

COMMONWEALTH OF KENTUCKY

BEFORE THE ELECTRIC GENERATION AND TRANSMISSION SITING BOARD

In the Matter of:

ELECTRONIC APPLICATION OF BLUE MOON)
ENERGY LLC FOR A CERTIFICATE OF)
CONSTRUCTION FOR AN APPROXIMATELY)
70 MEGAWATT MERCHANT ELECTRIC) Case No. 2021-00414
SOLAR GENERATING FACILITY)
AND NONREGULATED ELECTRIC)
TRANSMISSION LINE IN HARRISON COUNTY,)
KENTUCKY PURSUANT TO)
KRS 278.700 AND 807 KAR 5:110.)

BRIEF IN SUPPORT OF POST-HEARING POSITIONS

Comes now Blue Moon Energy LLC (“Applicant” or “BME”), by counsel, pursuant to 807 KAR 5:110 Section 7 and the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) Order dated June 27, 2022, and provides this Brief in support of its post-hearing position.

Conditional Use Permit Conditions

To begin, Applicant notes that the conditions contained in the Harrison County Conditional Use Permit (CUP) were developed in discussion with Harrison County officials over many months, were amended by the Board of Adjustments following a lengthy CUP hearing, and ultimately reflect the will of the local community where the BME project is proposed to be sited. The CUP conditions address many issues often addressed by the Siting Board in its Final Orders. Such issues include setbacks, landscaping, construction hours, security, Decommissioning, facility maintenance, road repairs, and construction noise. While Applicant asserts that local determination

of these issues is the most appropriate approach to mitigation measures and conditions, two issues in particular require further discussion.

Construction Hours

Recent Siting Board final orders have limited construction hours to the hours between 8 a.m. and 6 p.m. Monday through Saturday, with highly noisy activities (such as pile driving) occurring between 9 a.m. to 5 p.m. Monday through Friday. The Harrison County CUP limits construction activities to the hours of 7 a.m. to 9 p.m. Monday through Saturday, with Sunday activities only allowed if necessary to make up for delays or to meet deadlines. In order to ensure that these hours do not negatively impact project neighbors, CUP condition number 18 requires the Applicant to “create a plan to track and address comments or concerns from adjoining landowners during construction.” Such information is then made available to the County to ensure neighbor concerns have been sufficiently addressed. As such, further limitation on the project construction hours is unnecessary and would negate the County’s ability to make a local determination regarding appropriate construction practices. Logically, limiting the hours of construction translates to construction taking place over more weeks and months. By allowing earlier and later construction times, the County has chosen to favor longer construction days over additional months of construction. The County is in the best position to determine which approach to construction is best for its residents and the Applicant respectfully requests that the CUP conditions be respected and the Siting Board refrain from further limiting the construction hours allowed per the Harrison County CUP.

Decommissioning

Recent Siting Board final orders have required filing of a decommissioning plan that includes removal of all below ground components, regardless of depth. In contrast, the Harrison County CUP allows below ground components to be left in place in accordance with landowner agreements. Many of the landowner agreements with Applicant allow components located 36 inches below ground to be left in place following decommissioning. Due to the ongoing maintenance of the project site, there will virtually be no change in depth of components from the day installation takes place to the day decommissioning occurs. Such components that may be left below ground would include cable that is no longer connected or energized and, in rare occasions, steel posts that cannot feasibly be removed from depths below 36 inches. As such, Applicant requests that the Siting Board's decommissioning condition allow components to be left in place below 36 inches where the individual landowner agreements allow components to be left in place below ground.

Evergreen Visual Buffers

Recent Siting Board final orders have required evergreen visual buffers to be planted prior to commencement of panel arrays commencing in any phase of development. Applicant respectfully requests that evergreen planting be required prior to commencement of operation, not commencement of construction. This request is based on two considerations. First, planting prior to commencement of operations allows greater flexibility in terms of the season during which planting occurs. The landscaping contractor and the construction contractor are likely to be hired at roughly the same time and be given approval to commence work in roughly the same timeframe. If this occurs during a sub-optimal season for transporting and planting evergreen species, allowing some variability in the time of planting provides a greater chance of the evergreens surviving

transport and replanting. Additionally, Applicant has concerns that planting immediately prior to commencing construction will create sub-optimal soil conditions for the evergreen trees to take root, as considerable earth movement may be required in sections of the project. Thus, Applicant respectfully requests that evergreen planting be required to commence prior to operation, not prior to commencement of construction.

Complaint Resolution Program

Recent Siting Board final orders have required a complaint resolution program to be created and reports to be filed annually with the Siting Board. Applicant requests that annual reports only need be filed in years where complaints are received. Annual reports with no substantive information create opportunities for non-compliance with the final order without providing any actual benefit to the Siting Board, the Applicant, or adjoining landowners. Under the proposed condition, if no annual report is filed then the Siting Board knows that no complaint was received during the preceding calendar year. Applicant also notes that generating assets owned by utilities regulated by the Kentucky Public Service Commission receive no similar requirement. Thus, Applicant requests that the Siting Board not require annual complaint resolution program filings where no complaint was received in the preceding year.

Transfer of Ownership

Recent Siting Board Final Orders have required transfer of ownership or control on approval by the Siting Board. No statute exists that provides such authority to the Siting Board. As such, Applicant requests that the Siting Board require only notice of any transfer of ownership following issuance of a Construction Certificate. To the extent the Siting Board relies on KRS 278.710(1)(i), for a condition requiring Siting Board approval prior to transfer of ownership or control of a

Construction Certificate, Applicant recommends that the condition clearly state that approval will be based exclusively on applicant's environmental compliance history. Please note that this does not constitute waiver of any objections, defenses, or causes of action concerning a condition requiring Siting Board approval prior to transfer of ownership or control of a Construction Certificate.

Noise Suppression

Recent Siting Board orders have required construction methods that will suppress noises generated during the pile driving process if located within 1,500 feet of a noise sensitive receptor. Applicant has no experience with such noise mitigation methods and is unaware of any studies demonstrating the effectiveness of such sound mitigation measures. Additionally, Applicant has not analyzed the feasibility of any such methods. Applicant has demonstrated the relatively low dB levels structures around the project will experience during construction. As such, Applicant requests that no such condition requiring noise suppressing methods during pile driving be included in the Siting Board's Final Order.

Dated this 1st day of July, 2022.

Respectfully submitted,



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