

**COMMONWEALTH OF KENTUCKY**

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

IN THE MATTER OF:

THE ELECTRONIC APPLICATION OF BRIGHT MOUNTAIN SOLAR, LLC FOR A CERTIFICATE OF CONSTRUCTION FOR AN UP TO 80 MEGAWATT MERCHANT ELECTRIC SOLAR GENERATING FACILITY AND RELATED NONREGULATED TRANSMISSION LINE OF APPROXIMATELY 4 MILES IN PERRY COUNTY, KENTUCKY PURSUANT TO KRS 278.700 AND 807 KAR 5:110	) ) ) ) ) ) ) ) )	CASE NO. 2022-00274
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**BRIGHT MOUNTAIN SOLAR, LLC'S RESPONSE TO CONSULTANT REPORT**

Bright Mountain Solar, LLC (“Bright Mountain”) provides the following response to Harvey Economics’ (“HE”) Review of Bright Mountain’s Site Assessment Report for Solar Facilities (“SAR” or “Report”) filed on January 12, 2024. Bright Mountain appreciates the thorough review and analysis of the proposed project and proposed location. Bright Mountain respectfully submits its response to the Report as set forth below including proposed modifications to the Certificate condition recommendations contained in the Report.

**Section B: Compatibility with scenic surroundings**

**Recommendation 4:** *The Applicant shall cultivate at least two acres of native pollinator-friendly species onsite.*

**Response:** Applicant requests the Board not to adopt this recommendation, for several reasons that are unique to this Project. Most notably, as a reclaimed surface coal mine site, the surface is currently unlikely to support growth of native pollinator species without significant and costly addition of topsoil. Additionally, cultivating pollinator acreage on the site would also require ground disturbance that is not currently proposed. Finally, there are not currently areas of

pollinator species on the site that will be removed or disturbed via construction or operation of the Project, such that total or partial replacement is needed.

**Recommendation 5:** *The Applicant will use anti-glare panels and operate the panels in such a way that glare from the panels is minimized or eliminated. The Applicant will immediately adjust solar panel operations upon any complaint about glare from those living, working, or traveling in proximity to the Project.*

**Response:** Applicant does not object to the first sentence of this Recommendation. Applicant requests that the second sentence be eliminated, as issues regarding glare are otherwise already subject to Applicant’s required complaint resolution plan. Specifically, in Section I of the HE Report, Recommendations Nos. 1 and 2 require Applicant to develop and implement a complaint resolution plan and file annual status reports with the Siting Board associated with the complaint resolution plan.

Alternatively, Applicant requests that the second sentence be modified to require Bright Mountain to utilize its Complaint Resolution Plan process to address any complaint regarding glare.

Additionally, the current language of this Recommendation states that “any” complaint “immediately” requires Bright Mountain to adjust operations. This language leaves no room for investigation into the merit or nature of the complaint without potentially significant operational impacts to the facility. As noted in the HE Report, “PV panels are designed to absorb as much of the solar spectrum as possible to maximize efficiency and the Project’s solar panels will include anti-reflective coatings. Results from EDR’s Glare Analysis determined that no glare of any type (green, yellow or red) would be received at any of the” 40 nearest habitable structures. Page V-5. Thus, there is no particular glare concern associated with this Project.

Utilization of the Complaint Resolution Plan process is a reasonable approach to addressing any complaint alleging glare impact.

Applicant also notes that conditions implementing this Recommendation have not been included in other orders granted by the Board. For instance, in both *Horus Kentucky 1 LLC*, Case No. 2020-00417, and *Thoroughbred Solar LLC*, Case No. 2022-000115, HE issued the reports evaluating the projects' site assessment reports. Both HE reports make similar recommendations concerning glare to Recommendation No. 5 here. (Page VI-4 of the Review and Evaluation of the *Horus Kentucky 1, LLC* Site Assessment Report; Page V-62 of the Review and Evaluation of the *Thoroughbred Solar LLC* Site Assessment Report). However, in Board's final orders in both *Horus Kentucky 1 LLC* and *Thoroughbred Solar LLC*, no glare-specific condition was included. Applicant requests a consistent outcome in its proceeding, particularly given the remote and elevated location of the Project Area.

