its statutory authority”); *Public Serv. Comm'n v. Attorney Gen.*, 860 S.W.2d 296, 297–98 (Ky. App. 1993) (“An administrative body's powers are defined and limited by the agency's enabling statute.”).

² “Commence to construct” is defined in KRS 278.700(4) as the “physical on-site placement, assembly, or installation of material or equipment which will make up part of the ultimate structure of the facility.”

³ See *Sebastian-Voor Properties, LLC v. Lexington-Fayette Urb. Cty. Gov't*, 265 S.W.3d 190, 195 (Ky. 2008) (“Judicial review of an agency decision is limited to the determination of whether the decision was arbitrary, i.e., whether the action was taken in excess of granted powers, whether affected parties were afforded procedural due process, and whether decisions were supported by substantial evidence.”) citing *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450, 456 (Ky.1964); see also *Protect My Check, Inc. v. Dilger*, 176 F. Supp. 3d 685, 690 (E.D. Ky. 2016).

aggregate, they may make the project unviable. Accordingly, Green River respectfully requests the Siting Board to grant rehearing on the basis set forth herein.

A. Condition 7 – Open Karst Features

Condition 7 reads as follows:

The Applicant shall follow best practices, including a 50-foot setback from any open karst features, and monitoring of the karst features present within the Project. The Applicant shall notify the Siting Board, Meade County Fiscal Court, and Breckinridge County Fiscal Court of any property damage that is incurred due to karst and report what repairs are performed. Throughout the life of the Project, Applicant shall also report when any environmental or safety concerns arise from the karst features present within the Project.

Green River seeks clarification with regard to this condition. Specifically whether, in light of this condition, Green River is allowed to remediate karst features in accordance with the guidance of the Natural Resources Conservation Service, an agency of the United States Department of Agriculture, Practice Code 527. Green River also seeks clarification that, if it is able to successfully remediate and close a karst feature pursuant to such federal agency guidance, or other best practices, the 50-foot setback requirement would not apply to the remediated, closed karst feature.

B. Conditions 9 and 11 – Vegetative Buffers

Condition 9 reads as follows:

The Applicant shall implement planting of native evergreen species as a visual buffer to mitigate viewshed impacts, particularly in areas directly adjacent to the Project without existing vegetation.

In developing the updated Site Plan that was included in response to the Siting Board's Post-Hearing Data Requests, Item 4, Green River already developed and prepared a vegetative buffer plan that fully complied with, and was approved by, the Meade County Board of

Adjustments in granting the project a Conditional Use Permit (“CUP”).⁴ The Meade County CUP is comprehensive and views each parcel individually. Accordingly, it is more restrictive than Condition 9, which applies only a general rule as opposed to the specific vegetative buffer requirements for each parcel of the CUP. As evidenced by the updated Site Plan filed with the Post-Hearing Data Requests, Green River has carried the vegetative buffering requirement of the Meade County Solar Ordinance into that portion of the Project located in Breckinridge County. This assures that the same design rules applied in Meade County will be enjoyed by Breckinridge County neighbors as well, giving the project a consistent look and design.

Condition 9 has, in effect, already been complied with by virtue of the Meade County CUP process and the carrying-over of that design philosophy into Breckinridge County. Green River does not propose to eliminate Condition 9, but believes it would be preferable to expressly incorporate the specific measures that have already been imposed upon Green River into the general guidance of Condition 9. This will eliminate confusion as to what is required in the construction of the Project and provide certainty with regard to whether Green River has followed through on its commitments. Based upon the foregoing, Green River respectfully requests that Condition 9 be amended to read as follows:

The Consistent with the Meade County Conditional Use Permit and the updated Site Plan provided as Post-Hearing Request Attachment, Item 4, Applicant shall implement planting of native evergreen species as a visual buffer to mitigate viewshed impacts, particularly in areas directly adjacent to the Project without existing vegetation.

Green River also seeks rehearing to amend a related condition relating to vegetative buffers. Condition 11 reads as follows:

⁴ Meade County’s Board of Adjustments approved the CUP, which included Green River’s proposed site plan, on November 11, 2021 – ten days after the hearing was held in this docket. *See* Green River Solar Supplemental Response to Post-Hearing Data Request, Item 6.

