

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

In the Matter of:

<i>Electronic</i> Application of McCracken County)	
Solar LLC for a Certificate of Construction for)	
an approximately 60 Megawatt Merchant)	Case No.
Electric Solar Generating Facility in)	2020-00392
McCracken County, Kentucky Pursuant to)	
KRS 278.700 and 807 KAR 5:110)	

Notice re 10/30/21 Final Order

McCracken County Solar LLC (“McCracken County Solar”), by counsel, hereby provides notice to the Kentucky State Board on Electric Generation and Transmission Siting (“ESB”) in response to the October 30, 2021, Final Order (“10/30/21 Order”) Appendix A, p.7, Mitigation Measure No. 32 (“No. 32”). No. 32 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, McCracken County Solar or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the McCracken County Fiscal Court. In any application requesting such abandonment, sale or change of control, McCracken 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. 32 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

McCracken County Solar does not believe that the explicit approval identified in No. 32 is triggered under the current circumstances for the following reasons. The transfer at issue in McCracken County Solar is not that of the certificate; nor is it a transfer of the equity interests of McCracken County Solar to an entity other than its parent company at the time the construction certificate was issued. McCracken County Solar retains ownership of the certificate issued in this case. Furthermore, Community Solar remains the owner of all of McCracken County Solar’s issued and outstanding equity interests, 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, McCracken 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 McCracken County Solar and Community Solar access to extensive financial, managerial, and technical capacity beyond that which it already had when the certificate for McCracken 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, McCracken County Solar provided notice of the acquisition of Community Solar to the McCracken County Fiscal Court and McCracken County Planning and Zoning immediately after the transaction closed. Furthermore, McCracken County Solar reaffirms its statement provided with its application that neither it, nor any person or entity with an ownership interest in McCracken County Solar LLC has violated any state or federal environmental laws or regulations. There are no known actions, whether judicial or administrative, pending against McCracken County Solar LLC, nor against any person or entity with an ownership interest therein. McCracken County Solar will continue to ensure compliance with the 10/30/21 Order as it takes the next steps in the life of this Project.

Respectfully submitted,

/s/ Kathryn A. Eckert

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