

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF ASHWOOD	)	
SOLAR I, LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY 86	)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR	)	2020-00280
GENERATING FACILITY IN LYON COUNTY,	)	
KENTUCKY PURSUANT TO KRS 278.700 AND	)	
807 KAR 5:110	)	

ORDER

On September 20, 2024, Ashwood Solar I LLC (Ashwood Solar) filed a motion for a declaratory order that Siting Board approval is not necessary for an anticipated transaction, or in the alternative, an order approving the transaction.

BACKGROUND

Ashwood Solar filed an application to construct an approximately 100-megawatt merchant solar generating facility in Lyon County, Kentucky on December 22, 2020.<sup>1</sup> During the pendency of the case, Ashwood Solar responded to two rounds of discovery,<sup>2</sup> a site visit was conducted, the Siting Board hired a consultant who issued a report about the project,<sup>3</sup> Ashwood Solar responded to the consultant's report,<sup>4</sup> and a hearing was

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<sup>1</sup> Application (filed Dec. 22, 2020).

<sup>2</sup> Ashwood Solar's Response to Siting Board Staff's First Request for Information (filed Feb. 25, 2021); and Ashwood Solar's Response to Siting Board Staff's Second Request for Information (filed Feb. 25, 2021).

<sup>3</sup> Wells Engineering Report (filed Apr. 7, 2021).

<sup>4</sup> Ashwood Solar's Response to Consultant Report (filed Apr. 23, 2021).

held May 11, 2021.<sup>5</sup> The Siting Board evaluated the record before issuing the final Order that granted a certificate of construction conditioned on full compliance with the mitigation measures on June 21, 2021.<sup>6</sup>

On September 20, 2024, Ashwood Solar filed a motion and requested that the Siting Board issue a declaratory order in anticipation of a transfer of the project.<sup>7</sup> Ashwood Solar requested a declaratory order that the transaction does not require Siting Board approval. In the alternative, should the Siting Board find the transaction does require approval, Ashwood Solar requested Siting Board approval for the anticipated transfer.<sup>8</sup>

### Proposed Transaction

Ashwood Solar is owned by RWE Investco EPC Mgmt, LLC (EPC Mgmt).<sup>9</sup> The proposed transaction is that EPC Mgmt would contribute Ashwood Solar up to its 95 percent owner, RWE Investco Mgmt, LLC.<sup>10</sup> Investco will contribute Ashwood Solar down to its subsidiary, TEP Financing Six, LLC.<sup>11</sup> EPC Mgmt and Investco are indirect subsidiaries of RWE Clean Energy, LLC.<sup>12</sup> Currently, the day-to-day

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<sup>5</sup> Hearing Video Testimony of the May 11, 2021 Hearing.

<sup>6</sup> Final Order (Ky. Siting Board June 21, 2021) at 38.

<sup>7</sup> Motion for Declaratory Order (filed on Sept. 20, 2024).

<sup>8</sup> Motion for Declaratory Order at 1.

<sup>9</sup> Motion for Declaratory Order at 2.

<sup>10</sup> Motion for Declaratory Order at 2.

<sup>11</sup> Motion for Declaratory Order at 2.

<sup>12</sup> Motion for Declaratory Order at 2.

management and operation of Ashwood Solar is controlled by RWE Clean Energy, LLC.<sup>13</sup> Subsequent to the transfer, day-to-day management and operation of Ashwood Solar will still be controlled by RWE Clean Energy, LLC.<sup>14</sup>

### Arguments for the Transaction

Ashwood Solar made two arguments in its motion. Ashwood Solar first argued that the transaction it is proposing does not require Siting Board approval because, under KRS 278.710, Ashwood Solar is not transferring its rights or obligations of the construction certificate.<sup>15</sup> Ashwood Solar stated that, after the corporate reorganization, Ashwood Solar will continue to hold the construction certificate and will maintain the rights and obligations under the certificate.<sup>16</sup>

Ashwood Solar also argued that prior Commission precedent supports its position that Siting Board approval is not necessary. Ashwood Solar cited a line of cases<sup>17</sup> that held, under KRS 278.060(7), the Commission did not have to give approval for stock purchases of passive investors in a utility because control was not transferred to the investors.<sup>18</sup> Ashwood Solar stated this is consistent with the Federal Energy Regulatory

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<sup>13</sup> Motion for Declaratory Order at 2.

