

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

**In the Matter of:**

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

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**JOINT STATUS UPDATE**

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Bluebird Solar LLC (“Bluebird Solar”) and the Harrison Fiscal Court, by counsel, hereby provide the following status update.

On September 13, 2024, Bluebird Solar filed a Motion for Approval of Transfer of Ownership and Control. On September 23, 2024, the Harrison Fiscal Court served a Response to that motion on Bluebird Solar and Commission Staff.<sup>1</sup> In the Response, the Harrison Fiscal Court raised certain concerns, and asked that the Siting Board not approve of the transfer of ownership and control until those issues were addressed by Bluebird Solar. On receipt of the Response, Bluebird Solar communicated with Harrison County officials and scheduled a meeting for September 27, 2024. During the course of the meeting as more fully described below, the County agreed to withdraw its objection to the transfer based on certain representations and commitments from Bluebird Solar.

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<sup>1</sup> This response was entered into the record of the case on September 26, 2024.

## **I. Occupational Taxes**

In its Response, Harrison Fiscal Court indicated that there were issues with occupational taxes, which should have been paid by Bluebird Solar's contractor and its subcontractors. Bluebird Solar was aware of this issue through communications with County officials. Bluebird Solar made the tax payments due to the County Tax Administrator on September 23, 2024 to satisfy prior obligations of the contractor and its subcontractors. Bluebird Solar will reconcile those differences with the contractor.

Bluebird Solar has also instituted policies to mitigate against this situation repeating itself. Bluebird's contractor has agreed to require its subcontractors to verify tax payments quarterly as a condition of payment to the subcontractors.

## **II. Road Repairs**

Harrison Fiscal Court indicated concerns about fixing damage to roads caused by delivery trucks to the site. It acknowledged that temporary repairs have been made, but wanted to ensure that permanent repairs would be made following construction of the project. Bluebird Solar has reaffirmed its commitment to fixing or paying for repairs damage to roads and bridges resulting from any vehicle transport to the site. This is a requirement from the Siting Board's Order dated August 3, 2022, and Bluebird Solar will adhere to that requirement. Bluebird Solar has also been and will continue to be in communication with Harrison County Road Supervisor Kevin Florence regarding road issues.

### **III. Decommissioning Plan and Bond**

Harrison Fiscal Court suggested it would prefer for Bluebird Solar to consider revising its decommissioning plan and the bond amount. Although Bluebird Solar believes the current decommissioning plan including the bond amount required by the County will more than adequately protect the County, Bluebird Solar has agreed to two additional commitments. First, Bluebird Solar will agree to post the bond within 30 days after closing of the transaction between subsidiaries of BayWa r.e. USA LLC (“BayWa”) and MN8 Energy LLC (“MN8”). This posting will be made prior to the Siting Board’s and County-approved decommissioning plan’s deadline of when commercial operations begin. Second, Bluebird Solar LLC will agree to present an updated decommission plan for approval by the County in January 2026, instead of July 2028 as originally required by the Harrison County ordinance.

### **IV. Questions on the transaction**

During the September 27, 2024 meeting, County officials inquired about certain aspects of the transaction and the entity that would be responsible for potential liability after the transaction. Bluebird Solar is a project company. It is currently owned by a BayWa subsidiary. Following the transaction, Bluebird Solar will be owned by an MN8 subsidiary. All permits, project agreements, and related requirements will always stay with Bluebird Solar. Only the equity owner of the project is changing with the transaction. Upon the sale, the construction certificate will stay with the project company and a BayWa entity will be contracted by MN8 or its subsidiary to continue to act as construction manager. The construction manager will be responsible for compliance with all relevant permits and will oversee construction. Ultimately, MN8 will be responsible for claims made following the sale since they will be the owner of the project. However, MN8 will have some

back-to-back liability vis-à-vis BayWa through a construction management agreement if BayWa causes MN8 damage as a result of breaching that agreement (i.e. not complying with the construction certificate). As separately discussed in the Motion, MN8 is a financially healthy and creditworthy entity.

Because this is an equity transaction as further described above, liability will remain in all instances with Bluebird Solar as the project company and the entity that holds the construction certificate from the Siting Board approval. As between MN8 and BayWa, the allocation of economic risk with respect to such matters between BayWa (as the former owner) and MN8 (as the new owner) is still under negotiation. However, Bluebird Solar's liabilities and obligations are not changing as a result of this transaction.

## **V. Conclusion**

Ultimately, the County officials are comfortable withdrawing their objection to the transaction based on the discussions with and commitments of Bluebird Solar. The County and Bluebird Solar plan to enter a memorandum of understanding to memorialize the commitments, which will be subject to Harrison Fiscal Court approval. Accordingly, the Harrison Fiscal Court provides notice to the Siting Board that it withdraws its objection to the proposed transaction. Bluebird Solar respectfully requests expedited review and approval of this transaction.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC

*M. Todd Osterloh*

James W. Gardner  
M. Todd Osterloh  
333 West Vine Street, Suite 1500  
Lexington, KY 40507  
Phone: (859) 255-8581  
E-mail: [jgardner@sturgillturner.com](mailto:jgardner@sturgillturner.com)  
E-mail: [tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)  
*Counsel for Bluebird Solar LLC*

and

*Brian T. Canupp*

Brian T. Canupp  
110 S. Main Street  
Cynthiana, KY 41031  
859-988-9658  
[Brian@canupplaw.com](mailto:Brian@canupplaw.com)  
*Counsel for Harrison Fiscal Court*