

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

In the Matter of:

ELECTRONIC APPLICATION OF BLUEBIRD)	
SOLAR LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 100)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2021-00141
GENERATING FACILITY IN HARRISON COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND KAR)	
5:110)	

**BLUEBIRD SOLAR LLC’S MOTION
FOR APPROVAL OF TRANSFER OF OWNERSHIP AND CONTROL**

Bluebird Solar LLC (“Bluebird”), by counsel, moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”) for an order approving the transfer of Bluebird Solar LLC to MN8 DevCo 3 LLC. An affirmative response from the Siting Board on this motion is necessary in order to ensure closing by the contractual deadline. Due to the urgent nature of this matter, Bluebird respectfully requests an expedited review and decision from the Siting Board by no later than **September 26, 2024**. In support of this motion, Bluebird states as follows:

I. Introduction

On August 3, 2022, the Siting Board approved a construction certificate to construct a merchant solar electric generating facility for Bluebird. The Siting Board’s approval required certain mitigation measures and conditions, one of which was the following:

26. 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, Bluebird Solar or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Harrison County Fiscal Court. In any application requesting such abandonment, sale, or change of control, Bluebird Solar shall certify its compliance with KRS 278.710(1)(i).

See Order dated August 3, 2022, Appendix A at 6.

The project has made significant construction progress, and it anticipates that the project will begin generation of electricity for sale in January 2025. Bluebird’s corporate parent has recently executed a contract that would transfer ownership and control of Bluebird prior to achieving commercial operations.

The proposed transaction would involve two steps. Initially, MN8 Energy DevCo 3 LLC will purchase 100% of the membership interests in Bluebird Solar LLC from BayWa r.e. Development Portfolio I LLC in order to be the long-term owner and operator of the project.¹ MN8 Energy DevCo 3 LLC is a wholly owned subsidiary of MN8 Energy LLC (“MN8”). Shortly thereafter, MN8 will complete a tax-equity transaction that is similar to the one proposed by Bluebird in its October 13, 2022, motion that was granted on December 6, 2023.

Upon completing this second step, MN8 Energy LLC will own, directly or indirectly, 100% of the nonpassive, controlling interests (called “Class B shares”) in a subsidiary of MN8, which in turn will own 100% of Bluebird. In addition, the project’s tax equity investors will own passive, non-controlling interests (or “Class A shares”). The tax equity investors will have the benefit of standard protections offered to minority investors but will not be involved with the day-to-day management and operation of the project. The similarities of the tax equity structure planned under

¹ Bluebird has not completed the tax equity transaction that was contemplated by its Motion filed on October 14, 2022, and approved on December 6, 2023. Bluebird is still directly owned by BayWa r.e. Development Portfolio I LLC.

BayWa ownership and MN8 ownership can be seen in the organizational charts attached as Exhibit 1.

Notably, there will be no change of construction management as a result of MN8's acquisition of Bluebird. After the initial closing, BayWa r.e. Solar Asset Holdings LLC will continue managing the construction of the Bluebird project until the construction is completed through a contract.

II. Analysis

The Siting Board's Mitigation Measure 26 identifies two elements on which the Siting Board would approve such a transfer: (1) notice to the Harrison County Fiscal Court and (2) certify its compliance with KRS 278.710(1)(i), which relates to environmental compliance history.

With respect to the first element identified above, Bluebird is serving a copy of this motion on the Harrison County Judge/Executive and County Attorney, as evidenced by the certificate of service. In addition, representatives of Bluebird have discussed this proposed transaction with the Harrison County Judge/Executive.

With respect to the second element identified above, Bluebird certified its lack of environmental violations as contemplated by KRS 278.706 in its application.² Nothing has changed with respect to Bluebird on this issue since the filing of the application. In addition, Bluebird is attaching to this Motion as Exhibit 2 an affidavit of good environmental compliance as it relates to the post-closing corporate structure of Bluebird. Specifically, the affidavit indicates that MN8 DevCo 3 LLC nor any entity who will have a direct controlling interest in Bluebird has violated any state or federal environmental laws or regulations.

² See Application, Section 11 "Record of Environmental Violations."

Bluebird notes that it will remain the holder of the Siting Board’s construction certificate. As the Siting Board has previously indicated in this case, because Bluebird remains the construction-certificate holder, KRS 278.710 does not apply to this type of transfer.³ Nevertheless, the acquiring entity is well prepared to own and operate this project. As noted above, MN8 Energy DevCo 3 LLC is a wholly owned subsidiary of MN8. Originally founded inside of Goldman Sachs Asset Management in 2017, MN8 has quickly grown to be one of the largest owners and operators of renewable energy projects in the United States. As of June 30, 2024, MN8’s fleet is composed of over 875 projects spread across 28 states with an aggregate capacity of approximately 3.2 gigawatts (“GW”) of operating and under construction solar projects and approximately 270 megawatts (“MW”) or 1 gigawatt hour + of operating battery storage projects.

With hundreds of operating assets that vary in size from Commercial and Industrial Customer sited projects of several hundred kW to numerous utility scale projects of over 100MWs of Solar and Battery Energy Storage across a diverse geography of the nation, MN8 brings a breadth of expertise and experience in operating assets of all sizes.

