

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

In the Matter of:

ELECTRONIC APPLICATION OF SEBREE)
SOLAR LLC FOR A CERTIFICATE TO)
CONSTRUCT AN APPROXIMATE 250)
MEGAWATT MERCHANT SOLAR ELECTRIC) Case No. 2021-00072
GENERATING FACILITY AND AN)
APPROXIMATELY 4.5 MILE NONREGULATED)
ELECTRIC TRANSMISSION LINE IN)
HENDERSON COUNTY, KENTUCKY PURSUANT)
TO KRS 278.700 AND 807 KAR 5:110)

**SEBREE SOLAR, LLC’S
APPLICATION FOR DECLARATORY ORDER**

Comes now Sebree Solar, LLC, (“Sebree”), by and through counsel, and does hereby respectfully move the Kentucky Siting Board on Electric Generation and Transmission Siting (“Siting Board”) for an order declaring that Sebree is not required to obtain Siting Board approval for anticipated financing transactions, or in the alternative to approve the anticipated financing transactions. Due to the timing issues involved for the construction timeline, Sebree is requesting expedited review of this **Application and respectfully requests a decision from the Siting Board no later than November 17, 2023**. In support of this motion, Sebree states as follows:

I. BACKGROUND

Sebree tendered its application to construct a 250 MW merchant electric solar generating facility and an approximately 4.5 mile nonregulated electric transmission line in Henderson County (the “Project”) with the Siting Board on August 13, 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 December 21, 2021. Sebree responded to post-hearing data requests on January 14, 2022

and the case stood ready for adjudication. The Siting Board issued its Final Order on February 9, 2022. The Siting Board granted rehearing in part and denied rehearing in part on August 26, 2022 and denied a motion for clarification in an Order on September 16, 2022. There is currently an action pending in Henderson County Circuit Court on a small portion of the Siting Board's Final Order.

II. ARGUMENT

A. Tax Equity Financing

Transfers may need to occur between Sebree and affiliates to obtain funding for the Project through one or more tax equity investors. These tax equity investors would have a non-controlling, passive interest in the Project. The rights and obligations under the construction certificate will not be transferred. In order to achieve this, certain transfers on the corporate level will need to be completed.

Prior to achieving commercial operation, a to-be-formed wholly-owned direct or indirect subsidiary of ESI Energy, LLC ("ESI"), a Delaware limited liability company, which is a wholly-owned indirect subsidiary of NextEra Energy, Inc. ("NEE"), a Florida corporation, may seek to syndicate a portion of the economic ownership (but not operational control) of Sebree to one or more tax equity investors. It is currently expected that any such syndication would occur in a two-step process.

First, ESI would form one or more wholly-owned subsidiaries that are Delaware limited liability companies (each a "Holding Company", collectively the "Holding Companies"), followed by a contribution of Sebree to the Holding Companies. Other renewable energy projects owned by ESI may be contributed into the Holding Companies to form a portfolio of renewable energy projects to facilitate financing. Second, in exchange for the contribution of Sebree, one or more

tax equity investors would exchange cash, representing an interest in a portion of the economics in respect of one or more Holding Company for non-controlling ownership interests of one or more Holding Company. This syndication would allow financing from such tax equity investors to fund or reimburse construction costs of Sebree. A wholly-owned indirect subsidiary of NEE will continue to own all of the Class A Units of the applicable Holding Companies, and a wholly-owned NEE subsidiary would continue to be responsible for the day-to-day operation and management of Sebree. The tax equity investors' Class B Units would receive customary protections given to minority investors in renewable energy projects (e.g., veto rights over certain major decisions made by such Holding Company), but would not receive control over the operations or management of Sebree or the Holding Companies.

Sebree does not believe the above transaction requires Siting Board approval pursuant to KRS 278.710 or Mitigation Measure 26 from the Siting Board's February 9, 2022 Order in this proceeding, since there would be no transfer or change of control of the construction certificate or the operations or management of the solar Project. These anticipated transactions will not interfere with Sebree's ability to operate or control the Project and will not interfere with Sebree's ability to continue to comply with the Siting Board's Order and the requirements of its construction certificate. A wholly-owned indirect subsidiary of NEE will continue to be the entity responsible for the day-to-day operations and the management of the Project. That is the same as what was proposed and approved in the application for a construction certificate with the Siting Board.

Although Sebree does not believe that the above-described transaction requires Siting Board approval, if the Siting Board disagrees, Sebree requests approval of the anticipated transactions. The transactions described above show that the ultimate operational and managing control of the project will not change. Sebree will still be responsible for complying with the terms

of its construction certificate, with an indirect wholly-owned NEE subsidiary being responsible for supplying the appropriate staff necessary to comply with the terms of the construction certificate. This remains unchanged from the time the construction certificate was granted. The only change has been, as the Siting Board is aware and was disclosed by Sebree's sister company, Sebree Solar II, that ESI pled guilty to three violations of the Migratory Bird Treaty Act and agreed to pay fines and restitution.¹ Sebree is not aware of any other environmental violations. No controlling interest in the Project will transfer, only non-controlling, passive interests will be obtained by the tax equity investors.

CONCLUSION

WHEREFORE, based on the foregoing, Sebree respectfully requests an Order from the Siting Board declaring that the anticipated tax equity financing transactions do not require Siting Board approval, or in the alternative that the Commission grant approval for the anticipated transactions to assist Sebree in obtaining financing for the project.

This 18th day of October, 2023.

Respectfully submitted,



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

Counsel for Sebree Solar, LLC

¹ See, *In the Matter of Electronic Application of Sebree Solar II, LLC, for a Certificate to Construct an Approximately 150 Megawatt Merchant Solar Electric Generating Facility in Henderson County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2022-00131, Order, pp. 18-19, (Ky. P.S.C. Oct. 13, 2023).