

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF SEBREE	)	
SOLAR, LLC FOR A CERTIFICATE TO	)	
CONSTRUCT AN APPROXIMATELY 250	)	
MEGAWATT MERCHANT SOLAR ELECTRIC	)	
GENERATING FACILITY AND AN	)	CASE NO.
APPROXIMATELY 4.5 MILE NONREGULATED	)	2021-00072
ELECTRIC TRANSMISSION LINE IN	)	
HENDERSON COUNTY, KENTUCKY AND	)	
WEBSTER COUNTY, KENTUCKY PURSUANT	)	
TO KRS 278.700 AND 807 KAR 5:110	)	

ORDER

On November 27, 2024, Sebree Solar, LLC (Sebree Solar) filed a motion for a declaratory order that Siting Board approval is not necessary for an anticipated transaction or, in the alternative, approval of the transaction. Sebree Solar stated the transaction was necessary to obtain construction financing for the project.

BACKGROUND

Sebree Solar filed an application to construct an approximately 250-megawatt (MW) merchant solar generating facility and an approximately 4.5 mile transmission line in Henderson County, Kentucky on August 13, 2021.<sup>1</sup> During the pendency of the case, Sebree Solar responded to two rounds of discovery,<sup>2</sup> a site visit was conducted, the Siting

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<sup>1</sup> Application (filed Aug. 13, 2021).

<sup>2</sup> Sebree Solar's Response to Siting Board Staff's First Request for Information (filed Oct. 15, 2021) and Sebree Solar's Response to Siting Board Staff's Second Request for Information (filed Nov. 12, 2021).

Board hired a consultant who issued a report about the project,<sup>3</sup> Sebree Solar responded to the consultant's report,<sup>4</sup> and a hearing was held December 21, 2021. The Siting Board evaluated the entire record before issuing the final Order on February 9, 2022. Sebree Solar filed several motions that requested the Siting Board reconsider Mitigation Measure 26 in the February 9, 2022 Order that restricts transfers of ownership of the project.<sup>5</sup> The Siting Board declined to remove Mitigation Measure 26 and continued to require Siting Board approval for transfers of the project.<sup>6</sup>

On November 27, 2024, Sebree Solar filed a motion and requested that the Siting Board issue a declaratory order in anticipation of a transfer that may need to occur in order to obtain funding during the construction of the project.<sup>7</sup> Sebree 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, Sebree requested Siting Board approval for the anticipated transfer.<sup>8</sup>

### DISCUSSION AND FINDINGS

Sebree Solar stated that, to obtain funding for the project, certain transfers of Sebree Solar will need to occur. Sebree Solar is a wholly owned subsidiary of NextEra

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<sup>3</sup> Wells Engineering Report (filed Nov. 24, 2021).

<sup>4</sup> Sebree Solar's Response to Consultant Report (filed Dec. 3, 2021).

<sup>5</sup> Sebree Solar's Motion for Rehearing (filed Mar. 1, 2022), Sebree Solar's Motion for Ruling on Pending Motion on Rehearing (filed July 15, 2022), and Sebree Solar's Final Request for Clarification (filed Aug. 31, 2022).

<sup>6</sup> Order (Ky. Siting Board Aug. 26, 2022) and Order (Ky. Siting Board Sept. 16, 2022).

<sup>7</sup> Sebree Solar's Application for Declaratory Order (filed Nov. 27, 2024).

<sup>8</sup> Sebree Solar's Application for Declaratory Order at 1.

Energy, Inc. (NextEra).<sup>9</sup> ESI Energy, LLC (ESI) is also a wholly owned subsidiary of NextEra.<sup>10</sup> ESI will create a wholly owned subsidiary (Holding Company). Sebree Solar would then be transferred into the Holding Company.<sup>11</sup> After Sebree Solar is transferred into the Holding Company, one of the Holding companies would be the Borrower.<sup>12</sup> The Borrower would enter the Construction Revolving Credit Facility with commercial lenders and pledge its ownership interests to the commercial lenders as collateral to the loans that would be borrowed under a group of commercial lenders.<sup>13</sup>

Sebree Solar stated that NextEra, or its affiliates, will continue to be responsible for the day-to-day operation and management of Sebree Solar.<sup>14</sup> Sebree Solar stated that NextEra will retain control of the operations and management, and compliance with the Mitigation Measures in the February 9, 2022 Order.<sup>15</sup> Sebree Solar stated that NextEra, or its affiliates, will be responsible for supplying the necessary staff to comply with all Siting Board requirements.<sup>16</sup>

Having considered the motion, the Siting Board finds that the motion for a declaratory Order should be denied. Based upon the motion and being otherwise sufficiently advised, the Siting Board finds that the transfer of Sebree Solar into a holding

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<sup>9</sup> Sebree Solar's Application for Declaratory Order at 2.

<sup>10</sup> Sebree Solar's Application for Declaratory Order at 2.

<sup>11</sup> Sebree Solar's Application for Declaratory Order at 3.

<sup>12</sup> Sebree Solar's Application for Declaratory Order at 3.

<sup>13</sup> Sebree Solar's Application for Declaratory Order at 3.

<sup>14</sup> Sebree Solar's Application for Declaratory Order at 3.

<sup>15</sup> Sebree Solar's Application for Declaratory Order at 4.

<sup>16</sup> Sebree Solar's Application for Declaratory Order at 4.

company for construction financing should be approved. NextEra was an original party to the proceedings and the Siting Board fully investigated its environment compliance history and its financial, technical, and managerial capacity to construct and operate the project. The Siting Board has taken notice from the November 9, 2023 Order that ESI has violated the Migratory Bird Treaty Act, but still has a good record of environmental compliance.<sup>17</sup>

The transaction is only for financing purposes. The commercial lenders that were not party to 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 Sebree Solar's compliance with mitigation measures today will continue to do so post transfer, the Siting Board finds that the request to obtain funding during the construction for the Project should be approved subject to the continuing compliance with the February 9, 2022 Order.

The Siting Board further finds that when the transfers of the project occur, Sebree Solar will file proof into the record. In addition, when the financing is complete, notice shall be filed listing the lienholder, the amount of indebtedness as well as the portion of indebtedness as it relates to this project. This information should be updated to reflect any financing changes.

IT IS THEREFORE ORDERED that:

1. Sebree Solar's application for declaratory Order is denied.

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<sup>17</sup> Order (Ky. Siting Board Nov. 9, 2023) at 3.

2. Sebree Solar's request to obtain a transfer for funding during construction for the Project is granted.

3. Sebree Solar shall provide proof to the Siting Board, in post-case correspondence referencing this case number, within 20 days of the transfer transaction closing.

4. Sebree Solar shall provide notice to the Siting Board, in post-case correspondence referencing this case number, of the ultimate lienholder, the total amount of indebtedness as well as the indebtedness related to this project, within 20 days of the financial transaction closing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission



Commissioner, Public Service Commission



Commissioner, Public Service Commission

by    
w/ permission



Secretary, Energy and Environment Cabinet,  
or her designee

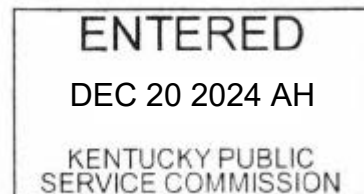


Secretary, Cabinet for Economic Development,  
or his designee

ATTEST:



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



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