

**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 December 20, 2024. 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, 2021.¹ Sebree responded to two rounds

¹ Application (filed Aug. 31, 2021).

of requests for information,² a site visit was conducted, and a hearing was held in this case on December 21, 2021.³ At the hearing, Sebree presented the testimony of five witnesses. Following an additional round of post-hearing data requests on January 14, 2022 and the case stood ready for adjudication on January 15, 2022.⁴ The Siting Board granted a Certificate of Construction and subsequently Sebree asked for clarification on several mitigation measures.⁵ Since the grant of the Certificate of Construction, Sebree was also granted approval for tax equity financing.⁶

II. ARGUMENT

A. Construction Financing

Transfers may need to occur between Sebree and affiliates to obtain funding during construction for the Project from one or more commercial lenders. These commercial lenders would be granted a pledge of the equity interest of the direct or indirect parent of Sebree, and other affiliates, as collateral for loans to be made under a revolving credit facility. The rights and obligations under the construction certificate will not be transferred. In order to achieve this funding, 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 finance the costs of developing an constructing Sebree and other affiliates by

² Sebree Solar, LLC’s Response to Staff’s First Information Request and Motion for Confidential Treatment (filed Oct. 15, 2021); and, Responses to Staff’s Second Request for Information (filed Nov. 12, 2021).

³ Hearing Video Testimony of the December 21, 2021 Hearing.

⁴ Response to Post-Hearing Data Request Part I and Part II (filed Jan. 14, 2022).

⁵ February 9, 2022 Order (Ky SB Dec. 22, 2021); August 26, 2022 Order (Ky SB, Aug. 26 2022); and, September 16, 2022 Order (Ky. SB, Sept. 16, 2023).

⁶ November 3, 2023 Order (Ky. SB, Nov. 3, 2023).

borrower (the “Borrower”), a secured, revolving credit facility with a group of commercial lenders (the “Construction Revolving Credit Facility”).

To facilitate and secure the loans to be made under the Construction Revolving Credit Facility, first, ESI would form one or more wholly-owned subsidiaries that are Delaware limited liability companies (each a “Holding Company”, collectively the “Holding Companies”), and one of the Holding companies would be the Borrower under the Construction Revolving Credit Facility. The formation of the Holding Companies would be followed by a contribution of Sebree to the Borrower and other Holding Companies, such that Sebree would be indirectly owned by the Borrower. Other renewable energy projects owned by ESI may be contributed into the Holding Companies (including the Borrower) to form a portfolio of renewable energy projects to facilitate the financing. Thereafter, Borrower would enter the Construction Revolving Credit Facility with commercial lenders and pledge its ownership interests, directly or indirectly, in the portfolio of renewable energy projects, including Sebree, to the commercial lenders as collateral for the loans to be borrowed under the Construction Revolving Credit Facility. The proceeds of the loans would provide funds or be used to reimburse ESI (or its affiliates), for construction costs of Sebree and the other renewable projects in the renewable project portfolio.

A wholly-owned indirect subsidiary of NEE will continue to own all of the applicable Holding Companies (including Borrower), and Sebree, and would continue to be responsible for the day-to-day operation and management of Sebree. On or around the time that Sebree achieves or will achieve commercial operation, the portion of the loans allocable to Sebree would be repaid and refinanced with the proceeds of a tax equity financing transaction previously approved by the Siting Board.⁷

⁷ See, November 3, 2023 Order.

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.

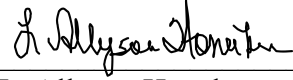
Although Sebree does not believe that the above-described transaction requires Siting Board approval, if the Siting Board disagrees, Sebree requests approval of the anticipated transactions. The transactions described above show that the ultimate operational and managing control of the project will not 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. 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 construction 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 27th day of November, 2024.

Respectfully submitted,



L. Allyson Honaker
Brittany Hayes Koenig
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 1203
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
brittany@hloky.com

Counsel for Sebree Solar, LLC