

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

In the Matter of:)
)
In the Matter of the Application of Bluebird Solar LLC)
for a Construction Certificate to Construct a Merchant) **Case No. 2021-00141**
Electric Generating Facility)

RESPONSE TO THE CONSULTANT’S REPORT

Bluebird Solar LLC (“Bluebird”), by counsel, provides the following response to Wells Engineering’s (“Wells”) report filed with the Siting Board on May 20, 2022.

Bluebird appreciates the time and effort Wells has spent on reviewing information related to this project. Generally, Bluebird finds the contents of the report and Wells’s suggested mitigation measures to be reasonable. However, Bluebird seeks to address several issues that Wells raised to provide the Siting Board greater clarity in its review of the report in conjunction with Bluebird’s Application.

Addressing document submission mentioned in Section 3.3.8 of the report, Bluebird filed a copy of the Cumulative Environmental Assessment with the Siting Board and with the Kentucky Energy and Environment Cabinet on May 18, 2022. Given the filing date, Wells did not have an opportunity to review the report prior to the completion of its report. The Siting Board and the Energy and Environment Cabinet now both have access to review the Cumulative Environmental Assessment prior to the hearing on June 2, 2022. Additionally, regarding the first recommendation in Section 4, Bluebird submitted a Site Survey Map showing the property boundaries with its Preliminary Site Layout that was attached as Appendix B to the Application’s Site Assessment

Report. Bluebird also provided the Siting Board with a high-resolution map and ALTA/NSPS Land Title Surveys of all tracts of the property in a prior filed response to requests for information. See Item 7 of Bluebird's Response to the Second Request for Information. The Siting Board has access to these detailed maps in the record of this proceeding.

In section 3.3.1, Wells avers that the cemeteries located within the project boundaries "shall be provided with access." None of the nearby cemeteries will be located within the fenced area of the project's parceled areas. The project design does not inhibit any point of access to the cemeteries within the site nor disturbs the cemeteries as Bluebird will maintain a 100-meter buffering distance between the fenced area of the project and the cemeteries. Relevant members of the public, such as family members of the deceased, will have the necessary means to visit the cemeteries. As a point of clarification, Bluebird does not plan to construct roads leading directly to the cemeteries. So, Bluebird will provide access to the cemeteries, as the Wells report recommends, but Bluebird will not construct infrastructure for the exclusive purpose of accessing the cemeteries.

Regarding Wells's finding in Section 3.3.3 and proposed mitigation measure 2, Bluebird notes that NERC CIP (Critical Infrastructure Protection) applies to operating power plants registered under NERC, they are not applicable to power plants under construction. In contrast, the NESC is an electric safety code relating to how electrical systems are constructed. The Bluebird project will be operated per applicable NERC CIP standards and access requirements and will be constructed per applicable NESC standards and access requirements.

Wells advocated for the implementation of sound blanketing or shrouding in its tenth proposed mitigation measure as the method of abating noise from the project. This shrouding, per Wells recommendation, should occur if the noise is generated within 500 feet of a noise receptor.

As Wells points out in Attachment C of its report, the use of noise shrouds is an “expensive and extreme option” to remedy noise from pile driving. Notably, Wells refers to shrouding as the “most viable option” for noise mitigation, but never refers to it as an industry standard. Wells’s proposed noise measures would seek to impose more stringent noise abatement standards on the Bluebird project than other similarly situated projects.

