

COMMONWEALTH OF KENTUCKY

**BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING**

IN THE MATTER OF:

THE ELECTRONIC APPLICATION OF)
SEBREE SOLAR, LLC FOR A CERTIFICATE)
TO CONSTRUCT AN APPROXIMATELY 250)
MEGAWATT MERCHANT SOLAR ELECTRIC) CASE NO. 2021-00072
GENERATING FACILITY AND AN)
APPROXIMATELY 4.85 MILE)
NONREGULATED ELECTRIC TRANSMISSION)
LINE IN HENDERSON COUNTY, KENTUCKY)
AND WEBSTER COUNTY, KENTUCKY)
PURSUANT TO KRS 278.700, ET SEQ. AND)
807 KAR 5:110, ET SEQ.)

**SEBREE SOLAR LLC'S
REQUEST FOR CLARIFICATION**

Comes now Sebree Solar LLC, (“Sebree”), by and through counsel, and does hereby request clarification on the Kentucky State Board on Electric Generation and Transmission Siting’s (“Siting Board”) August 26, 2022 Order on Rehearing (“Rehearing Order”). Sebree understands that this request is not provided for procedurally and also understands that this request does not toll Sebree’s time to appeal the Rehearing Order. Sebree reserves the right to pursue an appeal within thirty days from the date of the Rehearing Order. However, Sebree seeks clarification that Condition 26 does not trigger a Siting Board approval requirement in two situations Sebree was originally concerned with. With regards to this request for clarification Sebree respectfully states as follows:

I. BACKGROUND

Sebree tendered its application to construct a 250 MW merchant electric solar generating facility in Henderson County and an approximately 4.85-mile electric transmission line in Henderson and Webster Counties (the “Project”) with the Siting Board on August 13, 2021. The Siting Board issued its Final Order on February 9, 2022, approving the Project with conditions. Sebree filed a Motion for Rehearing on certain of the conditions contained in the Siting Board’s February 9, 2022 Order on March 1, 2022. On August 26, 2022 the Siting Board issued an Order granting in part and denying in part Sebree’s Motion for Rehearing. The language included in the Rehearing Order regarding future transfers leads Sebree to believe that the below financing scenarios would not trigger the need for Siting Board approval. However, to ensure compliance with the Final Order, Sebree seeks clarification from the Siting Board on this issue.

II. REQUEST FOR CLARIFICATION

Sebree is seeking clarification in this filing only with respect to Condition 26 – Restrictions on Future Transfers. Condition 26 from the February 9, 2022 Order states 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, Sebree 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 and Webster 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 Siting Board’s language used in the Sebree Rehearing Order states as follows:

Solar developments are often **sold** to other companies during the planning, construction, and operation of projects. When a certificate to construct a solar facility is sought the project and the developers are thoroughly evaluated to ensure that the project will comply with all statutory and regulatory requirements. After the review, the construction certificate is granted on the condition of full compliance with all mitigation measures, some of which continue throughout the operation of the facility. Without a requirement for the Siting Board to approve a **potential transfer of ownership** of

the project, the **construction certificate could be transferred** to a company without the financial, technical, or managerial capabilities **that are necessary to construct or operate** a solar facility under the imposed requirements, or to an owner without a good environmental compliance history. (*emphasis added*)

Sebree is concerned that Condition 26 could be read to limit or prevent the Project from obtaining financing or securing investors for this Project since without clarification the condition may make financing contingent on Siting Board approval. Based on the transfer concerns articulated in the Sebree Rehearing Order language and the financing needs surrounding the projects, Sebree requests the Siting Board clarify that either of the following scenarios does not require Siting Board approval under Condition 26:

Transfers directly or indirectly of ownership interests to (1) affiliates, or (2) debt or equity financing sources; provided that in each of these scenarios a NextEra entity retains control of development and construction of, and continues to operate, the project.

Transfers in connection with an exercise of remedies or foreclosure by debt or equity financing sources; provided any such transfer is to a person that individually or together with its affiliates has, or is controlled by a person that has, (1) at least three years' experience owning and operating utility -scale, solar-photovoltaic electric generating facilities with an aggregate nameplate capacity of at least 300 MWAC in the United States, or has engaged a person with such experience to operate the project; (2) a consolidated net worth of at least One Hundred Million Dollars (\$100,000,000), and (3) a good environmental compliance history.


Clarification from the Siting Board that Condition 26 is not implicated by these two scenarios would allow Sebree to obtain financing for the Project and to be able to transfer interests in the project between affiliates, if necessary. This would in turn allow Sebree to construct the Project and proceed with the investment of \$350 million in Kentucky. Sebree would provide the Siting Board notice of any transfers under the above two scenarios and would include this language

in any relevant financing and investor agreements. The conditions in the above scenarios should give the Siting Board assurance that Sebree would be operated by a NextEra entity or a qualified company that has the financial, technical, and managerial experience to construct and operate the project. In turn, Siting Board acknowledgment that these scenarios do not trigger the approval provisions of Condition 26 would give Sebree's potential investors or financing parties assurances that in the event of foreclosure they would not be prohibited from foreclosing on the assets and finding a qualified buyer for the Project, meeting the requirements contained above, as is customary in financed utility transactions. Sebree would give notice to the Siting Board if any of the provisions contained in the language above are implicated and, as per Condition 26, would seek approval from the Siting Board for any transfers outside of the above two scenarios.

WHEREFORE, on the basis of the foregoing, Sebree respectfully requests the Siting Board clarify its Rehearing Order as requested herein.

This 31st day of August, 2022.

Respectfully submitted,



L. Allyson Honaker
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com

Counsel for Sebree Solar LLC