

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

In the Matter of:

ELECTRONIC APPLICATION OF)
HUMMINGBIRD ENERGY LLC FOR A)
CERTIFICATE OF CONSTRUCTION)
FOR AN APPROXIMATELY 200)
MEGAWATT MERCHANT ELECTRIC)
SOLAR GENERATING FACILITY AND)
NONREGULATED ELECTRIC)
TRANSMISSION LINE IN FLEMING)
COUNTY, KENTUCKY PURSUANT TO)
KRS 278.700 AND 807 KAR 5:110)

Case No. 2022-00272

BRIEF IN SUPPORT OF POST-HEARING POSITIONS

Comes now Hummingbird Energy LLC (“Hummingbird” or “Applicant”), by and through counsel, pursuant to 807 KAR 5:110, Section 7 and Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board” or “Board”) order dated October 26, 2023, and provides this Brief in support of its post-hearing position. The Applicant appreciates this opportunity to clarify its position and address certain issues raised by the Board during the evidentiary hearing held on October 24, 2023 (“Hearing”).

Easement for Gooding Parcel

The proposed merchant electric generation facility (the “Project”) includes a parcel owned by John Gooding, which is identified as Tax Parcel No. 070-00-00-012.00 (the “Gooding Parcel”). An easement to connect the Gooding Parcel to the rest of the Project has not yet been secured. However, Applicant has requested the Gooding Parcel be approved as part of the construction certificate. Given concerns raised by the Board during the Hearing, Applicant now requests conditional inclusion in Hummingbird’s construction certificate. Applicant suggests a provision in the final order granting conditional approval of the Gooding Parcel and the subsequent easement

necessary to connect the Gooding Parcel to the rest of the Project with language similar to the following: “The Gooding Parcel and any Easement to connect the Gooding Parcel to the rest of the Project is hereby approved upon Applicant’s completion of the following three conditions: 1) An easement is secured to connect the Gooding Parcel to the rest of the Project with terms identical to the terms utilized in Applicant’s other easements filed with the Siting Board, and 2) the easement shall be clearly identified on Applicant’s final site plan, to be submitted in advance of commencing construction, and 3) the easement and the Gooding Parcel shall be in compliance with all other mitigation measures included herein.”

Conditional approval of the Gooding Parcel and a connecting easement is appropriate for three reasons. First, an easement enabling installation of Project collection lines will not impact placement of generation infrastructure on the Gooding Parcel, meaning that conditional inclusion of the Gooding Parcel will not materially alter the Project’s current site design. Second, conditional inclusion of the Gooding Parcel will not risk expanding Project boundaries beyond those indicated on Hummingbird’s site layout plan. Third, conditional approval of the Gooding Parcel and a subsequent easement will not impact the minimum setbacks requested by Applicant.¹ Thus, Applicant requests conditional approval of the Gooding Parcel, subject to obtaining an appropriate easement for its collection lines prior to commencing construction on the Gooding Parcel.

Stormwater Runoff

During Applicant’s Hearing, the Chairman expressed interest and concern regarding the effects of stormwater runoff on soil erosion, depending on the amount of spacing between solar module racking systems. Chairman Chandler questioned whether Applicant was aware of any academic literature suggesting that close placement of solar panels could negatively impact soil

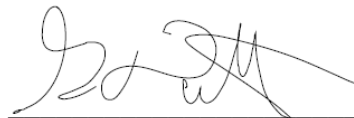
¹ While the Applicant’s responses to the Board’s Post-Hearing Request for Information have yet to be finalized, the Applicant has determined that all potential easement routes will not impact the minimum setbacks requested.

erosion. Applicant witness Jack Zoucha stated that the Project's final panel layout would rely on the expertise of its EPC contractor, who would conduct the studies and assessments necessary to develop a stormwater pollution prevention plan, and obtain a Kentucky Pollutant Discharge Elimination System (KPDES) stormwater permit from the Kentucky Division of Water (DOW) with best management practices incorporated, prior to commencing construction. Mr. Zoucha further stated that the Project plans to minimize erosion risk by avoiding installing panels in hydrologically sensitive areas and areas prone to flooding, and by using native grasses under the panels.

Since the Hearing, Mr. Zoucha has conducted further research regarding the impact of panel spacing on erosion. The current research on this topic appears to indicate that the potential for erosion depends on a variety of factors, including slope of the topography, quality of the vegetative ground cover, soil hydrology, as well as panel spacing. Applicant anticipates discussing this research with its EPC prior to finalizing the Project's panel layout to ensure erosion is mitigated to the extent practicable.

Dated this 31st day of October, 2023.

Respectfully submitted,



Gregory T. Dutton
FROST BROWN TODD LLP
400 W. Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400
(502) 581-1087 (fax)
gdutton@fbtlaw.com
Counsel for Hummingbird Energy LLC