Bluebird understands why Wells so carefully considers the significance of noise impacts on neighboring parcel owners. Yet, Bluebird cannot implement these extreme, non-standard noise measures in this project. The measures that Wells suggests not only are impracticable but they also do not follow the Siting Board’s precedent in managing noise abatement in prior application approvals. Most recently, in Case No. 2020-00244,¹ the Siting Board ordered that pile driving activity occurring within 1,500 feet of a noise-sensitive receptor would require the developer to use 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 solar site; or any other comparable method).” The Siting Board also held that the company could forego using noise suppression if it used a panel installation system that does not use pile driving.² As opposed to requiring shrouding, Bluebird recommends that the Siting Board maintain the following mitigation measure that is commonly required: If the pile driving activity occurs within 1,500 feet of a noise

¹ *In the Matter of: Electronic Application of Caldwell Solar, LLC for a Certificate of Construction for an Approximately 200-Megawatt Merchant Electric Solar Generating Facility in Caldwell County, Kentucky*, Case No. 2020-00244 at Appendix A (KSB Apr. 8, 2022)

² *See also In the Matter of: Electronic Application of Rhudes Creek Solar, LLC for a Certificate of Construction for an Approximately 100 Megawatt Merchant Solar Electric Generating Facility and a Related 138 kV Nonregulated Electric Transmission Line Approximately 1½ Miles in Length in Hardin County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2021-00127 at Appendix A (KSB Mar. 4, 2022); *In the Matter of: Electronic Application of Sebree Solar, LLC for a Certificate to Construct an Approximately 250 Megawatt Merchant Solar Electric Generating Facility and an Approximately 4.5 Mile Nonregulated Electric Transmission Line in Henderson County, Kentucky and Webster County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2021-00072 at Appendix A (KSB Feb. 7, 2022); *In the Matter of: Electronic Application of Green Rive Solar, LLC for a Certificate to Construct an Approximately 200 Megawatt Merchant Solar Electric Generating Facility in Breckinridge County and Meade County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, Case No. 2020-00387 at Appendix A (KSB Dec. 21, 2021)

sensitive receptor, Bluebird Solar shall implement a construction method that will mitigate the noise generated during the pile driving process (i.e., semi-tractor and canvas method; sound blankets on fencing surrounding the solar site; or any other comparable method).

Bluebird next moves to clarify Wells's recommended mitigation measures 4 and 5 related to setback distances. Wells proposes that Bluebird "adhere to the setback distance at all locations as per guidelines from the local planning zone authority." However, earlier in its report, at section 3.3.7 Wells iterates the statutory setback requirement of 2,000 feet in KRS 278.708(3)(a)(7) as the standard for required setbacks. Wells states that this is "not practical for a solar power plant;" however, Bluebird seeks to distill which setback regulation Wells has used in its analysis. The Harrison County Board of Adjustments' (the "Board of Adjustments") guidelines for a conditional use permit require setback distances of "a minimum of 100 feet to frontage boundary lines and 50 feet to side and rear boundary lines of any non-participating properties and roadways from the Applicant's solar energy system." See **Exhibit A**, Board of Adjustments Conditional Use Permit. The Planning Commission's setback requirements take precedence over either the general requirements in KRS 278.708 or setback recommendations from an outside consultant. KRS 278.704(3)(a). Accordingly, the Siting Board should review Bluebird's proposed solar setbacks through the lens of the local ordinance rather than the statute. Bluebird designed its setback distances to comply with the Board of Adjustments' requirements. Bluebird has also included plans for a 150-foot setback from residential structures to the array, a project feature which exceeds the Board of Adjustments' minimum requirements. Bluebird believes that this is the intent of Wells's report but seeks to clarify any confusion surrounding the applicable setback regulation in this matter.

In Wells's fifth proposed mitigation measure, it states that increased setbacks should exist for "certain equipment." Wells does not provide context as to what equipment it references in that setback. The Board of Adjustments' conditional use permit makes no mention of any exception for setback requirements for any type of equipment. As the Board of Adjustments' standards control Bluebird's project, no distinction or delineation of setback requirements relating to unspecified equipment should apply to the project. See KRS 278.704(3)(a).

Additionally, at section 3.3.7 of the report, Wells states, regarding setbacks, that "[t]here should also be no more than 200 feet from any residential structure or dwelling unit." As Bluebird's project stands currently submitted, Bluebird has no intention of building project structures or locating project equipment within 200 feet of a residential structure. Given the irregularity of this recommendation, Bluebird does not have context to interpret this recommendation as it is unlike any setback ordinance provision, prior setback requirement in other matters, or any setback feature contemplated in Bluebird's present Application.

