

COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

|                                       |   |            |
|---------------------------------------|---|------------|
| ELECTRONIC APPLICATION OF BLUEBIRD    | ) |            |
| SOLAR LLC FOR A CERTIFICATE OF        | ) |            |
| CONSTRUCTION FOR AN APPROXIMATELY 100 | ) | CASE NO.   |
| MEGAWATT MERCHANT ELECTRIC SOLAR      | ) | 2021-00141 |
| GENERATING FACILITY IN HARRISON       | ) |            |
| COUNTY, KENTUCKY PURSUANT TO KRS      | ) |            |
| 278.700 AND 807 KAR 5:110             | ) |            |

ORDER

On September 13, 2024, Bluebird Solar LLC (Bluebird Solar) filed a motion requesting the Siting Board approve a transfer of ownership and control of the project.<sup>1</sup>

BACKGROUND

Bluebird Solar filed an application to construct an approximately 100-megawatt merchant solar generating facility in Harrison County, Kentucky, on February 4, 2022.<sup>2</sup> During the pendency of the case, Bluebird Solar responded to two rounds of discovery,<sup>3</sup> a site visit was conducted, the Siting Board hired a consultant who issued a report about

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<sup>1</sup> Bluebird Solar's Motion for Approval of Transfer of Ownership and Control (filed Sept. 13, 2024) (Bluebird Solar's September 13, 2024 Motion for Approval).

<sup>2</sup> Bluebird Solar filed the application on February 3, 2022, and it was found deficient. Bluebird Solar filed the application again on February 4, 2022, and the application was accepted for filing.

<sup>3</sup> Bluebird Solar's Response to Siting Board Staff's First Request for Information (filed Apr. 8, 2022) and Bluebird Solar's Response to Siting Board Staff's Second Request for Information (filed May 6, 2022).

the project,<sup>4</sup> Bluebird Solar responded to the consultant's report,<sup>5</sup> and a hearing was held June 2, 2022.

The Siting Board issued the final Order on August 3, 2022. In the final Order, the Siting Board conditioned its approval of the construction certificate on 34 mitigation measures that Bluebird Solar must comply with during the construction and operation of the project. As part of the underlying motion before the Siting Board, Bluebird Solar requests the Siting Board address Mitigation Measure 26, which states:

If any person shall acquire or transfer ownership of, or control, or the right to control the project, by sale of assets, transfer of stock, or otherwise, or abandon the same, Bluebird Solar or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Harrison County Fiscal Court. In any application requesting such abandonment, sale, or change of control, Bluebird Solar shall certify its compliance with KRS 278.710(1)(i).<sup>6</sup>

On October 14, 2022, Bluebird Solar filed a motion requesting the Siting Board issue a declaratory order in anticipation of a transfer of the project resulting from tax-equity financing. Bluebird Solar requested a declaratory order that the tax-equity transaction did not require Siting Board approval. In the alternative, Bluebird Solar requested Siting Board approval for the anticipated tax-equity transfer if the Siting Board found the transaction does require approval. On December 6, 2022, the Siting Board issued an Order denying Bluebird Solar's argument that the tax-equity transaction did not require Siting Board approval, but it granted approval for the tax-equity transaction.<sup>7</sup>

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<sup>4</sup> Wells Engineering Report (filed May 20, 2022).

<sup>5</sup> Bluebird Solar's Response to Consultant Report (filed May 27, 2022).

<sup>6</sup> Order (Ky. PSC Aug. 3, 2022), Appendix A at 6, mitigation measure 26.

<sup>7</sup> Order (Ky. PSC Dec. 6, 2022) at 10.

On September 13, 2024, Bluebird Solar filed its motion requesting the Siting Board approve a transfer of ownership and control of the project from a subsidiary of BayWa.r.e. USA LLC to MN8 DevCo 3 LLC (MN8), which is an indirectly owned subsidiary of MN8 Energy LLC. In addition, Bluebird Solar requested approval for a tax-equity structure under MN8.

