

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

In the Matter of:

<i>Electronic</i> Application of Henderson County)	
Solar LLC for a Certificate of Construction for)	
an approximately 50 Megawatt Merchant)	Case No.
Electric Solar Generating Facility in)	2020-00391
Henderson County, Kentucky Pursuant to KRS)	
278.700 and 807 KAR 5:110)	

Notice re 12/22/21 Final Order

Henderson County Solar LLC (“Henderson County Solar”), by counsel, hereby provides notice to the Kentucky State Board on Electric Generation and Transmission Siting (“ESB”) in response to the December 22, 2021, Final Order (“12/22/21 Order”) Appendix A, p.6, Mitigation Measure No. 26 (“No. 26”). No. 26 provides 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, Henderson County Solar or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Henderson County Fiscal Court. In any application requesting such abandonment, sale or change of control, Henderson County Solar shall certify its compliance with KRS 278.710(1)(i).

On December 20, 2021, an affiliate of AES Clean Energy Development, LLC acquired all of the issued and outstanding equity interests of Community Energy Solar, LLC (“Community Solar”), the parent company of McCracken County Solar. As a result, McCracken County Solar is now an indirect wholly-owned subsidiary of AES Clean Energy Development, LLC. AES Clean Energy Development, LLC is owned 75% by The AES Corporation (NYSE: AES). The AES Corporation is currently a Fortune 500 company with vast experience financing, owning and operating energy projects throughout the world.

The ESB recently clarified that the standards of KRS 278.710(3), which requires ESB approval before the transfer of any rights or the obligations of a construction certificate, are not applicable to the transfer or sale of the actual entity holding the construction certificate.¹ The ESB also clarified that mitigation language identical to that in No. 26 above is necessary to “ensure that any transfer of the entity having received the construction certificate is to another person that is able to help ensure compliance with all of the mitigation measures and other applicable law.”²

Henderson County Solar does not believe that the explicit approval identified in No. 26 is triggered under the current circumstances for the following reasons. The transfer at issue in Henderson County Solar is not that of the certificate; nor is it a transfer of the equity interests of Henderson County Solar to an entity other than its parent company at the time the construction certificate was issued. Henderson County Solar retains “ownership” of the certificate issued in this case. Furthermore, Community Solar remains the owner of all of Henderson County Solar’s issued and outstanding equity interest, as it was throughout the duration of the application process with the ESB.

However, out of an abundance of caution and wanting to ensure that the ESB is aware of developments related to this Project, Henderson County Solar is providing notice of the acquisition of all outstanding equity interests of Community Energy Solar, LLC, which is now an indirect wholly-owned subsidiary of AES Clean Energy Development, LLC. Its relationship with AES Clean Energy Development, LLC and The AES Corporation now provides Henderson County Solar and Community Solar access to extensive financial, managerial, and technical capacity beyond that which it already had when the certificate for Henderson County

¹ See *In re Electronic Application of Bluebird Solar LLC for a Certificate of Construction for an Approximately 100 MW Merchant Electric Solar Generating Facility in Harrison County, Kentucky Pursuant to KRS 278.700 and KAR 5:110*, Case No. 2021-00141, December 6, 2022 Order, pp. 7-8.

² *Id.*

Solar was approved.

To ensure continued goodwill with the local community, Henderson County Solar provided notice of the acquisition of Community Solar to the Henderson County Fiscal Court and Henderson County Planning and Zoning immediately after the transaction closed. Furthermore, Henderson County Solar reaffirms its statement provided with its application that neither it, nor any person or entity with an ownership interest in Henderson County Solar LLC has violated any state or federal environmental laws or regulations. There are no known actions, whether judicial or administrative, pending against Henderson County Solar LLC, nor against any person or entity with an ownership interest therein. Henderson County Solar will continue to ensure compliance with the 12/22/21 Order as it takes the next steps in the life of this Project.

Respectfully submitted,

/s/ Kathryn A. Eckert

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