

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF BRIGHT)
MOUNTAIN SOLAR, LLC FOR A)
CERTIFICATE OF CONSTRUCTION FOR AN)
UP TO 80 MEGAWATT MERCHANT)
ELECTRIC SOLAR GENERATING FACILITY)
AND AN APPROXIMATELY 4 MILE)
NONREGULATED ELECTRIC)
TRANSMISSION LINE IN PERRY COUNTY,)
KENTUCKY, PURSUANT TO KRS 278.700,)
ET SEQ. AND 807 KAR 5:110, ET SEQ.)

Case No. 2022-00274

BRIGHT MOUNTAIN SOLAR, LLC'S
MOTION FOR RECONSIDERATION OF CONDITION 27

Comes now Bright Mountain Solar, LLC (“Bright Mountain” or “Applicant”), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13, and 807 KAR 5:110, and respectfully requests the Siting Board to reconsider and amend the content of Condition 27, contained within Appendix A of the Board’s March 13, 2024 Order granting Bright Mountain’s Application, subject to compliance with all mitigating measures and conditions contained in Appendix A thereto.

Condition 27 currently provides as follows:

Bright Mountain has filed a complete and explicit decommissioning plan with the Siting Board. Bright Mountain shall commit to remove all facility components, above-ground and below-ground, regardless of depth, from the Project site. Upon its completion, this plan shall be filed with the Siting Board or its successors.

Bright Mountain asserts that there is good cause for the Board to reconsider and amend the content of Condition 27 to require removal of underground facilities to a depth of three (3) feet

rather than “regardless of depth” and to allow landowners, consistent with their leases, to request improvements be excluded from removal.

There are three main reasons for the requested reconsideration and adjustment of Condition 27, which each provides good cause for the Siting Board to grant the request. First, the Order misstates the terms of the commitments in Bright Mountain’s Decommissioning Plan and its leases with participating landowners by omitting certain of the relevant language. That omission, described in more detail below, then appears to transfer into the content of Condition 27. Second, the adjustment Bright Mountain seeks would bring its Condition 27 into conformity with another similarly-situated (in relevant respects for purposes of this motion) project that was approved only two weeks prior to Bright Mountain. And third, the adjustment would bring Condition 27 into conformity with Kentucky law under HB 4, which became effective on July 23, 2023 and is contained in relevant part in KRS 278.706(2)(m).

A. Bright Mountain’s Decommissioning Plan and Leases Require Removal of Underground Facilities to a Depth of Three (3) Feet and Allow Landowners to Request to Keep Improvements, Contrary to Condition 27.

First, as noted in current Condition 27, Bright Mountain did submit a complete decommissioning plan as part of its Application, which was Exhibit J within the Site Assessment Report (Tab 12). In relevant part, the Decommissioning Plan states that:

The Owner will be responsible for removal of all above ground solar equipment, facilities, devices, roads, foundations, solar inverters, electrical lines, and any other property designed and used primarily for the purpose of generating and transferring electric energy at the end of the Project’s commercial operation. **Underground facilities such as electrical cable, concrete foundations, and support posts/piles will be removed to a depth of 36 inches.**

(Application, Tab 12, SAR at Exhibit J, p. 3) (emphasis added).

And consistent with Bright Mountain’s Decommissioning Plan, its leases for the Project generation facility with participating landowners contain the following commitment on removal of facilities:

8.11 **Return of Property.** Upon the expiration of this Agreement or its termination for any cause, Lessee shall return the Property in good order and condition. Specifically, Lessee shall, prior to the date of the expiration or termination of this Agreement, remove all improvements of Lessee **down to a depth of three (3) feet, except such improvements as road or similar ground improvements as expressly designated by the Landowner,** and which Lessee is specifically instructed by Landowner not to return to the prior condition as existing as of the Effective Date of this Agreement . . .

(See, e.g. Projects Leases filed to docket March 12, 2024) (emphasis added).

In the body of the Order, however, the following is stated regarding Bright Mountain’s Decommissioning Plan:

Bright Mountain submitted a decommissioning plan with the application. (citation omitted). The decommissioning plan and the applicable property leases contain covenants to remove all underground components.

(3/13/2024 Order at pp. 25-26.)