The Applicant shall provide a visual buffer between Project infrastructure and residences or other occupied structures with a line of sight to the facility to the reasonable satisfaction of the affected adjacent property owners. To the extent that an affected adjacent property owner indicates to the Applicant that such a buffer is not necessary, Green River Solar will obtain that property owner's written consent and submit such consent in writing to the Siting Board.

As stated above, Green River has adopted the vegetative buffer requirements from the Meade County Solar Ordinance for the entirety of the Project area to include the Breckinridge portion. The Site Layout as depicted in the Project's Response to Post-Hearing Information Request, Item 4 reflects these updated vegetative buffer requirements. As with Condition 9, the proposed additional wording for Condition 11 specifically requires Green River to act consistently with its commitments in obtaining the Meade County CUP. For the reasons set forth above, this additional language will assure that compliance with the CUP will equate to compliance with the Siting Board's condition as well. This will have the further benefit of honoring the local requirement espoused in the CUP and avoiding confusion in the future construction of the Project.

Green River seeks one additional change to Condition 11, which requires that a visual buffer must be "to the reasonable satisfaction of the affected adjacent property owners." This term injects significant uncertainty into the development of the Project and, at least for the Meade County portion of the Project, undermines the very purpose of a CUP. The CUP process is designed to give all affected parties an opportunity to raise any concerns with a proposed site plan. Like any administrative agency's permits, a duly issued CUP is presumed to be lawful and reasonable unless set aside or vacated.⁵ Condition 11 undermines the purpose of a CUP where it gives individual adjacent landowners the ability to vitiate the CUP by insisting upon vegetative screening that varies from that which has already been approved by a local government agency.

⁵ See, e.g., *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 101 (1949).

While an adjacent landowner's success on such a claim would hinge upon how reasonable it is, the "reasonable" standard itself invites formal disputes to fester and lead to litigation. Though no doubt well-intentioned, Condition 11 could lead to outcomes which are inconsistent with the purpose of requiring a CUP and the cost of resolving such disputes are wholly unnecessary.

Condition 11 also implies that acceptance of the vegetative buffer which the CUP has already established will need to be documented with each of the affected adjacent property owners. This would require outreach to nearly 200 unique adjacent property owners, adding significant administrative burden to the project. If Green River is unable to reach an agreement with every landowner, it may affect project financing or create an enhanced litigation risk. In light of the fact that the CUP has been reviewed and approved by an agency of local government and the updated Site Plan comports with its restrictions in both counties, it should be sufficient to establish reasonable requirements for vegetative buffers. Accordingly, Green River respectfully requests that Condition 11 be amended to read as follows:

The Consistent with the Meade County Conditional Use Permit and the updated Site Plan provided as Post-Hearing Request Attachment, Item 4, Applicant shall provide a visual buffer between Project infrastructure and residences or other occupied structures with a line of sight to the facility ~~to the reasonable satisfaction of the affected adjacent property owners~~. To the extent that an affected adjacent property owner indicates to the Applicant that such a buffer is not necessary, Green River Solar will obtain that property owner's written consent and submit such consent in writing to the Siting Board.

The proposed changes to Conditions 9 and 11 will limit confusion, align the obligations with those applied in the CUP, reduce the administrative burden of developing the Project and limit the likelihood of future litigation. Green River respectfully requests the Siting Board to adopt these proposed changes.

C. Conditions 13 and 15 – Construction Limitations

The December 22nd Order includes two conditions that adversely impact the construction phase of the Project. For instance, Condition 13 reads as follows:

Green River Solar is required to limit the construction activity, process, and deliveries to the hours between 8 a.m. and 6 p.m. Monday through Saturday. Non-noise-causing and non-construction activities can take place on the site between 7 a.m. and 10 p.m., Monday through Sunday, including field visits, arrival, departure, planning meetings, mowing, surveying, etc. To the extent that the Applicant has proposed more limited hours for high noise construction activities, those are approved; however, the herein stated requirements govern all parts of the project as the minimum.