Since inception, MN8 has established a distinguished reputation as a developer, acquirer, owner, and operator of renewable energy projects. MN8 brings significant financial capability and backing, as indicated through reported operating company revenue of over \$290 million in 2021 as reported in its S1 filing with the SEC and maintains a continued level of financial outperformance as compared with others in the industry.

MN8 currently utilizes an optimized approach to project operations and maintenance through various in-house services, third party contractors, and industry experts. Post acquisition

³ See Order dated December 6, 2024 at 8 (“KRS 278.710(3) applies only to the transfer of a construction certificate and not to the transfer of a person having a construction certificate . . .”).

of Bluebird, the long-term operation will be optimized over time by making use of MN8's experience and expertise.

For the foregoing reasons, Bluebird respectfully requests an order approving the transfer of Bluebird Solar LLC to MN8 DevCo 3 LLC. In order to close before the contractual deadline, Bluebird respectfully requests an expedited review and decision from the Siting Board by no later than **September 26, 2024**.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

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Counsel for Bluebird Solar LLC

CERTIFICATE OF SERVICE

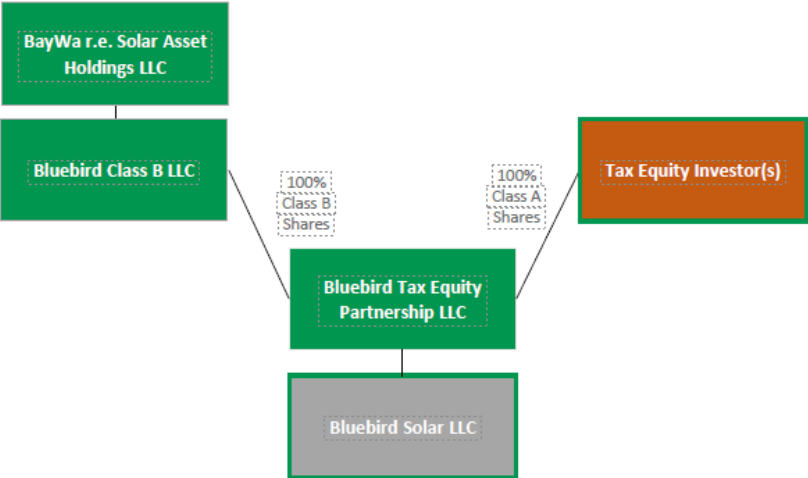
I certify that a true and correct copy of this Application has been served via mail and e-mail on September 13, 2024 upon the following:

Harrison County Judge/Executive Jason Marshall
111 South Main Street, Suite 201
Cynthiana, KY 41031
hcjudge@harrisoncountyfiscalcourt.com

Harrison County Attorney Bradley Vaughn
105 W. Pike Street
Cynthiana, KY 41031
bradleyvaughn2@yahoo.com

Exhibit 1

Post-Transaction Structure with Tax Equity Investor(s) previously approved on December 6, 2022



MN8 Post-Transaction Structure with Tax Equity Investor(s)

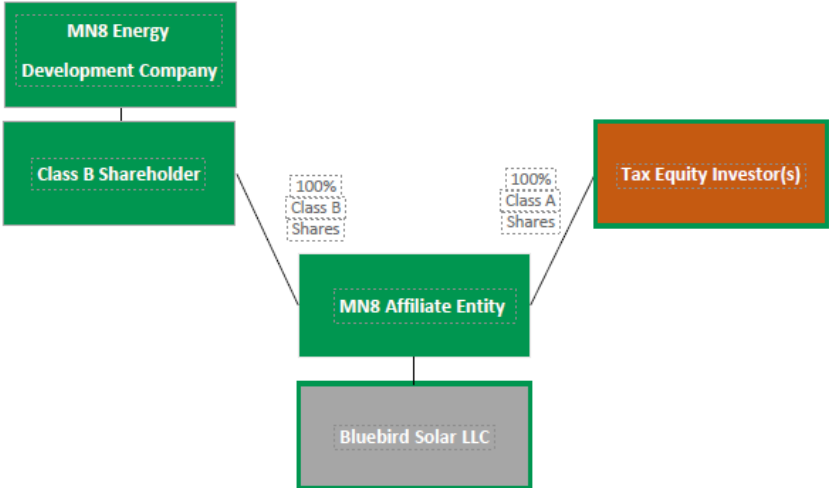


Exhibit 2

AFFIDAVIT

Comes the affiant, Jon Yoder, and after first being duly sworn states as follows:

- 1. I am over 18 years of age, of sound mind, and otherwise competent to make this affidavit. The statements in this affidavit are based on my personal knowledge and current recollection.
- 2. I am the authorized signatory of MN8 DevCo 3 LLC.
- 3. As of the date hereof and to the best of my knowledge upon reasonable inquiry, neither MN8 DevCo 3 LLC, nor any entity with a controlling interest in the MN8 DevCo 3 LLC, has violated any state or federal environmental laws or regulations. There are no pending environmental actions against MN8 DevCo 3 LLC or any entity with controlling interest in MN8 DevCo 3 LLC.



 NAME

STATE OF NEW YORK)
) ss
 COUNTY OF NEW YORK)

Subscribed, sworn to and acknowledged before me by personal knowledge on this the 12th day of September, 2024



 NOTARY PUBLIC, STATE AT LARGE

I.D. No. 02EF0025285

My Commission Expires:
5/29/28



