

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

In the Matter of:

ELECTRONIC APPLICATION OF HENDERSON)	
COUNTY SOLAR LLC FOR A CERTIFICATE)	
OF CONSTRUCTION FOR AN APPROXIMATELY)	CASE NO.
50 MEGAWATT MERCHANT ELECTRIC)	2020-00391
SOLAR GENERATING FACILITY IN HENDERSON)	
COUNTY, KENTUCKY PURSUANT TO)	
KRS 278.700 AND 807 KAR 5:110)	

**HENDERSON COUNTY SOLAR LLC’S RESPONSE
TO FINDINGS AND RECOMMENDED MITIGATION
MEASURES IN SITING BOARD CONSULTANT’S REPORT**

Comes Henderson County Solar LLC (“Henderson County Solar”), by counsel, and provides the following response to the findings and recommended mitigation measures contained in the *Review and Evaluation of the Henderson County Solar, LLC Site Assessment Report* (“Consultant’s Report”), filed by Harvey Economics.¹

A. Site Development Plan

Recommended Mitigation:

1. *A final site layout plan should be submitted to the Siting Board upon completion of the final site design. Deviations from the preliminary site layout plan, which formed the basis for*

¹ There are sixty mitigation measures presented for consideration by the Siting Board and Applicant. They are found in Section 6, *Recommended Mitigation*, beginning at page VI-1 of the Consultant’s Report.

HE's review, should be clearly indicated on the revised graphic. Those changes would include, but are not limited to, location of solar panels, inverters, transformer, substation.

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

2. *Any change in Project boundaries from the information which formed this evaluation should be submitted to the Siting Board for review.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

3. *The Siting Board will determine if any deviation in the boundaries or site development plan is likely to create a materially different pattern or magnitude of impacts. If not, no further action is required, but if yes, the Applicant will support the Siting Board's effort to revise its assessment of impacts and mitigation requirements.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

4. *A final Project-specific construction schedule, including revised estimates of on-site workers and commuter vehicle traffic, should be submitted to the Siting Board. Deviation from the preliminary construction schedule should be clearly indicated.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

5. *The Siting Board will determine if any deviation to the construction schedule or workforce estimates is likely to create a materially different pattern or magnitude of impacts. If not, no further action is required. If so, the Applicant will support the Siting Board's effort to revise its assessment of impacts and mitigation requirements.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

6. *The Applicant or its contractor will control access to the site during construction and operation. All construction entrances will be gated and locked when not in use.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

7. *The Applicant's access control strategy should include appropriate signage to warn potential trespassers, pursuant to the Henderson County Solar Ordinance. The Applicant must ensure that all site entrances and boundaries have adequate signage, particularly in locations visible to the public, local resident and business owners.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

8. *According to National Electrical Safety Code regulations, the security fence must be installed prior to any electrical installation work. The substation will have its own separate security fences installed.*

Henderson County Solar's Response:

The presence of security fences during the delivery and placement of electrical equipment, including the installation of any underground cables, is neither logistically practical nor necessary for public safety. Henderson County Solar agrees that the security fence must be

installed prior to any energization of any electrical equipment. Henderson County also agrees that the substation will have its own separate security fences installed.

Recommended Mitigation:

9. *The Applicant will comply with all applicable regulations for solar facilities as set forth in the Henderson County Solar Ordinance.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

10. *The Applicant will secure a crossing agreement from CSX for the purpose of installing an underground power line below and perpendicular to the existing railway line.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

B. Compatibility with scenic surroundings

Recommended Mitigation:1. *The Applicant should maintain existing vegetation to the maximum extent possible. The Applicant will not remove any existing vegetation unless the existing*

vegetation needs to be removed for placement of solar panels and related structures or is essential for necessary construction or operational activities.

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

2. *Existing vegetation between the solar arrays and the residences should be left in place, to the extent practicable, to help screen the Project and reduce visual impacts from the nearby homes and roadways.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

3. *The Applicant should work with homeowners and business owners to address concerns related to the visual impact of the Project on its neighbors.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

4. *The Applicant should pay particular attention to the visual buffer needs for the homes along Lover's Lane. Individual discussions and agreements about buffering, including vegetative buffers prior to construction commencement, should be considered.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

5. *The Applicant should provide a visual buffer between Project infrastructure and residences or other occupied structures with a line of sight to the facility, pursuant to the Henderson County Solar Ordinance.*

Henderson County Solar's Response:

Henderson County Solar respectfully disagrees with the interpretation of the Henderson County Solar Ordinance to require a visual buffer between Project infrastructure and residences or other occupied structures with a "line of sight" to the facility. The Henderson County Solar Ordinance takes adjacency and proximity into consideration in its requirements.