Limiting construction activities to between 8:00 a.m. and 6:00 p.m., particularly during the summer months, will have a detrimental impact upon the Project and increase the construction costs by: (1) requiring additional contractors to be employed to meet the Project schedule; (2) extending the construction schedule based upon fewer working hours; or (3) some combination of both. Green River is prepared to work within this constraint, but respectfully requests that it be allowed one additional hour in the morning to undertake non-noise-causing activities. By definition, such activities would not be disruptive to adjacent landowners, but would enable Green River to more effectively utilize its 8 a.m. to 6:00 p.m. workday. Accordingly, Green River respectfully requests that Condition 13 be amended to allow non-noise-causing activities to begin on the Project site at 6:00 a.m.

Green River also requests that Condition 15 be deleted from the Commission's Order. Condition 15 reads as follows:

If the pile driving activity occurs within 1,500 feet of a noise sensitive receptor, Green River Solar shall 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 solar site; or any other comparable method). Should Green River Solar employ the proposed alternative racking

system of ground mounting, such noise suppression measures will not be required when utilizing that method.

While pile-driving is expected to take place on the Project over an approximate twelve (12) month period, the activity will be moving around the Project over that time. It is anticipated that the longest that pile-driving would take place within 1,500 feet of any particular noise sensitive receptor is one month.⁶ Once pile-driving is complete in an area, Green River does not anticipate a need to return to that area for further pile-driving. As stated in prior filings, Green River Solar has committed to the following noise mitigations:

Green River Solar has committed to notify residents and business in the vicinity of the proposed Project about the start of construction one month prior to commencing construction. These notifications will also include contact information for answering questions and providing feedback.⁷

The additional requirement set forth in Condition 15 to use sound blankets on fencing or another comparable method during pile driving will result in approximately \$4.5 million in additional construction costs, which threatens the Project's viability. These additional costs will include procurement and installation of the sound barriers as well as negative impacts to crew productivity by forcing work to be undertaken in a non-sequential fashion. Moreover, the benefit of sound blankets is itself uncertain. As much as anything, terrain features, existing vegetation and ambient conditions will impact the extent to which a noise sensitive receptor perceives noise from the pile-driving activity. Green River understands the well-intentioned nature of this requirement, but respectfully suggests that it will certainly add an unreasonable expense in order to gain what is at best a speculative benefit.

⁶ The precise sequence for this activity has not yet been determined. In limiting the construction workday in Condition 13, the cumulative number of days of pile-driving activity will likely increase to some degree.

⁷ See Green River Response to Siting Board Consultant's Report, p. 4.

D. Condition 17 – Inverter Setback

Condition 17 of the December 22nd Order includes specific setback requirements for various components of the proposed solar facility.

Green River Solar shall place panels, inverters and substation equipment consistent with the distances to noise receptors indicated in Green River Solar’s noise and traffic study and with the setbacks required by the Meade County Ordinance for the entirety of the Project. Nevertheless, Green River Solar shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church or school, 25 feet from non-participating adjoining parcels, and 50 feet from adjacent roadways. Green River Solar shall not place a central inverter, and if used, energy storage systems, closer than 450 feet from a residence, church or school. These setbacks shall not be required for residences owned by landowners involved in the Project that explicitly agree to lesser setbacks and have done so in writing. All agreements by participating landowners to lesser setbacks must include language advising the participating landowners of the standard setback required by the order. All agreements by participating landowners to lesser setbacks must be filed with the Siting Board prior to commencement of construction of the Project.

