

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF GREEN RIVER )  
SOLAR, LLC FOR A CERTIFICATE TO )  
CONSTRUCT AN APPROXIMATELY 200- )  
MEGAWATT MERCHANT SOLAR ELECTRIC )  
GENERATING FACILITY IN BRECKINRIDGE )  
COUNTY AND MEADE COUNTY, KENTUCKY )  
PURSUANT TO KRS 278.700 AND 807 KAR )  
5:110 )

CASE NO.  
2020-00387

ORDER

This matter is before the Siting Board upon a motion for rehearing filed on January 21, 2022, by Green River Solar, LLC (Green River Solar) for reconsideration and clarification of certain mitigation requirements imposed by the Siting Board's December 22, 2021 Order (Final Order) that conditionally approved a certificate to construct an approximately 200-megawatt (MW) merchant solar generating facility in Meade and Breckinridge counties. Green River Solar indicated rehearing is necessary for nine of the conditions from the Final Order to prevent unnecessary costs, delay, or inefficiency in the development of the project.

DISCUSSION AND FINDINGS

Compatibility with Scenic Surroundings

Mitigation Measure 7 requires a 50-foot setback from open karst features. Green River Solar requested this mitigation measure be amended to allow remediation of any open karst feature pursuant to the United States Department of Agriculture (USDA),

Practice Code 527. Green River Solar then requested that if the open karst feature is able to be remediated, then the 50-foot setback would not apply.

Based upon the motion and the Final Order and being otherwise sufficiently advised, the Siting Board finds Green River Solar may remediate karst features pursuant to USDA Practice Code 527. However, the Siting Board further finds that the 50-foot setback from remediated karst features is still necessary because these features still pose a potential for flooding or further collapse.

Green River Solar requested rehearing on Mitigation Measures 9 which requires Green River Solar to plant native evergreen species as a visual buffer to mitigate viewshed impacts. Green River Solar requested this mitigation measure be amended to recognize the fact that Meade County has already approved of its vegetative screening plan during the Conditional Use Permit (CUP) process and the approved plan is more detailed than the Siting Board's mitigation measure in the Final Order. Green River Solar would like the additional language in Mitigation Measure 9 to state, "Consistent with the Meade County Conditional Use Permit and the updated Site Plan, Applicant shall implement planting of native evergreen species. . . ." <sup>1</sup>

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board in reviewing this mitigation measure, declines to amend Mitigation Measure 9. The mitigation measure as it appears in the Final Order is the baseline of what Green River Solar must provide in its vegetative screening. The fact the CUP requires more stringent vegetative screening does not necessitate the Siting Board changing its Order. Additionally, if the CUP is amended to not require vegetative

---

<sup>1</sup> Green River Solar Motion for Rehearing (filed Jan. 21, 2022), at 4.

screening the mitigation measure as ordered will serve to minimize viewshed impacts to the neighboring landowners.

Green River Solar also requested reconsideration of Mitigation Measure 11 that requires Green River Solar to provide a vegetative buffer “to the satisfaction of” the affected property owners with a line of sight to the solar facility. Green River Solar argued that during the CUP proceedings neighboring landowners had the ability to participate and voice concerns with the vegetative screening. Green River Solar stated that if the Siting Board does not amend the condition of satisfying neighboring landowners it undermines the CUP by allowing adjacent landowners to circumvent the CUP process. Green River Solar also argued that creating a vegetative buffer to the satisfaction of neighboring property owners could lead it to having to satisfy unreasonable demands of neighbors.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that “to the reasonable satisfaction of affected adjacent property owners” shall not be removed from Mitigation Measure 11. The CUP issued by Meade County Planning and Zoning and the certificate to construct the solar facility from the Siting Board can provide different requirements that Green River Solar must comply with in order to construct the solar facility. The Siting Board is not required to substitute its judgment for that of Meade County Planning and Zoning and make all of the mitigation measures the exact same. The Siting Board found in the Final Order that the satisfaction of neighboring landowners with the vegetative buffer is an important consideration in the grant of the certificate of construction and will not change the mitigation measure solely because the CUP also required a vegetative screening plan. 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 Green River Solar feels is unreasonable demands, Green River Solar can file a motion with the Siting Board to determine if the visual buffer proposed is in compliance with the mitigation measure.

### Construction Limitations

Green River Solar requested rehearing of Mitigation Measure 13 that relates to construction hours. Mitigation Measure 13 allows non-noise causing activities to occur between 7 a.m. through 10 p.m. Green River Solar requested that non-noise causing activities to be permitted to begin at 6:00 a.m.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds that Mitigation Measure should be amended to permit non-noise causing activities from 6 a.m. through 10 p.m. As opposed to other mitigation measures and issues dealt with in both the Siting Board's Order and the CUP where the Siting Board has significant experience and expertise, while the body governing the CUP does not, such as decommissioning electric generating facilities and public viewshed impacts of electric facilities, hours of construction is a general issue equally applicable to any CUP the governing body may adjudicate.

Green River Solar requested that the Siting Board delete Mitigation Measure 15 from the Final Order. Mitigation Measure 15 requires noise suppression if pile-driving occurs within 1,500 feet of a noise sensitive receptor. Green River Solar requested that its mitigation measure of only notifying neighboring residents of pile-driving be implemented instead. Green River Solar indicated that if required to use noise suppression during pile driving, it would incur \$4.5 million in additional construction costs.