Henderson County Solar agrees to provide a visual buffer between Project infrastructure and adjacent residences or other occupied structures, pursuant to the Henderson County Solar Ordinance, which reads:

d. All Level 3 SES shall be screened with a seven (7) foot tall fence and, to the extent reasonably practicable, a visual buffer that provides reasonable screening to reduce the view of the SES from residential dwelling units on adjacent lots (including those lots located across a public right of way). A vegetation screening plan to reduce the view of the SES from residential dwelling units on adjacent lots will be submitted for approval of the Henderson City-County Planning Commission. The existing natural tree growth and natural land forms along the SES perimeter may create a sufficient buffer and shall be preserved when reasonably practicable. When no alternative vegetation screening plan is approved by the Henderson City-County Planning Commission, a double row of staggered evergreen trees will be planted 15' on center from adjacent non participating residential dwellings including the outdoor living space immediately near residential dwellings. Parcel boundaries with no proximity to residential dwellings shall not require screening. The proposed evergreen trees shall be placed on the exterior of security fencing. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential properties.

Recommended Mitigation:

6. *The Applicant should follow through on its commitment to providing vegetative buffers at the locations indicated on the Site Plan maps included in the application materials. If the final site layout plan deviates from the preliminary plan with regard to the locations of solar panels,*

inverters, substation or other Project infrastructure, an additional evaluation of the need for vegetative buffers will be conducted and reviewed by the Siting Board.

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

7. *Plantings used for the vegetative buffer should reach eight feet high within four years. To the extent that an affected property owner indicates to the Applicant that such a buffer is not necessary, the Applicant will obtain that property owner's written consent and submit such consent in writing to the Siting Board.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

8. *Landscape screening should extend and connect to existing site vegetation, to help create a more natural transition between existing vegetation and developed.*

Henderson County Solar's Response:

Henderson County Solar agrees to extend and connect the proposed landscape screening to existing site vegetation where reasonably practical and where such existing site vegetation is in close proximity to the proposed landscape screening.

Recommended Mitigation:

9. *The Applicant should develop a vegetation management plan that describes the approach and procedures for maintaining or replacing vegetative buffers as needed.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

10. *The Applicant should consider planting and maintaining multiple acres of native pollinator-friendly species on-site to help offset lost pollination opportunities from crops.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

11. *The Applicant will submit a professional glare study to the Siting Board. The Siting Board will review that study to understand the potential for glare surrounding the Project site and determine the need for additional mitigation.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

12. *The Applicant has committed to using anti-glare panels and operating the panels in such a way that glare from the panels is minimized or eliminated. The Applicant will immediately adjust solar panel operations upon any complaint about glare from those living, working, or traveling in proximity to the Project. Failing this, the Applicant will cease operations until the glare is rectified.*

Henderson County Solar's Response:

Henderson County Solar agrees to use anti-glare panels and to operate the panels in such a way that glare from the panels is minimized or eliminated. Henderson County Solar agrees to work in good faith and in a timely manner to address any complaints about glare from those living, working, or traveling in proximity to the Project, and to take all commercially reasonable efforts to mitigate any materially adverse effects arising from any glare caused from the Project.

C. Potential changes in property values and land use

Recommended Mitigation:

1. *No unique mitigation measures are recommended related to potential impacts to property values or adjacent land uses because other mitigation can accomplish this. However, close coordination by the Applicant with impacted and concerned homeowners regarding these mitigation measures should be initiated.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

D. Peak and average noise levels

Recommended Mitigation:

1. *The Applicant should notify residents and businesses within 2,400 feet of the Project boundary about the construction plan, the noise potential, and the mitigation plans for affected areas at least one month prior to the start of construction.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

2. *The Applicant should remain in contact with nearby residents, with a special focus on residents on Lover's Lane, to explain the construction schedule and associated noise impact and duration prior to start of construction. The Applicant should confirm that noise levels are not unduly high or annoying during construction. If the noise levels are unduly high or annoying, the Applicant should mitigate those effects as needed.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

3. *The Applicant should limit the construction activity, process and deliveries to the hours of 8:00 am to 6:00 pm, Monday through Saturday. Pile driving activities should cease by 6:00 pm each day, except for pile driving in the Neighbor Zones, in which case, pile driving should cease at 5:00 pm. No construction work should be conducted on Sundays. These hours represent a reasonable timeframe to ensure that nearby property owners are not unduly impacted by construction activities.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

4. *The Neighbor Zones should be implemented as the Applicant proposed. In those zones the Applicant should 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 Project site; or any other comparably effective method).*