This Condition correctly allows Green River to place inverters at the distance indicated in its noise study and in a manner consistent with the Meade County Solar Ordinance. However, it then goes on to create additional specific setback requirements for specific components of the Project.⁸ The Condition’s additional setback requirement for solar panels is consistent with the noise and traffic studies and the Meade County Solar Ordinance, which makes that portion of Condition 17 redundant and unnecessary. Condition 17’s 450-foot setback from a residence, church or school for a central inverter, however, is inconsistent with Green River’s noise study

⁸ To the extent that Condition 17 contradicts the setback requirements set forth in the Meade County Solar Ordinance, it would violate KRS 278.704(3) which gives primacy to setback requirements in local planning and zoning ordinances.

and the Meade County Solar Ordinance.⁹ In establishing contradicting requirements, Condition 17 will force Green River to deviate from its approved site plan to relocate one inverter that complies with the Meade County Solar Ordinance but is less than 450-feet from two receptors.¹⁰ Moreover, given the fact that the approved site plan already calls for vegetative buffers between the Project and adjacent non-participating neighbors, the relative noise level of an inverter at 450-feet versus 250-feet is immaterial when measured against background, ambient noise. Thus, it would be preferable to retain the beginning language of this Condition as that is what was the subject of Green River's noise and traffic studies and what subsequently formed the basis for Green River's development of its site plan that was submitted to and approved by the Meade County Board of Adjustment. If Condition 17 simply relies upon the setback requirements set forth in the Meade County Solar Ordinance, the necessity of creating a process to deviate from the Siting Board's additional setback requirements goes away. Accordingly, Green River proposes that Condition 17 be restated as follows:

Green River Solar shall place panels, inverters and substation equipment consistent with the distances to noise receptors indicated in Green River Solar's noise and traffic study and with the setbacks required by the Meade County Ordinance for the entirety of the Project. ~~Nevertheless, Green River Solar shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church or school, 25 feet from non-participating adjoining parcels, and 50 feet from adjacent roadways. Green River Solar shall not place a central inverter, and if used, energy storage systems, closer than 450 feet from a residence, church or school. These setbacks shall not be required for residences owned by landowners involved in the Project that explicitly agree to lesser setbacks and have done~~

⁹ The Meade County Solar Ordinance requires a 250-foot setback for all facility components from a residential structure, nursing home, school or church. *See* Green River's Application, Vol. 1, Tab 3, Attachment A, p. 2 (Meade County Fiscal Ordinance 2021-005).

¹⁰ *See* Green River's Response to Post-Hearing Data Request, Item 1, Attachment 1, p. 5 (revised Site Plan, Sheet C2.02); *see also* Green River's Application, Vol. 2, Tab. 11, Attachment A, Exhibit 4, pp. 27-46. The noise study considered over 1,000 receptors when measuring the noise associated with the Project's planned ninety-nine (99) inverters and indicated only two receptors would be within 450 feet of an inverter included in the revised site layout. Additional attenuation from vegetative buffer was not considered in this assessment.

~~so in writing. All agreements by participating landowners to lesser setbacks must include language advising the participating landowners of the standard setback required by the order. All agreements by participating landowners to lesser setbacks must be filed with the Siting Board prior to commencement of construction of the Project.~~

E. Conditions 28 – Restrictions on Future Transfers

One of the conditions in the December 22nd Order applies to any future transfers of ownership, control or the right to control the Project. Condition 28 reads 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 Solar 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 constitutional and statutory basis for imposing this condition is unclear. Nevertheless, even if it is enforceable, the condition as written and included in the December 22nd Order is untenable as it, in essence, requires any future owner or investor of the Project – whether a direct or indirect owner – to reapply for “approval” of such a transaction from the Siting Board. The current wording will impact NextEra Energy Resources LLC’s (an indirect parent of Green River) ability to finance the Project through its traditional finance and tax equity financing structures due to the broad nature of the condition’s language. Condition 28 also adversely impacts creditors rights. As a backstop to this condition, a financing party would require an indemnity obligation in favor of investors backstopped by a guaranty in an amount equal to its investment in the Project. Another option that NextEra Energy Resources leverages for project financing is through its corporate partners or a strategic project investment portfolio which would transfer partial ownership to outside investors who want to invest in renewable energy. As written, Condition 28