On September 23, 2024, the Harrison County Fiscal Court served a response to Bluebird's Solar's September 13, 2024 Motion for Approval.<sup>8</sup> In the response, the Harrison County Fiscal Court raised several concerns including the lack of payment of occupational tax returns from Bluebird Solar, long-term cost and repair to Allen Pike, and the modification to the decommissioning agreement.<sup>9</sup> Harrison County Fiscal Court was not a party to this case; however, Harrison County is directly impacted by Bluebird Solar's project. On September 30, 2024, a joint status update signed by Bluebird Solar's attorney and counsel for Harrison County Fiscal Court was filed into the record.<sup>10</sup> The status update stated that on September 27, 2024, a meeting was held between the Harrison County officials and Bluebird Solar.<sup>11</sup> Ultimately, based on representations and commitments from Bluebird Solar, Harrison County Fiscal Court agreed to withdraw its objection to the proposed transaction.<sup>12</sup>

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<sup>8</sup> Harrison County Fiscal Court's Response Bluebird Solar's September 13, 2024 Motion for Approval (entered into the record on Sept. 26, 2024).

<sup>9</sup> Bluebird Solar's Response to Harrison County Fiscal Court's Response to Bluebird Solar's September 13, 2024 Motion for Approval (filed Sept. 25, 2024).

<sup>10</sup> Bluebird Solar and Harrison County Fiscal Court's Joint Status Update (filed on Sept. 30, 2024).

<sup>11</sup> Bluebird Solar and Harrison County Fiscal Court's Joint Status Update at 1.

<sup>12</sup> Bluebird Solar and Harrison County Fiscal Court's Joint Status Update at 1.

## PROPOSED TRANSACTION

According to Bluebird Solar's September 13, 2024 Motion for Approval, the proposed transaction would involve two steps. Initially, MN8 DevCo 3 LLC (MN8) will purchase 100 percent of the membership interests in Bluebird Solar from BayWa.r.e. Development Portfolio I LLC (BayWa.r.e.) in order to be the long-term owner and operator of the project.<sup>13</sup> Shortly thereafter, MN8 will complete a tax-equity transaction that is similar to the one proposed by Bluebird Solar in its October 13, 2022 motion that was granted on December 6, 2023.

Upon completing this second step, Bluebird Solar's September 13, 2024 Motion for Approval stated that MN8 will own, directly or indirectly, 100 percent of the nonpassive, controlling interests (called "Class B shares") in a subsidiary of MN8, which in turn will own 100 percent of Bluebird Solar.<sup>14</sup> In addition, the project's tax equity investors will own passive, non-controlling interests (or "Class A shares"). According to Bluebird Solar's September 13, 2024 Motion for Approval, the tax equity investors will have the benefit of standard protections offered to minority investors but will not be involved with the day-to-day management and operation of the project.<sup>15</sup>

Bluebird Solar indicated that the project has made significant construction progress, and it anticipates that the project will begin generation of electricity for sale in January 2025.<sup>16</sup> There will be no change of construction management as a result of

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<sup>13</sup> Bluebird Solar has not completed the tax equity transaction that was contemplated by its motion filed on October 14, 2022, and approved on December 6, 2023. Bluebird Solar is still directly owned by BayWa.r.e.

<sup>14</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 2.

<sup>15</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 2.

<sup>16</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 2.

MN8's acquisition of Bluebird Solar.<sup>17</sup> After the initial closing, an affiliate of BayWa r.e. will continue managing the construction of the Bluebird Solar project until the construction is completed through a contract.<sup>18</sup>

#### Arguments for the Approval of Transfer of Ownership

Bluebird Solar argued that Mitigation Measure 26 from the Siting Board's August 3, 2022, Order mandates that Bluebird Solar obtain approval from the Siting Board prior to transferring ownership or control of the project.<sup>19</sup> The condition requires Bluebird Solar to provide notice to the Harrison County Fiscal Court and certify environmental compliance with KRS 278.710 (1)(i), which relates to environmental compliance history.

