

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

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
SEBREE SOLAR II, LLC FOR A CERTIFICATE)	
TO CONSTRUCT AN APPROXIMATELY 150)	
MEGAWATT MERCHANT SOLAR ELECTRIC)	CASE NO. 2022-00131
GENERATING FACILITY IN HENDERSON)	
COUNTY, KENTUCKY PURSUANT TO)	
KRS 278.700, ET SEQ. AND 807 KAR 5:110)	

**SEBREE SOLAR II, LLC’S
APPLICATION FOR DECLARATORY ORDER**

Comes now Sebree Solar II, LLC, (“Sebree II”), 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 II is not required to obtain Siting Board approval for anticipated financing transactions, or in the alternative to approve the anticipated financing transactions. Sebree II is requesting review of this **Application and respectfully requests a decision from the Siting Board within 75 days from the date of this filing.** In support of this motion, Sebree II states as follows:

I. BACKGROUND

Sebree II tendered its application to construct a 150 MW merchant electric solar generating facility in Henderson County (the “Project”) with the Siting Board on April 18, 2023. Following two rounds of information requests and a visit to the site of the proposed solar facility, a hearing was held in this case on August 17, 2023. Sebree II responded to post-hearing data requests on September 5, 2023 and the case stood ready for adjudication. The Siting Board issued its Final

Order on October 12, 2023. The Siting Board granted rehearing in part and denied rehearing in part on December 15, 2023.

II. ARGUMENT

A. Tax Equity, Construction and Back Leverage Financings

Transfers may need to occur between Sebree II and affiliates to obtain funding for the Project through three separate financings. The first financing would be a development and construction loan to be funded by one or more commercial lenders prior to Sebree II achieving commercial operation. These commercial lenders would be granted a pledge of the equity interest of the direct or indirect parent of Sebree II and other affiliates, as collateral for loans to be made under a revolving credit facility (the “**Construction Revolving Credit Facility**”). The second financing contemplates a tax equity financing whereby one or more tax equity investors would, indirectly, obtain a non-controlling, passive interest in the Project to allow a wholly owned NextEra Energy, Inc. (“NEE”) subsidiary, as sponsor, (the “Sponsor”) to monetize certain tax credits related to the Sponsor’s investment in and development of Sebree II (the “**Tax Equity Financing**”). The third financing would be a back leverage financing to be funded by one or more commercial lenders (the “**Back Leverage Credit Facility**”). A back leverage financing allows a Sponsor to finance its share of the future equity cash flows of the Project. The back leverage financing would be secured by a pledge of the membership interests in the controlling member owned by the Sponsor in the tax equity partnership. In each case, the rights and obligations under the construction certificate will not be transferred. To achieve these financings, certain transfers at the corporate level will need to be completed.

In connection with the Construction Revolving Credit Facility, prior to achieving commercial operation, ESI Energy, LLC (“ESI”), a Delaware limited liability company, which is

a wholly-owned indirect subsidiary of NEE, a Florida corporation, may seek to finance the costs of developing and constructing Sebree II and other affiliates by contributing Sebree II to a wholly-owned indirect subsidiary of ESI. The borrower under the Construction Revolving Credit Facility will also be a subsidiary of ESI and will indirectly, wholly own Sebree II. Other renewable energy projects owned by ESI may already have been, or from time to time be, contributed to this borrower to form a portfolio of renewable energy projects that secure the loans made to the borrower under the Construction Revolving Credit Facility. There may be further transfers under the borrower for depreciation elections, but there would not be any change in control of the equity of the Project.

In connection with the Tax Equity Financing, ESI would form one or more wholly-owned subsidiaries that are Delaware limited liability companies (each a “Holding Company”, collectively the “Holding Companies”), followed by a contribution of Sebree II to one of the Holding Companies (the “Tax Partnership”). Other renewable energy projects owned by ESI may be contributed into the Tax Partnership to form a portfolio of renewable energy projects to facilitate financing. Additionally, in exchange for the contribution of Sebree II to the Tax Partnership, one or more tax equity investors would exchange cash, representing an interest in a portion of the economics in the Tax Partnership for non-controlling ownership interests in such Tax Partnership. The formation and contributions to the Tax Partnership would allow financing from such tax equity investors to fund or reimburse a portion of the construction costs of Sebree II via the monetization of tax credits. A wholly-owned indirect subsidiary of NEE will continue to own all of the Class A Units of the applicable Holding Company (each, a “Class A Member”), and a wholly-owned NEE subsidiary would continue to be responsible for the day-to-day operation and management of Sebree II. The tax equity investors’ Class B Units would receive customary protections given to minority investors in renewable energy projects (e.g., veto rights over certain

major decisions made by such Holding Company), but would not receive control over the operations or management of Sebree II or the Holding Companies. The Tax Partnership could also be indirectly owned by the borrower under the Construction Revolving Credit Facility. In the future, the Tax Partnership could be transferred out of the borrower and to another wholly-owned entity of NEER.

In connection with the Back Leverage Credit Facility, ESI may seek to finance certain costs of developing and constructing Sebree II and other affiliates by forming and contributing to a Holding Company a portfolio of Tax Partnerships (including the Tax Partnership in which Sebree II is a part). The borrower under the Back Leverage Credit Facility will also be an indirect subsidiary of ESI and will indirectly own Sebree II. The membership interests of the Class A Member in each Tax Partnership will be pledged to secure the loans under the Back Leverage Credit Facility. In addition, the distributions in respect of each Class A Member's membership interests will be pledged and held in collateral accounts to secure the loans under the Back Leverage Credit Facility. The Back Leverage Credit Facility may include projects that have not reached commercial operation and in respect of such projects NEE would cause a completion guaranty to be delivered to the lenders. In general, the Back Leverage Credit Facility would not change the ultimate operational and management control of the project. However, in the unlikely case of a default and exercise of remedies by the lenders under the Back Leverage Credit Facility (including foreclosure on the membership interests of the applicable Class A Member), a change of control in the ownership and operation of Sebree II could occur (a "Back Leverage Foreclosure").

Sebree II does not believe the above transactions require Siting Board approval pursuant to KRS 278.710 or Mitigation Measure 28 from the Siting Board's October 12, 2023 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 except in the case of a Back Leverage Foreclosure. These anticipated transactions will not interfere with Sebree II's ability to operate or control the Project and will not interfere with Sebree II's ability to continue to comply with the Siting Board's Order and the requirements of its construction certificate. Except in the case of a Back Leverage Foreclosure, 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 II does not believe that the above-described transaction requires Siting Board approval, if the Siting Board disagrees and based on prior Siting Board decisions, Sebree II requests approval of the anticipated transactions. The transactions described above would not change the ultimate operational and management control of the project. Sebree II 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. Sebree Solar II disclosed that ESI pled guilty to three violations of the Migratory Bird Treaty Act and agreed to pay fines and restitution.¹ Sebree II is not aware of any other environmental violations in the ownership structure of Sebree II. Except in the case of a Back Leverage Foreclosure, no controlling interest in the Project will transfer, only non-controlling, passive interests will be obtained by the investors.

¹ See, Order, pp. 18-19, (Ky. P.S.C. Oct. 13, 2023).

CONCLUSION

WHEREFORE, based on the foregoing, Sebree II respectfully requests an Order from the Siting Board declaring that the anticipated financing transactions do not require Siting Board approval, or in the alternative that the Siting Board grant approval for the anticipated transactions to assist Sebree II in obtaining financing for the Project.

This 8th day of April, 2025.

Respectfully submitted,



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