

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF MARTIN)	
COUNTY SOLAR PROJECT LLC TO TRANSFER)	CASE NO.
A CERTIFICATE OF CONSTRUCTION)	2022-00362
PURSUANT TO KRS 278.710(3) AND 807 KAR)	
5:110)	

ORDER

On November 28, 2022, Martin County Solar Project, LLC (Martin County Solar) filed an application with the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) to transfer a portion of the Certificate of Construction that was conditionally granted in Case No. 2021-00029¹ to Martin County II Solar Project, LLC (Martin County Solar II).

There are no intervenors in this matter. The Siting Board established a procedural schedule for the orderly processing of the case.² Martin County Solar responded to one discovery request from Siting Board Staff.³ The matter is now ready for a decision.

BACKGROUND

¹ Case No. 2021-00029, *Electronic Application of Martin County Solar Project, LLC for a Certificate of Construction for an Approximately 200-Megawatt Merchant Electric Solar Generating Facility in Martin County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, (Ky. PSC Nov. 15, 2021).

² Procedural Schedule (Ky. PSC Dec. 20, 2022).

³ Martin County Solar Project's Responses to Siting Board Staff's First Request for Information (filed Feb. 20, 2023) (Martin County Solar's Response to Staff's First Request).

In Case No. 2021-00029, Martin County Solar filed an application to construct an approximately 200 megawatt (MW) solar generating facility on a 4,122 acre site in Martin County, Kentucky.⁴ During the pendency of the case, Martin County Solar responded to three rounds of discovery,⁵ a site visit was conducted, the Siting Board's consultant issued a report about the project,⁶ and a hearing was held.⁷ The Siting Board evaluated the entire record before it issued the November 15, 2021 final Order that granted a Certificate of Construction conditioned upon full compliance with the mitigation measures contained in the Order.⁸

On November 28, 2022, Martin County Solar filed an application with the Siting Board to bifurcate the construction certificate it was granted in the November 15, 2021 final Order. Martin County Solar proposed to divide the construction certificate into two projects. Martin County Solar would retain 111 MW. Martin County Solar II would develop an 89 MW project.⁹ Martin County Solar indicated that it, and the newly created Martin County Solar II, would be wholly owned subsidiaries of Savion, LLC (Savion). Savion is a wholly owned subsidiary of Shell USA.¹⁰

⁴ Case No. 2021-00029, Martin County Solar Project Application and Exhibits (filed May 19, 2021).

⁵ Case No. 2021-00029, Martin County Solar Response to Siting Board Staff's First Request for Information (filed July 19, 2021); Martin County Solar Response to Siting Board Staff's Second Request for Information (filed Aug. 16, 2021); Martin County Solar Response to Siting Board Staff's Post-Hearing Request for Information (filed Oct. 12, 2021).

⁶ Case No. 2021-00029, Letter Filing Report into the Record (filed Aug. 30, 2021).

⁷ Hearing Video Testimony of the September 21, 2021 Hearing.

⁸ Case No. 2021-00029, November 15, 2021 final Order at 33.

⁹ Application unnumbered at 1.

¹⁰ Martin County Solar's Response to Staff's First Request, Item 2.

Martin County Solar stated the division of the project into two is necessary because the development and construction phases will take several years because of the necessary permitting.¹¹ Separating the certificate of construction into two projects allows one project to start construction while the permitting process is undertaken for the other portion.¹² Martin County Solar would be constructed first and as it comes into service Martin County Solar II would begin construction.¹³ Martin County Solar stated the division will also create an opportunity to sell the Renewable Energy Credits (RECs) to different parties.¹⁴ Martin County Solar further stated the division of the project will allow each project's boundaries to reflect the individual landowners property boundaries.¹⁵

LEGAL STANDARD

KRS 278.710(3)(a) states that a company who has received a construction certificate for a merchant generating solar facility shall not transfer rights or obligations of the certificate without a determination by the Siting Board that the acquirer has a good environmental compliance history.¹⁶ 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 requirements imposed by the Siting Board.¹⁷

DISCUSSION AND FINDINGS

¹¹ Martin County Solar's Response to Staff's First Request, Item 4.

¹² Martin County Solar's Response to Staff's First Request, Item 4.

¹³ Martin County Solar's Response to Staff's First Request, Item 6.

¹⁴ Martin County Solar's Response to Staff's First Request, Item 4.

¹⁵ Martin County Solar's Response to Staff's First Request, Item 4.

¹⁶ KRS 278.710(3)(a).

¹⁷ KRS 278.710(3)(b).

Martin County Solar argued the transfer of approximately half of the construction certificate to Martin County Solar II meets the requirements of KRS 278.710(3)(a) because the parent company of both projects, Savion, has a good environmental compliance history. Martin County Solar stated that Savion provided its verified statement of environmental compliance in Case No. 2021-00029, and nothing has changed since the construction certificate was granted.¹⁸ The Siting Board finds Martin County Solar II and its parent company Savion have demonstrated a good environmental compliance history as required for the transfer of a construction certificate pursuant to KRS 278.710(3).