would restrict the ability to use these avenues to finance Green River’s Project and would impose considerable additional costs upon the Project. Moreover, it is not uncommon for a power purchase agreement to give the purchaser of a facility’s energy the right to purchase the facility at some point in the future. While Green River certainly has no objection to providing notice of such a transaction to the Siting Board and the Fiscal Courts of Meade County and Breckinridge County, there is no apparent statutory basis for the Siting Board to hold any future corporate transaction approval proceedings once construction is complete. This condition was not the subject of discovery or the Siting Board’s consultant’s report and appears for the first time in the record as a condition in the December 22nd Order. Condition 28 impairs the value of the construction certificate issued by the Siting Board without substantial evidence to support the condition in a manner that violates fundamental notions of due process.¹¹ Accordingly, Green River respectfully requests that this condition be modified to only include a requirement that the Siting Board and the respective Fiscal Courts be notified if any such transfer of ownership, control or right to control takes place, as was done in Case No. 2021-00029.¹²

F. Conditions 30 and 31 – Decommissioning Obligations

The final two conditions for which Green River seeks rehearing relate to various decommissioning obligations. For instance, Condition 30 reads as follows:

Green River Solar shall file a full and explicit decommissioning plan with the Siting Board. This plan shall commit Green River Solar to removing all facility components, above-ground and below-ground, regardless of depth, from the project site. Upon its completion, this plan shall be filed with the Siting Board or its successors. The

¹¹ See, e.g., *Wasson v. Kentucky State Police*, 542 S.W.3d 300, 303 (Ky. Ct. App. 2018).

¹² See *In the Matter of the Electronic Application of Martin County Solar Project, LLC for a Certificate of Construction for an Approximately 200 Megawatt Merchant Electric Solar Generating Facility in Martin County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Order, Case No. 2021-00029 (Ky. State Siting Bd. Nov. 15, 2021), Appendix A, p. 6 (“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, Martin County Solar or its successors or assigns shall provide explicit notice to the Siting Board and the Martin County Fiscal Court.”).

decommissioning plan shall be completed at least one month prior to construction of the Project.

The Meade County Solar Ordinance allows a developer to abandon any facility components that are more than three feet below ground in place.¹³ Moreover, a contractual term with an identical three-foot requirement is included in leases agreed to by each of the landowners upon whose land the solar electric generation facilities will be located.¹⁴ To avoid creating inconsistent obligations and impairing the contractual relationships Green River has already established with participating landowners at considerable cost to the Project, Green River respectfully requests that Condition 30 be amended to read as follows:

Green River Solar shall file a full and explicit decommissioning plan with the Siting Board. This plan shall commit Green River Solar to removing all facility components, above-ground and ***up to three (3) feet depth below-ground, as set forth in the Meade County Solar Ordinance*** ~~below-ground, regardless of depth~~, from the project site. Upon its completion, this plan shall be filed with the Siting Board or its successors. The decommissioning plan shall be completed at least one month prior to construction of the Project.

Finally, Condition 31 imposes a bonding obligation on Green River that runs in favor of the respective Fiscal Courts of Meade County and Breckinridge County. Condition 31 reads as follows:

Green River Solar shall comply with Meade County's CUP regarding all bonding in addition those requirements of the Siting Board. Green River Solar shall file a bond with the Meade County Fiscal Court and Breckinridge County Fiscal Court, equal to the amount necessary to effectuate the explicit or formal decommissioning plan, naming the county as a third-party obligee (or secondary, in addition to individual landowners) beneficiary, in addition to the lessors of the subject property insofar as the leases contain a decommissioning bonding requirement, so that either

¹³ See Green River Application, Tab 3, Attachment A, Meade County Fiscal Court Ordinance No. 2021-005, p. 3; A zoning ordinance is presumed to be reasonable under Kentucky law. See *McCollum v. City of Berea*, 53 S.W.3d 106, 111 (Ky. Ct. App. 2000).