Green River Solar also stated that the benefits of sound blankets are uncertain, and the terrain with existing vegetation will provide sound mitigation.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 15 shall not be deleted or modified. KRS 278.710(1)(b) directs the Siting Board to consider the noise level during construction as a factor for the grant of a construction certificate. Throughout the application, site assessment report (SAR), the discovery process, and at the Formal Hearing Green River Solar had opportunities to present evidence for the cost of various noise mitigation measures and its preference on which measure to use. Green River Solar never presented any such evidence and requested that it only be required to provide notice to residents in the vicinity. Instead, Green River Solar merely states that using sound blankets or fencing would cost \$4.5 million without any supporting information. The Siting Board did provide Green River Solar with an alternative to these sound mitigation measures if it feels sound blankets or fencing is too costly, using an alternate racking system of ground mounting.

### Setbacks

Green River Solar requested rehearing of Mitigation Measure 17, which requires a 450-foot setback from residences, churches, or schools for a central inverter. Green River Solar stated that one of the central inverters will have to be relocated if this Mitigation Measure is not modified. Green River Solar stated that this 450-foot setback is inconsistent with the Meade County Solar Ordinance and the CUP, which only requires a 250-foot setback for a central inverter. Green River Solar also argued that the approved

site plan requires vegetative buffers that will reduce the noise of the central inverter making the 200-foot difference immaterial.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds the 450-foot setback from residences, churches, or schools shall remain. As stated previously, the CUP and the certificate to construct the solar facility from the Siting Board can provide different requirements that Green River Solar must comply with in order to construct the solar facility. The Siting Board has consistently required the 450-foot setback in all orders granting a construction certificate regardless of the local county's setback requirements.

#### Restrictions on Future Transfers

Mitigation Measure 28 requires Green River Solar to request approval from the Siting Board before ownership of the project is transferred. Green River Solar argued this requirement will impact NextEra Energy Resources LLC's ability to finance the project through traditional finance and tax equity financing. Green River Solar argued Mitigation Measure 28 impairs the value of the construction certificate. Green River Solar stated the Siting Board has no authority for this condition and that the mitigation measure should be changed to only require notice to the Siting Board.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 28 shall not be modified. The approval of the construction certificate in the Final Order was conditioned upon full compliance with all the mitigation measures contained in the order. These mitigation measures also continue into the operation of the project. If the Siting Board did not require approval of a potential transfer of ownership, the construction certificate could be transferred to a

company without the requisite expertise or resources to comply with the mitigation measures. This would create a situation where a merchant solar generating facility is being constructed and operated outside of the statutory requirements that this Siting Board is empowered to impose.

### Decommissioning Obligations

Green River Solar requested a modification of Mitigation Measure 30. This mitigation measure requires Green River Solar to remove all facility components below-ground during decommissioning. Green River Solar stated that the CUP and the individual leases only require decommissioning up to three feet underground and the decommissioning requirement from the Siting Board should be the same.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 30 shall not be modified. The Siting Board has experience in decommissioning electric generating facilities that Meade County Planning and Zoning does not. The Siting Board also has experience in the Underground Facilities Damage Prevention Act relating to farmland that Meade County Planning and Zoning does not. No law presented to the Siting Board indicates that the existence of a CUP or leases, or issues being addressed in a local ordinance abrogate the statutory rights and responsibility of the Siting Board. The Siting Board will not adopt the same requirement from the CUP as it relates to decommissioning underground components.

Mitigation Measure 31 requires Green River Solar to file a bond with both Meade and Breckinridge counties Fiscal Court to ensure decommissioning. Green River Solar

requested Mitigation Measure 31 be amended to reflect the fact that there is already a decommissioning bond for the Meade County portion of the project.

Based upon the motion and the Final Order, and being otherwise sufficiently advised, the Siting Board finds Mitigation Measure 31 shall not be amended. There is nothing to be gained by amending the mitigation measure to reflect that one of the bonds has already been posted.

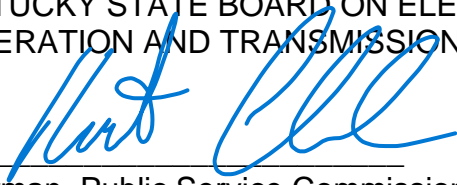
IT IS THEREFORE ORDERED that:

1. Green River Solar's motion for rehearing is granted in part and denied in part.
2. Green River Solar's motion for rehearing on Mitigation Measures 7, 9, 11, 15, 17, 28, 30, and 31 is denied.
3. Green River Solar's motion for rehearing on Mitigation Measure 13 is granted. Mitigation Measure 13 in Appendix A to the Final Order is stricken and shall be replaced with the following:

Green River Solar is required to limit the construction activity, process, and deliveries to the hours between 8 a.m. and 6 p.m. Monday through Saturday. Non-noise causing and non-construction activities can take place on the site between 6 a.m. and 10 p.m. Monday through Sunday, including field visits, arrival, departure, planning meetings, mowing, surveying, etc.



KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



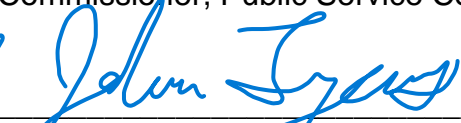
Chairman, Public Service Commission

Vice Chairman, Public Service Commission

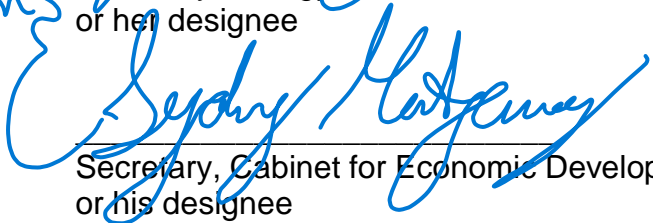


Commissioner, Public Service Commission

*6/21/22  
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

ENTERED  
AUG 12 2022  
rCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

\*Maurice Lucas  
Judge Executive

,