Martin County Solar argued that Martin County Solar II, and its parent company Savion, have the financial, technical, and managerial capacity to meet the obligations imposed by the Siting Board in the November 15, 2021 final Order as required in KRS 278.710(3)(b).¹⁹ Martin County Solar argued that Martin County Solar II will have the financial capacity to ensure compliance with the Siting Board's orders because Savion will retain control of the project and Savion was the entity in control of Martin County Solar when the project was granted a construction certificate.²⁰ Martin County Solar stated that the Industrial Revenue Bond (IRB) and Payment in Lieu of Taxes (PILOT) agreement reached with Martin County and the financial agreement with the Kentucky Economic Development Finance Authority will be divided in the same manner as the construction certificate to ensure financing for the projects.²¹

¹⁸ Application at 4.

¹⁹ Application at 4.

²⁰ Application at 5.

²¹ Application at 5 and Martin County Solar's Response to Staff's First Request, Item 8 and Item 9.

Martin County Solar argued that Martin County Solar II will have the technical capacity to comply with Siting Board orders because the project will continue to be developed by Savion.²² Martin County Solar stated that, because the Siting Board determined that Savion had the technical capacity to develop Martin County Solar, it continues to have the technical capacity to develop Martin County Solar II.²³

Martin County Solar argued that Martin County Solar II will have the managerial capacity to develop the project because Savion is one of the largest utility scale solar developers in the United States.²⁴ Martin County Solar further stated the Siting Board previously determined Savion possessed the managerial capacity to comply with all of its orders.²⁵

The Siting Board finds Martin County Solar II and its parent company Savion have the requisite financial, technical, and managerial capacity to comply with all of the mitigation measures in the November 15, 2021 final Order in Case No. 2021-00029 as required. During the pendency of Case No. 2021-00029, the Siting Board conducted a complete review of project which included the ability of Martin County Solar, and, by extension, its parents company Savion, to fully comply with any mitigation measures imposed. Martin County Solar has confirmed that its parent company, Savion, will remain the parent company of Martin County Solar II.²⁶ The Siting Board finds this satisfies the requirements of KRS 278.710(3)(b). Martin County Solar II, and Savion, should comply

²² Application at 6.

²³ Application at 6.

²⁴ Application at 6.

²⁵ Application at 6.

²⁶ Martin County Solar's Response to Staff's First Request, Item 1.

with the Mitigation Measures contained in Appendix A to this Order. A map of the two projects is attached hereto as Appendix B.

When a Certificate to Construct a solar facility is sought, the project and the developers are thoroughly evaluated to ensure that the project will comply with all statutory and regulatory requirements. After the review, the Construction Certificate is conditionally granted on the condition of full compliance with all mitigation measures, some of which continue into the operation of the project. The Siting Board not only reviews the history and abilities of the Person²⁷ seeking the Certificate, but also the entities that have an ownership interest in the applicant. Here, as in all cases filed with the Siting Board since 2020, Martin County Solar and the newly created Martin County Solar II have no resources or employees, and instead depends on the resources and employees of Savion. Without Savion, Martin County Solar and Martin County Solar II would not have the managerial, technical, or financial capability necessary to construct or operate the projects, nor to comply with the conditions required herein. As such, the Siting Board will require Martin County Solar and Martin County Solar II, and by extension Savion, to receive Siting Board approval of the transfer of ownership or control of Persons holding a Construction Certificate. Without knowledge of who is providing the resources and employees to Martin County Solar and Martin County Solar II there is no way to ensure the mitigation measures are adhered to throughout the life of the Project. This condition will apply to any transfer of ownership or control of the Person holding the Certificate to Construct, either Martin County Solar or Martin County Solar II.

IT IS THEREFORE ORDERED that:

²⁷ KRS 278.700(3) defines a person as any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity.

1. Martin County Solar's motion to bifurcate the construction certificate granted in Case No. 2021-00029, *Electronic Application of Martin County Solar Project, LLC for a Certificate of Construction for an Approximately 200-Megawatt Merchant Electric Solar Generating Facility in Martin County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110* is granted.

2. Martin County Solar II shall be responsible for all of the mitigation measures imposed upon Martin County Solar in the Siting Board's November 15, 2021 final Order and attached to this Order in Appendix A.

3. If any Person as defined by KRS 278.700(3) shall acquire or transfer ownership of, or control, or the right to control Martin County Solar or Martin County Solar II, by sale of assets, transfer of stock, or otherwise, or abandon the same, Martin County Solar and Martin County Solar II, or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Martin County Fiscal Court. In any application requesting such abandonment, sale, or change of control, Martin County Solar, Martin County Solar II, and any proposed entity with an ownership interest in either project shall certify its compliance with KRS 278.710(1)(i).