Regarding proposed mitigation measure 7, Wells recommends limiting working hours to the hours described in the Application. Bluebird's Application directly comports with the Board of Adjustments' conditional use permit regulations that limit construction to occur from 7 a.m. to 9 p.m. Bluebird agrees with Wells's assertion in this mitigation measure. However, for the sake of clarity and conformity with the governing ordinance, Bluebird asserts that the construction time for the project should run from 7 a.m. to 9 p.m. Monday through Saturday, and on Sundays if necessary to make up for delays or meet deadlines, which—again—is the time limitations set by the local agency's requirement. See Exhibit A.

Regarding mitigation measure 8, Wells recommends the implementation of a secondary containment system for the transformer oil to prevent water contamination. Bluebird's design for

the substation foundation will include an oil collecting pit built under the transformer to collect any accidental discharge of oil. The oil collecting pit will comply with the SPCC requirements for the provision of appropriate containment to prevent a discharge: “The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs. Determining the method, design, and capacity for secondary containment, only requires addressing the typical failure mode, and the most likely quantity of oil that would be discharged.” Bluebird’s oil collecting pit area will be designed to extend beyond the edge of the transformer base to capture leaking oil, and its total capacity will be calculated taking into consideration the total volume of oil in the transformer and the volume of water from rain that is expected to fall during the duration of a discharge event (accidental leak or spillage of oil) and before clean up occurs.

Wells also questions the Economic Impact Analysis that Bluebird provided stating that the study was less thorough than other similar reports, but ultimately finds the project would generate a positive economic impact. Bluebird agrees that ultimately the project will have a positive economic impact on the local and regional communities. Bluebird’s Economic Impact Analysis was styled, formulated, and analyzed using the same information and methodologies as other economic studies that have been submitted with previous Siting Board applications to develop solar projects. The Siting Board has never found that the prior submitted reports lacked sufficient detail or analysis for approval. As the economic report shows, Bluebird’s project will create a positive net economic benefit, and accordingly, the Siting Board should view the project as a valuable addition to the local economy.

Bluebird also is aware of Wells's concern in section 4.1.1 that the contemporaneous construction of Bluebird's project and Blue Moon Solar's project could cause construction noise and traffic disruptions within Harrison County. However, this concern can easily be alleviated. First, the timeline for development of each project appears to be staggered by six months, which means that overlap of construction will be minimal. Additionally, the two projects are located in different areas of the county so they should not cause cumulative noise or traffic effects. See Items 10 and 11 of the Responses to the First Request for Information. Bluebird will continue its attempt to coordinate with Blue Moon Solar to address any further concerns that the Siting Board may have about the development of both projects at the same time within Harrison County. See Item 13 of the Responses to the First Request for Information.

Both Bluebird and Wells find that the Kirkland Impact Study is credible and accurately represents local market conditions should the project be approved. Given the significant vegetative buffering already in existence on the property that will shield the project immediately from neighboring parcels, Bluebird agrees with Wells that the project will not adversely impact property values of adjoining property to the project site.

Finally, regarding Wells's concerns about the impact of historic resources on the project in 3.3.8 of the report, Bluebird has consulted with the Jackson Group to provide analysis of potential impact to historic buildings and cemeteries in and around the project area. As is standard for renewable energy projects, Bluebird will rely on the Kentucky State Historic Preservation Office concurrence and findings when Bluebird receives them. Bluebird will comply with any regulated requirements provided by the State Historic Preservation Office regarding historic buildings and cemeteries.

In sum, Bluebird seeks to clarify terms of the Wells's report for the Siting Board. Bluebird would request that the imposition of mitigation measures coincide with the terms of the Board of Adjustments' conditional use permitting and the Siting Board's precedent in its ordering of mitigation measures.