¹⁴ See Green River Response to Staff's First Request for Information, Confidential Item 24b.

county will have the authority to draw upon the bond to effectuate the decommissioning plan. For land in which there is no bonding requirement otherwise, the county shall be the primary beneficiary of the decommissioning bond for that portion of the project. The bond(s) shall be filed with the Meade County Treasurer or Breckinridge County Treasurer, or with a bank, title company or financial institution reasonably acceptable to each county. The acceptance of the county of allowing the filing the bond(s) with an entity other than the fiscal court, through the Meade County Treasurer or Breckinridge County Treasurer, can be evidenced by a letter from the Judge Executive, the Fiscal Court, or the County Attorney. The bond(s) shall be in place at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at Green River Solar'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 facilities. Certification of this review shall be provided to the Siting Board or its successors and the Meade County Fiscal Court and Breckinridge 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. Green River Solar may combine the bonds required by this measure and the Meade County CUP, as long as the obligations to Meade County and Breckenridge County are not reduced or eroded in any manner or fashion.

Green River does not object to posting a decommissioning bond with the two fiscal courts being named as beneficiaries.¹⁵ However, it believes that Condition 31 should be amended to reflect that the Meade County decommissioning bond obligation already exists. Thus, the Siting Board should not impose a separate bonding requirement for the Meade County portion of the Project. Green River therefore respectfully requests that Condition 31 be amended to read as follows:

Green River Solar shall comply with Meade County's CUP regarding all bonding *obligations for that portion of the Green River Solar project in Meade County* ~~in addition those requirements of the Siting Board.~~ *In addition,* Green River Solar shall file a bond

¹⁵ Green River will reach out to the Breckinridge Fiscal Court in the coming weeks to confirm that it will consent to being named as a beneficiary of a decommissioning bond and will accept the duties and obligations that arise from such status. Green River will advise the Siting Board as to the Fiscal Court's response.

with the ~~Meade County Fiscal Court and~~ Breckinridge County Fiscal Court, equal to the amount necessary to effectuate the explicit or formal decommissioning plan, naming the county as a third-party obligee (or secondary, in addition to individual landowners) beneficiary, in addition to the lessors of the subject property insofar as the leases contain a decommissioning bonding requirement, so that ~~either~~ **the** county will have the authority to draw upon the bond to effectuate the decommissioning plan. For land in which there is no bonding requirement ***set forth in a lease agreement*** ~~otherwise~~, the county shall be the primary beneficiary of the decommissioning bond for that portion of the project. The bond(s) shall be filed with the ~~Meade County Treasurer or~~ Breckinridge County Treasurer, or with a bank, title company or financial institution reasonably acceptable to ~~each~~ **the** county. The acceptance of the county of allowing the filing the bond(s) with an entity other than the fiscal court, through the ~~Meade County Treasurer or~~ Breckinridge County Treasurer, can be evidenced by a letter from the Judge Executive, the Fiscal Court, or the County Attorney. The bond(s) shall be in place at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at Green River Solar'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 facilities. Certification of this review shall be provided to the Siting Board or its successors and the ~~Meade County Fiscal Court and~~ Breckinridge 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. Green River Solar may combine the bonds required by this measure and the Meade County CUP, as long as the obligations to Meade County and Breckenridge County are not reduced or eroded in any manner or fashion.

These amendments to Condition 31 will assure that Green River complies with its pre-existing obligation under the Meade County CUP, but will not create an inconsistent obligation. Likewise, it will allow Green River to work with the Breckinridge County Fiscal Court to establish a decommissioning bond in the latter's favor as envisioned in the original language of Condition 31. Again, this clarification will make the administration of the decommissioning bond more efficient while fully effectuating the Siting Board's intent.

III. CONCLUSION

Green River continues to appreciate the time and attention that the Siting Board has already devoted to the review of the Project. With minimal changes, the Siting Board's December 22nd Order may be improved to assure that the Project moves forward and positively contributes to the communities of both Meade County and Breckinridge County for many decades to come.

WHEREFORE, on the basis of the foregoing, Green River respectfully requests the Siting Board to grant rehearing and amend or delete the various conditions of its December 22, 2021 Order as set forth herein.

This 21st day of January, 2022.

Respectfully submitted,



David S. Samford
L. Allyson Honaker
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, KY 40504
(859) 368-7740
david@gosssamfordlaw.com
allyson@gosssamfordlaw.com

Counsel for Green River Solar LLC