

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF AEUG	)	
MADISON SOLAR, LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY 100	)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR	)	2020-00219
GENERATING FACILITY IN MADISON COUNTY,	)	
KENTUCKY PURSUANT TO KRS 278.700 AND	)	
807 KAR 5:110	)	

ORDER

This matter is before the Siting Board upon a motion to reopen the case filed on November 8, 2021, by AEUG Madison Solar, LLC (AEUG Madison) that requested reconsideration and clarification of certain mitigation requirements imposed by the Siting Board's June 9, 2021 Order (Final Order) that conditionally approved a certificate to construct an approximately 100-megawatt (MW) merchant solar generating facility.

BACKGROUND

AEUG Madison filed a motion on July 9, 2021, for reconsideration and clarification of several issues in the Final Order. On September 23, 2021, AEUG Madison filed a motion for expedited review of three mitigation measures that had been included in the July 9, 2021 motion for reconsideration. On October 18, 2021, the Siting Board issued an Order, addressing the issues in the September 23, 2021 motion. Subsequently, AEUG Madison realized the remaining measures in the July 9, 2021 motion had not been ruled on by the Siting Board. Then AEUG Madison filed the November 8, 2021 motion to reopen the case to address the remaining mitigation measures that AEUG Madison

requested clarification on. This Order addresses the remaining issues in the July 9, 2021 motion.

## DISCUSSION AND FINDINGS

### Compatibility with Scenic Surroundings

AUEG Madison requested reconsideration of mitigation measures 8 and 9 that pertain to visual buffers. Mitigation measure 8 requires AEUG Madison to work with homeowners and business owners to address concerns regarding the visual impact of the solar facility on its neighbors. Mitigation measure 9 requires AEUG Madison to provide a buffer “to the satisfaction of” the affected property owners that have a line of sight to the facility. AEUG Madison argued that the mitigation measures as written could lead to it having to satisfy unreasonable demands of neighboring property owners. AEUG Madison requested a “good faith effort” component be added to both measures.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board in reviewing mitigation measures 8 and 9 finds that a “good faith” component is unnecessary for either mitigation measure. The Siting Board notes that issues arising from the obligation to provide a visual buffer can be brought back to the Siting Board by a motion. If a nearby landowner is making what AEUG Madison feels are unreasonable demands, AEUG Madison can file a motion with the Siting Board to determine if the visual buffer proposed is in compliance with the mitigation measures.

AUEG Madison also requested to have mitigation measure 10 removed as a condition based upon the glare study it provided on January 30, 2022. Mitigation measure 10 requires AEUG Madison to provide proof glare will not occur. AEUG Madison contends that a total absence of glare is not possible, instead AEUG Madison argued that

the requirement should be no red glare. The glare study confirmed that there will be no red glare from the panels.

Based upon the motion and the glare study, and being otherwise sufficiently advised, the Siting Board in reviewing mitigation measure 10 agrees that mitigation measure 10 should be struck from the Final Order because the glare study has been accepted by the Siting Board and the condition satisfied.

#### Compliance with the Conditional Use Permit (CUP)

Mitigation measure 26 in the Final Order requires AEUG Madison to maintain compliance with the CUP through the entirety of the project's construction and operation. AEUG Madison argued that clarification of this mitigation measure is necessary because of potential conflict between the Siting Board's mitigation measures and the CUP requirements. AEUG Madison requested the language of mitigation measure 26 be changed to state that the CUP requirements control if there is conflict between the Siting Board requirements and the CUP.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board in reviewing mitigation measure 26 finds that no wording change is necessary. AEUG Madison has not sufficiently identified terms between the CUP and the Siting Board's Order that do or could conflict. Further in the event both documents present differing requirements for particular subjects, such as set-backs for facilities, compliance with both requirements is not a "conflict." In the event there are actual "conflicts" between the CUP and the Siting Board's Order, those "conflicts" can be brought back to the Siting Board by a motion. This process should provide reasonable certainty

to AEUG Madison on perceived difference and actual conflicts between the Siting Board's Order and the CUP.

### Decommissioning

Lastly, AEUG Madison sought clarification of mitigation measure 30, which details the decommissioning obligation. AEUG Madison asked that the entire mitigation measure be struck and replaced with a new mitigation measure. AEUG Madison claimed a new mitigation measure was needed to clarify ambiguities and provide clear direction to AEUG Madison.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board in reviewing the mitigation measure is in agreement with AEUG Madison that mitigation measure 30 should be modified. The Siting Board shall adopt the language of more recent decisions regarding decommissioning in this case. The more recent decisions provide specificity regarding the bond filing and recording requirements.