Thus, the Order omits reference to the provisions of both the Decommissioning Plan and Leases stating that (1) removal of underground facilities is required to a depth of three feet and (2) that the Landowner has a right to request certain improvements not be removed, at their option. To retain current Condition 27 would place Bright Mountain in the untenable position of being unable to abide by a Landowner’s request to leave ground-level or underground improvements in place because current Condition 27 does not allow for landowner input.

For this reason, the Siting Board should reconsider the Order, include reference that the Decommissioning Plan and Leases require removal of underground facilities to a depth of three feet, except where Landowners expressly request to keep improvements in place.

B. Reconsideration and Adjustment of Condition 27 Would Bring it Into Conformity with Another Similarly-Situated Project Wherein Removal of Underground Facilities is Only Required to a Depth of Three Feet.

Second, reconsideration and adjustment of Condition 27 would also serve the purpose of ensuring consistency in conditions among similar-situated projects. Here, one such project was granted its certificate on February 28, 2024, just two weeks before Bright Mountain. *See Application of Song Sparrow Solar, LLC for Certificate of Construction for an Approximately 104 Megawatt Merchant Electric Solar Generating Facility in Ballard County, Kentucky*, Case No. 2023-00256. In that case, Song Sparrow Solar had also submitted a Decommissioning Plan with its Application. And, like Bright Mountain, the Decommissioning Plan required removal of underground facilities to a depth of three feet, stating in relevant part:

The anticipated sequence of decommissioning and removal is described below; however, overlap of activities is expected.

* * *

- Remove above and below-ground electrical cables to a depth of 36 inches (Application of Song Sparrow Solar, LLC, dated September 1, 2023, at Attachment H, pp. 2-3).

In Condition 29 in the Siting Board's February 28, 2024, 2024 Order conditionally granting that project's certificate, Song Sparrow is directed only as follows:

Song Sparrow did file a decommissioning plan with the Siting Board. If this decommissioning plan should change Song Sparrow shall comply with the Energy and Environmental Cabinet pursuant to KRS 278.710(9).

(2/28/2024 Order conditionally granting Song Sparrow certificate at Appendix A, p 6).

Thus, despite both having submitted decommissioning plans providing for removal of underground facilities to a depth of three feet, Song Sparrow was permitted this limitation, and Bright Mountain was not. Further, if removal to a depth of three feet was appropriate in the case

of Song Sparrow, the logic would be even stronger in the case of Bright Mountain because Bright Mountain will be constructed on previously coal-mined mountaintop land.

Therefore, for the additional reason of ensuring consistency in conditions among certificated projects, Condition 27 should be reconsidered and adjusted.

C. Reconsidering and Adjusting Condition 27 Would Bring it Into Conformity with Applicable Kentucky Law Enacted in 2023 by HB 4.

Finally, Bright Mountain is one of only several merchant solar electric generating projects to be certificated by the Siting Board after the effective date of HB 4 in July 2023. In relevant part, HB 4’s provisions as enacted discuss and provide that a completed application must contain:

A decommissioning plan that shall describe how the merchant electric generating facility will be decommissioned and dismantled 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;
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 is installed, unless the landowner and the applicant agree otherwise to a different depth.**

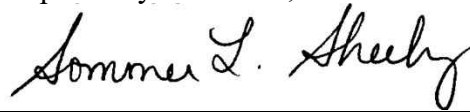
KRS 278.706(2)(m) (emphasis added).

This language plainly indicates the legislature’s intent to allow both of the provisions contained within Bright Mountain’s Decommissioning Plan and Leases—removal of underground facilities to a depth of three feet and exceptions by landowner request—that have been omitted from Condition 27. That law was effective at the time the Siting Board rendered its Order here, providing further basis for the Siting Board to reconsider and adjust the language of Condition 27.

For any or all of these reasons, Bright Mountain respectfully requests reconsideration be granted and the Siting Board issue an order directing the following amendment to Condition 27:

Bright Mountain has filed a complete and explicit decommissioning plan with the Siting Board. Bright Mountain shall comply with said plan and, if the plan changes, comply with the Energy and Environment Cabinet pursuant to KRS 278.710(9).

Respectfully submitted,



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