RESPECTFULLY SUBMITTED,

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Exhibit A



1. All construction activities shall be limited to daylight hours between 7:00 a.m. to 9:00 p.m. and will not be conducted on Sundays unless it is necessary to make up for delays or to meet deadlines. Construction workers may arrive on site prior to 7 a.m., but construction activities shall not take place until that time.
2. The Applicant shall adhere to its Landscape Plan as submitted to the Planning Commission for the site plan review. However, along KY-353 the applicant shall at the minimum supplement existing landscape and plant either evergreens as listed in the Segment 5 planting plan or Segment 4 planting plan.
3. The Applicant shall maintain setbacks of a minimum of 100 feet to frontage boundary lines and 50 feet to side and rear boundary lines of any non-participating properties and roadways from the Applicant's solar energy system.
4. The Applicant's solar energy system, excluding utility poles, antennas, and substation equipment, shall not exceed 20 feet in height.
5. The Applicant shall prepare stormwater management plans that meet or exceed the Kentucky Stormwater Management Program regulations for all regulated activities at all stages of construction, operation, and decommissioning.
6. The Applicant shall obtain all required regulatory permits including a KPDES General Permit for Stormwater Discharges Associated with Construction Activity and a certificate of construction from the Kentucky State Board on Electric Generation and Transmission.
7. Following construction of the Project, the Project Site shall be fenced and locked at all times. The Project Site shall also be secured during construction. The Developer will install and maintain a permanent perimeter/boundary fence that meets the requirements of the National Electrical Safety Code.
8. Prior to the issuance of a Building Permit, a Decommissioning Plan and Cost Estimate shall be prepared by a licensed and Registered Professional Engineer from the Commonwealth of Kentucky who is not an employee of the Applicant or the landowner. The Decommissioning Plan shall comply with the minimum requirements of Article 23 of the Harrison County Fiscal Court's Zoning Ordinance. The Decommissioning Plan and Cost Estimate shall be approved by the Planning Commission prior to issuance of a Building Permit.

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9. The Decommissioning Plan and Cost Estimate shall be updated every five years, submitted to the Planning Commission for approval, and the Security revised as appropriate based upon the revised cost estimate.
 10. The Applicant shall post a combination performance and warranty surety in the amount indicated by the Cost Estimate in the form of either a Cash Deposit, Irrevocable Letter of Credit, or Surety Bond, which shall be both to ensure repair of defective materials and/or abandonment of the site. The Security shall be made in favor of the Cynthiana - Harrison County - Berry Joint Planning Commission in a form approved to the satisfaction of the Planning Commission.
 11. The Applicant and the County shall enter into a recorded agreement in a form approved by the Planning Commission that ensures that the decommissioning is carried out in accordance with this Ordinance. The agreement at a minimum shall include a Decommissioning Plan, Cost Estimate, and language binding the applicant or landowner and the County to implement the decommissioning activities.
 12. The project will be addressing any glare events through controls limiting the angle of rotation for the trackers on-site during periods of backtracking, typically early morning and late afternoon. During the first year of operation should glare events occur, Bluebird Solar will respond accordingly by modifying the tracker rotation limits in the plant controller during times when glare is present. The project will put together an Operations and Maintenance Glare plan, to be submitted to the Building Inspector before project permits. The plan will detail when onsite Operations and Maintenance (O&M) personnel would on-site mobilize to critical viewpoints during certain times of the year during specific early morning and late afternoon hours. As detailed in the Reflectivity and Visibility Analysis, implementing limitations on backtracking cut off angles would achieve the desired effect of reducing or preventing a glare event. The backtracking limits will be implemented during the hours and seasons as determined by the combined Reflectivity and Visibility Analysis and verified by the Operations and Maintenance team.
 13. Ground shall be remain free of debris and damaged solar materials at all times after construction has been completed.
 14. Prior to construction the Applicant shall prepare an emergency management plan acceptable to the local fire district and County and should be responsible for training of local personnel as needed.
 15. We recommend the Applicant contact the agricultural department and property owners and have a discussion on appropriate landscaping for the area.