#### **Section D: Anticipated peak and average noise levels**

**Recommendation No. 3:** *If pile driving activity occurs within 1,000 feet of a noise sensitive receptor, the Applicant shall implement a construction method that will suppress the noise generated during the pile driving process (i.e., semi-tractor and canvas method; sound blankets on fencing surrounding the Project site; or any other comparably effective method).*

**Response:** The Applicant requests that the Board not adopt this recommendation because the Project will utilize pile-driving equipment that is substantially smaller than that used in conventional civil construction. The Vermeer or similar sized pile installation equipment to be used is tailored to the solar market and is less than 50 horsepower. Thus, it is expected that the sound level associated with this equipment will be much quieter than a typical pile driver. While specific sound data for this smaller equipment has not been identified, similar equipment in the United Kingdom has been identified to have a sound level of 87 dBA when evaluated at only 10 meters (33 feet). This would be equivalent to 83 dBA at 50 feet and similar in sound level to typical construction equipment (nominally 85 dBA at 50 feet). Therefore, impacts are expected

to be substantially less than would require pile-driving mitigation within 1,000 feet of a noise-sensitive receptor.

**Recommendation No. 4:** *The Applicant should limit the construction activity, process and deliveries to the hours of 8:00 am to 6:00 pm, Monday through Saturday. No construction work should be conducted on Sundays.*

**Response:** Applicant proposes this Recommendation be adopted modified as follows:

The Applicant shall limit construction activities to the hours between 7:00 a.m. to 9:00 p.m. Monday through Saturday. Construction shall not be conducted on Sundays unless it is necessary to make up for delays or to meet deadlines. Non-noise causing and non-construction activities can take place on the site prior to 7:00 a.m.

As modified, this Recommendation is consistent with conditions the Board has adopted relative to other approved projects. (See, e.g., *In the Matter of Blue Moon Energy, LLC* Case No. 2021-00414, Final Order dated August 3, 2022, at Appendix A, Condition 14; *In the Matter of Bluebird Solar, LLC*, Case No. 2021-00141, Final Order dated August 3, 2022, at Appendix A, Condition 13).

**Recommendation No. 5:** *The Application shall place panels, inverters and substation equipment consistent with the distances to ice receptors indicated in the Applicant's noise study and with the Applicant's proposed setbacks. Nevertheless, the Applicant shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church or school, 25 feet from non-participating adjoining parcels, and 50 feet from adjacent roadways. The Applicant shall not place a central inverter and, if used, energy storage systems closer than 450 feet from a residence, church, or school. These setbacks shall not be required for residence owned by landowners involved in the Project that explicitly agree to lesser setbacks and have done so in writing. All agreements by participating landowners to lesser setbacks must be filed with the Siting Board prior to the commencement of construction of the Project.*

**Response:** Applicant does not object to any existing portion of Recommendation No. 5, assuming the intention in the third sentence is a 50-foot setback requirement from adjacent *public* roadways, but that this requirement does not apply to Applicant's internal access roads. Assuming that understanding is correct, which Applicant believes it is, Applicant proposes a minor

clarification by addition of the word “public” at the end of the third sentence between the existing words “adjacent” and “roadways.”

**Section E: Road and rail traffic, fugitive dust, and road degradation**

**Recommendation No. 4:** *The Applicant will fix or pay for damage resulting from any vehicle transport to the Project site or transmission line easements. The Applicant shall implement ridesharing between construction workers when feasible, use appropriate traffic controls or allow flexible working hours outside of peak hours to minimize any potential delays during AM and PM peak hours.*

**Response:** Applicant does not object to the second sentence of this Recommendation. However, it requests the Board to adopt the Recommendation without the first sentence. The reason is that Applicant has already conferred with representatives of Perry County and been advised that no road user maintenance agreement is required. Thus, the Recommendation would impose significant additional obligations beyond those required by the impacted county. Moreover, the Project will already be conducting a number of expected road improvements as part of the construction process.

**Recommendation No. 9:** *The Applicant shall consult with CSX and the KYTC to evaluate potential impacts to railroad crossings from Project traffic, if railroad crossings are necessary. If necessary, the Applicant shall develop additional, specific mitigation measures applicable to impacts on affected railroad crossings.*

**Response:** Applicant proposes the Board decline to include this Recommendation because Applicant does not anticipate any Project traffic to cross any active railroad lines.