Henderson County Solar's Response:

Henderson County Solar agrees to implement the Neighbor Zones as proposed in the application. Henderson County Solar respectfully disagrees with the recommended mitigation to additionally implement a construction method in the Neighbor Zones intended to suppress the noise generated during the pile driving process (i.e., semi-tractor and canvas method; sound blankets on fencing surrounding the Project site; or any other comparably effective method). Henderson County Solar asserts that such construction methods are neither logistically practical, commercially reasonable, nor materially effective. Henderson County Solar proposes that the implementation of the Neighbor Zone restrictions, in addition to the recommended mitigation steps in parts 2 and 3 of this section D, is a reasonable and effective approach to managing the effects of noise generated during the pile driving process on the residents of Lover's Lane.

Recommended Mitigation:

5. *When possible, construction crews should avoid simultaneous use of multiple sources of loud equipment in the same area. This is especially true for the Northern section.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

6. *If repairs or maintenance activities occur at night, normally quiet during the operational phase, crews should be aware of nearby homes and reduce loud noise when possible.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

E. Road and rail traffic, dust, and road degradation

Recommended Mitigation:

1. *The Applicant should work with the Commonwealth road authorities and the Henderson County Road Department to perform road surveys, before and after construction activities, on all roads to be used by construction vehicles.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

2. *The Applicant will consult with the Kentucky Transportation Cabinet (KTC) regarding truck and other construction traffic and obtain necessary permits from the KTC.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

3. *The Applicant will consult with the Henderson County Road Department regarding truck and other construction traffic and obtain necessary permits from the Henderson County Road Department.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

4. *The Applicant will develop and comply with any road use agreement executed with the Henderson County Road Department. Such an agreement might include special considerations for overweight loads, routes utilized by heavy trucks, road weight limits and bridge weight limits.*

The Lover's Land bridge over Canoe Creek, posted as having an 18-ton weight limit, poses a special concern when considering heavy truck traffic and delivery of the Project transformer.

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

5. *The Applicant will fix or fully compensate the appropriate transportation authorities for any damage or degradation to roads or bridges, such as the Lover's Land bridge over Canoe Creek, that it causes or to which it materially contributes to, regardless of its status as a KY Route or local road.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

6. *The Applicant should develop and follow a traffic management plan to minimize the impacts of any traffic increases and keep traffic and people safe. To better manage traffic during construction, the construction team may issue "route and parking cards" to workers and delivery drivers. These cards would specify time, route and parking areas and indicate entrances to be used.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

7. *Ridesharing during the construction phase will be encouraged.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

8. *The Applicant will comply with all laws and regulations regarding the use of roadways.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

9. *The Applicant will secure a crossing agreement from CSX for the purpose of installing an underground power line below and perpendicular to the existing railway line.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

10. *The Applicant will plant a continuous groundcover across the Project site. Where needed, the Applicant will employ irrigation to establish and maintain such a groundcover.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

11. *The Applicant will develop a fugitive dust control plan and follow best practices to suppress fugitive dust emissions. The Applicant will monitor dust emissions occurring during construction or operations and adjust activities, if necessary, to minimize dust emissions.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

12. *The Applicant has indicated that the curve on Lover's Lane will be mitigated by adding three feet of pavement/stabilization and widening along both sides of Lover's Lane.*

Henderson County Solar's Response:

Henderson County Solar agrees to consult with a transportation engineer licensed in the Commonwealth of Kentucky, and with the Henderson County Road Department, to determine and implement any pavement stabilization and widening along Lover's Lane that will be required to support the construction of the proposed facility.

Recommended Mitigation:

13. *In addition, the Applicant will secure a crossing agreement from CSX for the purpose of installing an underground power line below and perpendicular to the railway.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

F. Economic Impacts

Recommended Mitigation:

1. *The Applicant should attempt to hire local worker and contractors to the extent they are qualified to perform the construction and operations work.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

2. *The Applicant should also consider other opportunities to optimize local benefits; for example, by purchasing as many materials as possible in the local area during construction and operation.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

G. Decommissioning

Recommended Mitigation:

1. *The Applicant, its successors, or assigns shall decommission the entire site if the Project ceases producing electricity for a period of more than twelve (12) months. Decommissioning shall involve the removal of all solar panels, racking, and equipment including concrete pads and trenched electrical wiring.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

2. *The Applicant shall file a final decommissioning plan with the Siting Board or its successors. This plan should commit the Applicant to removing all facility components from the Project site and Henderson County at the cessation of operations. As part of the decommissioning plan, the Applicant has committed to these steps:*

a. The Project equipment and improvements shall be disassembled, removed, packaged, and shipped for re-sale, transported to a salvage/recycling facility or other processing facility where possible, or taken to a landfill for disposal (this includes all above-ground and below-ground facilities).