<sup>14</sup> Motion for Declaratory Order at 2.

<sup>15</sup> Motion for Declaratory Order at 3.

<sup>16</sup> Motion for Declaratory Order at 3.

<sup>17</sup> Case No. 2020-00256, *Electronic Application of T. Rowe Associates, Inc for a Declaratory Order Regarding the Acquisition of Common Stock* (Ky. PSC Aug. 14, 2020), final Order; Case No. 2020-00209, *Electronic Application of the Vanguard Group, Inc. for a Declaratory Order Regarding Investment Fund Ownership* (Ky. PSC Aug. 10, 2020), final Order; Case No. 2015-00389, *Application of T. Rowe Price Associates, Inc. for a Declaratory Order Regarding the Acquisition of Common Stock* (Ky. PSC Mar. 14, 2016), final Order.

<sup>18</sup> Motion for Declaratory Order 4–5.

Commission's (FERC) policy that its approval is not necessary for the sale of passive tax equity interests.<sup>19</sup>

In the alternative, Ashwood Solar argued that, if the Siting Board believes approval is necessary for the transaction, it should be approved.<sup>20</sup> Ashwood Solar stated that the transaction does not affect the control of the project by RWE Clean Energy, LLC.<sup>21</sup> Ashwood Solar stated that the tax equity transaction will not affect the way the project is operated nor its ability to comply with the Siting Board's mitigation measures.<sup>22</sup>

Ashwood Solar reiterated that the tax equity investors would have no control over the project and all the criteria used in making its decisions would still apply.<sup>23</sup> Ashwood Solar stated that all the criteria in KRS 278.710(1) that the Siting Board considers when determining if a construction certificate should be granted, are not impacted by the direct corporate parent or passive investors of the project.<sup>24</sup> Ashwood Solar stated that its application provided the applicant has a good environmental compliance history and Ashwood Solar, through the corporate parents including RWE Clean Energy, LLC, will continue to have the financial, technical, and managerial capacity to comply with regulatory compliance.<sup>25</sup>

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<sup>19</sup> Motion for Declaratory Order at 5.

<sup>20</sup> Motion for Declaratory Order at 6.

<sup>21</sup> Motion for Declaratory Order at 6.

<sup>22</sup> Motion for Declaratory Order at 3–4.

<sup>23</sup> Motion for Declaratory Order at 6.

<sup>24</sup> Motion for Declaratory Order at 6.

<sup>25</sup> Motion for Declaratory Order at 6–7.

## LEGAL STANDARD

KRS 278.020(6) requires Commission approval before a utility may transfer ownership or control by a sale of assets, transfer of stock, or abandonment. The Commission must determine if the entity acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.<sup>26</sup>

KRS 278.710(3)(a) states that a company who has received a construction certificate for a merchant electric generating facility shall not transfer rights or obligations of the certificate without a Siting Board determination that the acquirer has a good environmental compliance history.<sup>27</sup> KRS 278.710(3)(b) requires a determination by the Siting Board that the acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval.<sup>28</sup>

## DISCUSSION AND FINDINGS

KRS 278.702(3) allows the Siting Board to promulgate administrative regulations to implement the provisions of KRS 278.700-278.716. The regulations governing the Siting Board procedures do not allow for declaratory orders.<sup>29</sup> However, Ashwood Solar raised issues in its motion the Siting Board believes should be addressed; therefore, the Siting Board will consider the motion.

The statutes governing the Siting Board were amended subsequent to the final Order in this matter. In addition, many of the projects granted conditional certificates of

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<sup>26</sup> KRS 278.020(6).

<sup>27</sup> KRS 278.710(3)(a).

<sup>28</sup> KRS 278.710(3)(b).