Bluebird Solar stated that that it served a copy of the motion on the Harrison County Judge Executive and County Attorney.<sup>20</sup> Bluebird Solar also stated that it certified its lack of environmental violations as contemplated by KRS 278.706 in its application.<sup>21</sup> Bluebird Solar indicated that nothing has changed with respect to Bluebird Solar on this issue since the filing of the application.<sup>22</sup> In addition, Bluebird Solar submitted an affidavit of good environmental compliance as it relates to the post-closing corporate structure of Bluebird Solar under MN8 ownership.<sup>23</sup> Specifically, the affidavit indicates that MN8 nor

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<sup>17</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>18</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>19</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>20</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>21</sup> See Application, Section 11 "Record of Environmental Violations."

<sup>22</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>23</sup> Bluebird Solar's September 13, 2024 Motion for Approval, Exhibit 1.

any entity who will have a direct controlling interest in Bluebird Solar has violated any state or federal environmental laws or regulations.<sup>24</sup>

Bluebird Solar argued that MN8 has the financial, technical, and managerial capacity to construct and operate the project.<sup>25</sup> Bluebird Solar indicated that MN8 was originally founded inside of Goldman Sachs Asset Management in 2017, and has quickly grown to be one of the largest owners and operators of renewable energy projects in the United States.<sup>26</sup> Bluebird Solar noted that MN8's fleet is composed of over 875 projects spread across 28 states with an aggregate capacity of approximately 3.2 gigawatts (GW) of operating and under construction solar projects and approximately 270 megawatts (MW) or at least 1 gigawatt hour of operating battery storage projects.<sup>27</sup>

According to the motion, MN8 has hundreds of operating assets that vary in size including utility scale projects of over 100 MWs of Solar and Battery Energy Storage.<sup>28</sup> Bluebird Solar further argued that MN8's expertise and experience in operating assets similar to the Bluebird Solar project.<sup>29</sup> In addition, Bluebird Solar stated that MN8 brings significant financial capability and backing, as indicated through reported operating company revenue of over \$290 million in 2021 as reported in its S1 filing with the SEC

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<sup>24</sup> Bluebird Solar's September 13, 2024 Motion for Approval, Exhibit 2.

<sup>25</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

<sup>26</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

<sup>27</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

<sup>28</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

<sup>29</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

and maintains a continued level of financial outperformance as compared with others in the industry.<sup>30</sup>

### LEGAL STANDARD

KRS 278.710(3) 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, and the acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval.<sup>31</sup>

KRS 278.710(3)(a) requires that the acquirer have a good environmental compliance history. 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. This language is the same as the language in KRS 278.020(6) that gives the Commission jurisdiction to approve the transfer of a utility.

### DISCUSSION AND FINDINGS

Based on Bluebird Solar's September 13, 2024 Motion for Approval and being otherwise sufficiently advised, the Siting Board finds that the transfer of Bluebird Solar LLC to MN8 DevCo 3 LLC should be approved. Mitigation Measure 26 explicitly requires Bluebird Solar to provide notice to the Harrison County Fiscal Court and certify its compliance with KRS 278.710(1)(i), which relates to environmental compliance history. Bluebird Solar stated that it served a copy of this motion on the Harrison County Judge

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<sup>30</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

<sup>31</sup> KRS 278.710(3)(a)–(b).