b. Any exposed soil where equipment was removed will be stabilized consistent with applicable erosion and sediment control standards and planted with groundcover.

c. Vegetative groundcover shall remain. No additional grading or soil ripping shall be performed during decommissioning.

d. Vegetative buffers shall remain unless landowner requests removal.

e. Internal gravel access drives shall be removed unless landowner requests those drives remain. Paved or gravel aprons from public roads shall remain.

f. Utility-owned interconnection facilities and all ancillary facilities, including but not limited to associated gravel access roads, shall remain.

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

3. *The Applicant will post a Surety Bond, or other form of security acceptable to the County, equal to one-percent of the total Project cost, naming Henderson County as the third-party beneficiary of the bond so that Henderson County will have the authority to draw upon the bond to effectuate the decommissioning plan. The bond shall be in place by the commencement of operations.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

4. *The amount of the Surety Bond (or other form of security) should be reviewed and updated every five years of the Project life at the expense of the Applicant.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

5. *As applicable to individual lease agreements, the Applicant, its successors, or assigns will abide by the specific land restoration commitments agreed to by individual property owners, as described in each signed lease agreement.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

6. *If the Applicant proposes to retrofit the current proposed facility, it shall demonstrate to the Siting Board that the retrofit facility will not result in a material change in the pattern or magnitude of impacts compared to the original project. Otherwise, a new Site Assessment Report will be submitted for Siting Board review. The term retrofit is defined as the facility being re-designed such that the facility has a different type of operations or function, i.e., no longer operates as a solar electric generation facility.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

7. *The Applicant shall also prepare a new Site Assessment Report for Siting Board review if the Applicant intends to retire the currently proposed facility and employ a different technology.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

H. Public outreach and communication

Recommended Mitigation:

1. Because of the limited attendance at local public meetings and the general sense of local unawareness of the Project, it is suggested that the Applicant pursue additional public outreach and engagement activities within Henderson County.

Henderson County Solar's Response:

Henderson County Solar respectfully disagrees with the assessment that there is a "general sense of local unawareness of the Project."

As required under the Siting Board review process, during the pre-Application period, Henderson County Solar mailed letters to all individuals owning property adjacent to the proposed project site making them aware of the project, directing them to an informational website, inviting them to a presentation of the project, and offering an in-person meeting. This information was also made generally available by publication in the local newspaper. Henderson County Solar followed up this mailing with phone calls to all adjacent residences.

Prior to the filing of the Application, Henderson County Solar sent an additional mailing to all individuals owning property adjacent to the proposed project site, and published an additional notice of the project in the local newspaper.

As part of the Site Plan Review process conducted by the Henderson City-County Planning Commission, notices of the review proceedings were sent to all adjacent landowners to the proposed project site. In addition, signs were posted along the proposed project site periphery indicating the existence of a review process and providing information in regard to the

Planning Commission proceedings. A notice of the proposed project and the related Planning Commission meeting was also published in the local newspaper.

Henderson County Solar asserts that the adjacent landowners who may be potentially affected by the proposed project are aware of the project. The agreed recommended mitigations in sections B(3), B(4), C(1), D(1), and D(2) above and I(2) below should provide sufficient additional outreach and engagement opportunities with the local community.

I. Complaint resolution program

Recommended Mitigation:

1. The Applicant should develop a complaint resolution plan that describes the process for filing complaints during construction and during operations; how the complaint will be addressed; the timeframe in which a complainant can expect a response; and an explanation of how resolution will be determined if the complainant is not satisfied with the response from the Applicant.

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

2. *The Applicant should notify residents and businesses within 2,400 feet of the Project boundary about the construction plan and the complaint resolution process at least one month prior to the start of construction.*

Henderson County Solar's Response:

Henderson County Solar agrees to the recommended mitigation.

Recommended Mitigation:

3. *The Applicant should submit to the Siting Board an annual status report associated with the complaint resolution plan and activities, providing the individual complaints, how the Applicant addressed those complaints and the ultimate resolution of those complaints, identifying whether or not the resolution was to the complainant's satisfaction.*

Henderson County Solar's Response:

Henderson County Solar proposes that the Siting Board be notified no less than annually of any individual complaints, how Henderson County Solar addressed those complaints and the ultimate resolution of those complaints, and whether or not the resolution was to the complainant's satisfaction.

This 15th day of October, 2021.

Respectfully Submitted,



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