Mitigation measure 30 shall now read:

AEUG Madison shall file a bond with the Madison County Fiscal Court, equal to the amount necessary to effectuate the explicit or formal decommissioning plan naming Madison County as a third-party obligee (or secondary, in addition to individual landowners) beneficiary, in addition to the lessors of the subject property insofar as the leases contain a decommissioning bonding requirement so that Madison County will have the authority to draw upon the bond to effectuate the decommissioning plan. For land with no bonding requirement, Madison County shall be the primary beneficiary of the decommissioning bond for that portion of the Project. The bond shall be filed with the Madison County Treasurer or with a bank, title company, or financial institution reasonably acceptable to the county. The acceptance of the county of allowing the filing the bond with an entity other than the Fiscal Court, through the Madison County Treasurer, can be evidenced by a letter from the Judge-Executive, the Fiscal Court, or the County Attorney. The bond(s) shall be in place

at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at AEUG Madison's expense to determine and update the cost of removal amount. This review shall be conducted by an individual or firm with experience or expertise in the costs of removal or decommissioning of electric generating facilities. Certification of this review shall be provided to the Siting Board or its successors and the Madison County Fiscal Court. Such certificate shall be by letter and shall include the current amount of the anticipated bond and any change in the costs of removal or decommissioning.

### Formal Conference

AEUG Madison requested in the motion for reconsideration and clarification a formal hearing with the Siting Board to provide clarity and allow the Siting Board to ask questions about the proposed additions to the mitigation measures. The Siting Board, in review of the motion, has no questions and needs no clarification from AEUG Madison. A formal conference is unnecessary, and the request is denied.

IT IS THEREFORE ORDERED that:

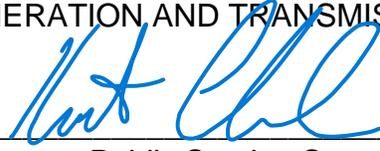
1. AEUG Madison's petition for reconsideration and clarification and for a formal conference is granted in part and denied in part.
2. AEUG Madison's petition for reconsideration and clarification of mitigation measures 8 and 9 are denied.
3. Mitigation measure 10 is stricken from Appendix A to the Final Order. Mitigation measure 10 is struck because the glare study has been accepted by the Siting Board confirming no red glare will result from the solar facility satisfying this condition.
4. AEUG Madison's petition for reconsideration and clarification of mitigation measure 26 is denied.

5. AEUG Madison's petition for reconsideration and clarification for mitigation measure 30 is granted. Mitigation measure 30 is stricken from Appendix A to the Final Order and replaced with the following:

AEUG Madison shall file a bond with the Madison County Fiscal Court, equal to the amount necessary to effectuate the explicit or formal decommissioning plan naming Madison County as a third-party obligee (or secondary, in addition to individual landowners) beneficiary, in addition to the lessors of the subject property insofar as the leases contain a decommissioning bonding requirement so that Madison County will have the authority to draw upon the bond to effectuate the decommissioning plan. For land with no bonding requirement, Madison County shall be the primary beneficiary of the decommissioning bond for that portion of the Project. The bond shall be filed with the Madison County Treasurer or with a bank, title company, or financial institution reasonably acceptable to the county. The acceptance of the county of allowing the filing the bond with an entity other than the Fiscal Court, through the Madison County Treasurer, can be evidenced by a letter from the Judge-Executive, the Fiscal Court, or the County Attorney. The bond(s) shall be in place at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at AEUG Madison's expense to determine and update the cost of removal amount. This review shall be conducted by an individual or firm with experience or expertise in the costs of removal or decommissioning of electric generating facilities. Certification of this review shall be provided to the Siting Board or its successors and the Madison County Fiscal Court. Such certificate shall be by letter and shall include the current amount of the anticipated bond and any change in the costs of removal or decommissioning.

6. AEUG Madison's request for a formal hearing is denied.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

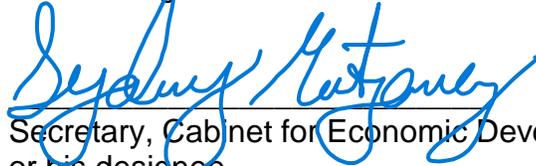
Vice Chairman, Public Service Commission

Commissioner, Public Service Commission

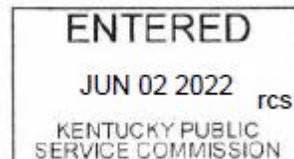
by KAC  
w/permission



Secretary, Energy and Environment Cabinet,  
or her designee



Secretary, Cabinet for Economic Development,  
or his designee



ATTEST:



Executive Director  
Public Service Commission  
*on behalf of* the Kentucky State  
Board on Electric Generation  
and Transmission Siting

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