<sup>29</sup> 807 KAR 5:100 and 807 KAR 5:110.

construction are just now being constructed. As part of that process, many issues of first impression are being raised. The Siting Board has a duty to ensure that all mitigation measures are complied with in full and as part of that duty, the Siting Board finds it necessary to review these transactions for statutory compliance, in particular, to ensure that a party with the responsibility to comply with mitigation measures will continue to do so both financially and practically.

The Siting Board is aware that, when the final Order for this case was issued on June 21, 2021, it did not include a mitigation measure that required Ashwood Solar to request approval from the Siting Board if there was any transfer of ownership, or control, or the right to control the project, by sale of assets, transfer of stock, or otherwise or abandon the same. It is the position of the Siting Board that, although such a mitigation measure was not included in Ashwood Solar's final Order, in order to be consistent among siting board cases both past and present, the Siting Board finds that approval is necessary for Ashwood Solar's proposed transfer.

KRS 278.710(3)(a) requires that the acquirer have a good environmental compliance history. The proposed transfer satisfies that requirement. The parent company RWE Clean Energy, LLC has a good environmental compliance history based on the evidence in the record. In addition, Ashwood Solar provided a verified statement of environmental compliance.<sup>30</sup> The Siting Board finds Ashwood Solar and its parent company RWE Clean Energy, LLC have demonstrated a good environmental compliance history as required by KRS 278.710(3).

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<sup>30</sup> Motion for Declaratory Order, Exhibit 2.

KRS 278.710(3)(b) states that the Siting Board make a determination that the acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval or has the ability to contract to meet these obligations.<sup>31</sup> The Siting Board must ensure that the holder of the construction certificate is able to comply with each mitigation measure including both financially and logistically. The Siting Board finds that Ashwood Solar and RWE Clean Energy, LLC have the requisite financial, technical, and managerial capacity to comply with all the mitigation measures in the final Order issued June 21, 2021. During the pendency of the case, the Siting Board conducted a complete review of the project which included the ability of Ashwood Solar, and, by extension, RWE Clean Energy LLC, to fully comply with any mitigation measures imposed. The Siting Board finds this satisfies the requirements of KRS 278.710(3)(b) as nothing related to either structure or responsibilities will change as to the day-to-day activity. Ashwood Solar and RWE Clean Energy, LLC should comply with all the Mitigation Measures that were provided in the final Order issue on June 21, 2021.

Based upon the motion and being otherwise sufficiently advised, the Siting Board finds that the transfer of Ashwood Solar to RWE Investco Mgmt, LLC then Investco will contribute Ashwood Solar down its subsidiary, TEP Financing Six, LLC should be approved.

RWE Clean Energy has good environmental compliance history and have the financial, technical, and managerial capacity to construct and operate the project. The transaction is only for financing purposes. The tax equity investors that were not party to

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<sup>31</sup> KRS 278.710(3)(b).

the original consideration of the case are not going to have a controlling interest in the project and substantially the same entities will ensure compliance with the Siting Board's orders post-transfer as they are today. As the *substantially same entities* that ensure Ashwood Solar's compliance with mitigation measures today will continue to do so post transfer and the new entities with a managing ownership interest have a good environmental history, the Siting Board finds that the proposed transfers of Ashwood Solar should be approved subject to the continuing compliance with its final Order.

IT IS THEREFORE ORDERED that:

1. Ashwood Solar's motion for a declaratory Order is denied.
2. Ashwood Solar's request to make corporate transfers of the project to allow for tax equity investments is granted.
3. Ashwood Solar shall provide proof to the Siting Board, in post-case correspondence referencing this case number, within 20 days of the transaction closing.



KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission



Commissioner, Public Service Commission



Commissioner, Public Service Commission



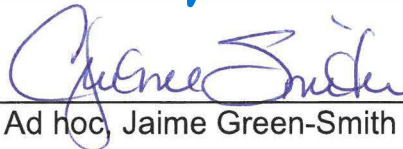
Secretary, Energy and Environment Cabinet,  
or her designee



Secretary, Cabinet for Economic Development,  
or his designee



Ad hoc, Crystal Lasher-Hurst



Ad hoc, Jaime Green-Smith

w/ permission  
by AH

ATTEST:



For

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



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