**Section G: Decommissioning**

**Recommendation No. 1:** *The Applicant shall file a full and explicit decommissioning plan with the Siting Board or its successors as well as Perry County. This plan shall commit the Applicant to removing all facility components, above-ground and below-ground, regardless of depth, from the Facility Area and transmission line route. Access roadways and other structures, such as the O&M building, shall also be removed unless the landowner states in writing that they prefer those to remain in place. The decommissioning plan shall be completed at least one month prior to construction of the Project.*

**Response:** Applicant objects to the language “regardless of depth,” and it requests the Board to adopt this Recommendation with the language “regardless of depth” replaced with “to a depth of three (3) feet.” KRS 278.706(m)(2), (which enacted House Bill 4 and became effective on June 29, 2023), provides the following specifications for Applicant’s decommissioning plan:

A decommissioning plan that shall describe how the merchant electric generating facility will be decommissioned and dismantles following the end of its useful life. The decommissioning plan shall, at a minimum, include plans to:

1. Unless otherwise requested by the landowner, remove all above-ground facilities; and
2. Unless otherwise requested by the landowner, remove any underground components and foundations of above-ground facilities, **Facilities removed under this subparagraph shall be removed to a depth of three (3) feet below the surface grade of the land in or on which the component was installed, unless the landowner and the applicant agree otherwise to a different depth.**

(emphasis added). In addition to this statutory specification, three (3) feet is consistent with the requirement contained in Applicant’s lease agreements with participating landowners.

Additionally, as Recommendation No. 2 in this section is duplicative except to be applicable to the transmission line, Applicant proposes the second sentence of Recommendation No. 1 be modified to state “This plan shall commit the Application to removing all generation facility and transmission line components . . . “

**Recommendation No. 2:** *Decommissioning shall also include removal of all Project transmission line structures and any associated transmission line components. Access roads developed to maintain transmission line components shall also be removed unless the landowner states in writing that they prefer those to remain in place.*

**Response:** Consistent with its proposed modifications to Recommendation No. 1 in Section G, Applicant requests that the Board decline to adopt Recommendation No. 2 as duplicative. To the extent it is adopted, Applicant requests the first sentence be modified to add “, to a depth of three (3) feet if below ground” to the end of the sentence.

**Recommendation No. 3:** *The Applicant, its successors, or assigns shall decommission the entire site of the Project once it ceases producing electricity for a continuous period of 12 months. Decommissioning shall include the removal of all solar panels, racking, and equipment including concrete pads and trenched electrical wiring.*

**Response:** Applicant does not object to the first sentence in this Recommendation. Consistent with its proposed modifications to Recommendation No. 1 in Section G, Applicant requests that the Board decline to adopt the second sentence in Recommendation No. 3 as duplicative. To the extent it is adopted, Applicant requests the second sentence be modified to add “, to a depth of three (3) feet if below ground” added between “equipment” and “including.”

**Recommendation No. 6:** *The Applicant shall file a bond with Perry County Fiscal Court, equal to the amount necessary to effectuate the explicit or formal decommissioning plan, naming Perry County as an obligee or a third-party (or secondary, in addition to individual landowners) beneficiary of that bond, so that Perry County will have the authority to draw upon the bond to effectuate the decommissioning plan as needed. For land in which there is no bonding requirement otherwise, Perry County shall be the primary beneficiary of the decommissioning bond for that portion of the Project. The bond(s) shall be in place at the time of commencement of operation of the Project.*

**Response:** Given the recent changes to KRS 278.706(m), effective June 29, 2023, regarding decommissioning requirements, Applicant requests that this recommendation be modified to state that the Applicant will comply with the decommissioning bond requirements set forth by KRS 278.706(m)(5) to avoid any inconsistencies with applicable state law.

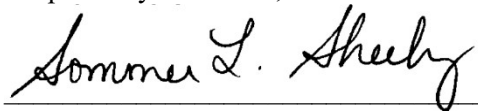
**Section H: Public outreach and communication**

**Recommendation No. 1:** *The Applicant should pursue additional public outreach and engagement activities within Perry County because of the limited attendance at the local public meeting and the general sense of local unawareness of the Project.*

**Response:** Applicant objects to the content of this Recommendation beginning with “because” through the end of the sentence and request the Board to strike it such that the condition reads “The applicant should pursue additional public outreach and engagement activities within Perry County. Deletion of the remainder of the Recommendation is appropriate because, contrary to the language, Applicant’s public involvement program has been robust, and there has been no

evidence of a general sense of local unawareness about the Project. In fact, the Project held properly-noticed two public information meetings, at which attendees expressed support for the Project and, in some cases, inquired about obtaining employment to work on the Project. Additionally, Project representatives have conducted numerous in-person and telephone meetings with local officials and other members and stakeholders in the community.

Respectfully submitted,

A handwritten signature in black ink that reads "Sommer L. Sheely". The signature is written in a cursive style and is positioned above a horizontal line.

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