Executive and County Attorney.<sup>32</sup> In addition, Bluebird Solar indicated that its representatives have discussed this proposed transaction with the Harrison County Judge Executive and the Fiscal Court.<sup>33</sup>

With respect to the second element identified above, Bluebird Solar certified its lack of environmental violations as contemplated by KRS 278.706 in its application.<sup>34</sup> Bluebird Solar indicated that nothing has changed with respect to Bluebird Solar on this issue since the filing of the application.<sup>35</sup> In addition, Bluebird Solar submitted an affidavit of good environmental compliance as it relates to the post-closing corporate structure of Bluebird Solar under MN8 ownership. Specifically, the affidavit indicates that MN8 nor any entity who will have a direct controlling interest in Bluebird Solar has violated any state or federal environmental laws or regulations.<sup>36</sup>

The Siting Board also finds that MN8 has the financial, technical, and managerial capacity to construct and operate the project pursuant to KRS 278.710(3)(b). Bluebird Solar indicated that MN8 was originally founded inside of Goldman Sachs Asset Management in 2017, and has quickly grown to be one of the largest owners and operators of renewable energy projects in the United States.<sup>37</sup> MN8's fleet is composed of over 875 projects spread across 28 states with an aggregate capacity of approximately 3.2 GW of operating and under construction solar projects and approximately 270 MW or

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<sup>32</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>33</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>34</sup> See Application, Section 11 "Record of Environmental Violations."

<sup>35</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 3.

<sup>36</sup> Bluebird Solar's September 13, 2024 Motion for Approval, Exhibit 2.

<sup>37</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

at least 1 gigawatt hour of operating battery storage projects.<sup>38</sup> MN8 has hundreds of operating assets that vary in size including utility scale projects of over 100 MWs of Solar and Battery Energy Storage.<sup>39</sup> Accordingly, the Siting Board notes that MN8 has expertise and experience in operating assets similar to the Bluebird Solar project. In addition, MN8 brings significant financial capability and backing, as indicated through reported operating company revenue of over \$290 million in 2021 as reported in its S1 filing with the SEC and maintains a continued level of financial outperformance as compared with others in the industry.<sup>40</sup>

The Siting Board agrees that it is beneficial for MN8 to contract with a BayWa r.e. subsidiary for continued construction management following the transaction. With the project scheduled to begin generation in January 2025, consistency in construction management and retaining historical knowledge will help promote a seamless transition to MN8. The contract will assist in ensuring that Bluebird Solar's project complies with the mitigation measures now and going forward until generation begins and the Energy and Environmental Cabinet (EEC) begins its enforcement of statutes and regulations.

The Siting Board also finds that MN8's proposed tax-equity structure is appropriate and should be approved. The proposed tax-equity structure is similar to the structure previously approved by the Siting Board, whereby tax-equity investors would receive passive, non-controlling Class A shares and an MN8 subsidiary would receive

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<sup>38</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

<sup>39</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

<sup>40</sup> Bluebird Solar's September 13, 2024 Motion for Approval at 4.

the non-passive, controlling Class B shares. As with the structure previously approved, this transaction is for financial purposes only.<sup>41</sup>

IT IS THEREFORE ORDERED that:

1. Bluebird Solar's request to transfer ownership and control of Bluebird Solar LLC to MN8 DevCo 3 LLC and to allow for tax equity investments is granted.
2. Within 14 days of the transaction closure, Bluebird Solar shall notify the Siting Board and reference this case in a post-case correspondence filing.
3. Nothing in this Order shall be construed as changing or alleviating the mitigation measures in the conditional grant of the construction certificate in this matter.

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<sup>41</sup> Order (Ky. PSC Dec. 2022) at 10.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

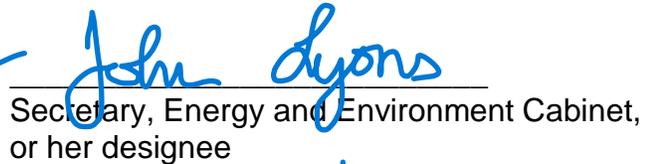


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Commissioner, Public Service Commission

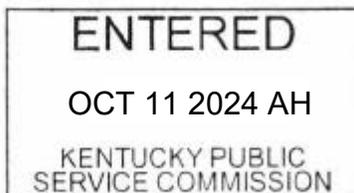
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Secretary, Energy and Environment Cabinet,  
or her designee



Secretary, Cabinet for Economic Development,  
or his designee



ATTEST:



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