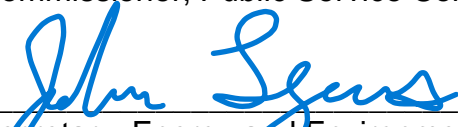
4. This case is closed and removed from the Siting Board's docket.

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

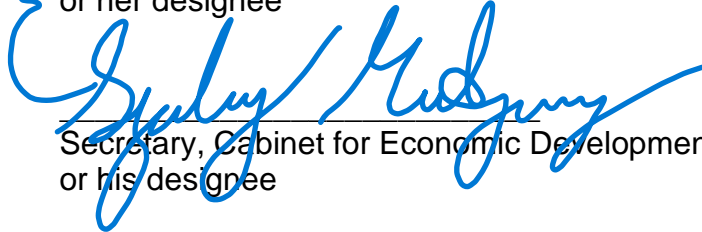

Chairman, Public Service Commission


Vice Chairman, Public Service Commission


Commissioner, Public Service Commission



Secretary, Energy and Environment Cabinet,
or her designee

by KAC
w/permission


Secretary, Cabinet for Economic Development,
or his designee

ENTERED
APR 12 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING IN
CASE NO. 2022-00362 DATED APR 12 2023

SEVEN PAGES TO FOLLOW

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION AND TRANSMISSION SITING IN CASE NO. 2021-00029 DATED NOV 15 2021

MITIGATION MEASURES AND CONDITIONS IMPOSED

The following mitigation measures and conditions are hereby imposed on Martin County Solar LLC (Martin County Solar) to ensure that the facilities proposed in this proceeding are constructed as ordered.

1. A final site layout plan shall be submitted to the Siting Board upon completion of the final site design. Deviations from the preliminary site layout provided in the Martin County Solar's responses to the Siting Board Staff's Post-Hearing Request for Information should be clearly indicated on the revised graphic. Those changes shall include, but are not limited to, location of solar panels, inverters, transformers, substation, operation and maintenance building or other Project facilities and infrastructure.

2. Any change in the Project boundaries from the information that formed this evaluation shall be submitted to the Siting Board for review.

3. The Siting Board will determine whether any deviation in the boundaries or site layout plan is likely to create a materially different pattern or magnitude of impacts. If not, no further action is required, but if yes, the application will support the Siting Board's effort to revise its assessment of impact and mitigation requirements.

4. A final, Project specific, construction schedule, including revised estimates of on-site workers and commuter vehicle traffic, shall be submitted to the Siting Board. Deviations from the preliminary construction schedule provided in this matter should be clearly indicated.

5. The Siting Board will determine whether any deviation to the construction schedule or workforce estimates is likely to create a materially different pattern or magnitude of impacts. If not, no further action is required, but if yes, Martin County Solar will support the Siting Board's effort to revise its assessment of impacts and mitigation requirements.

6. Martin County Solar or its contractor will control access to the site during construction and operation. All construction entrances will be gated and locked when not in use.

7. Martin County Solar's access control strategy shall also include appropriate signage to warn potential trespassers. Martin County Solar must ensure that all site entrances and boundaries have adequate signage, particularly in locations visible to the public, local residents, and business owners.

8. According to National Electrical Safety Code regulations, the security fence must be installed prior to any electrical installation work. The substation will have its own separate security fence and locked access installed.

9. Martin County Solar should coordinate with the Kentucky Department of Fish and Wildlife Resources to notify hunters that access at the site will no longer be allowed. Martin County Solar should also incorporate this message into its signage at site entrances and boundaries.

10. Martin County Solar shall not remove any existing vegetation around the site's perimeter unless the existing vegetation needs to be removed, except to the extent it must remove such vegetation for the construction and operation of Project components.

11. While it is not expected, if any components of the facility are visible to neighboring homes after construction, Martin County Solar shall assess the feasibility of a screening plan, including consulting with neighbors to determine whether there are adverse impacts to their viewshed. If a screening plan is considered, regardless of whether it is ultimately implemented, notice of such consideration shall be filed with the Siting Board.

12. Martin County Solar shall fix or pay for damage resulting from any vehicle transport to the project site in accordance with all applicable transportation permits obtained from state and local road authorities. For damage resulting from vehicle transport in accordance with all permits, those permits will be controlling.

13. Martin County Solar shall comply with all laws and regulations regarding the use of roadways.

14. Martin County Solar shall implement ride-sharing between construction workers when feasible, use appropriate traffic controls or allow flexible working hours outside of peak hours to minimize any potential delays during AM and PM peak hours.

15. Martin County Solar will consult with the Kentucky Transportation Cabinet (KYTC) regarding truck and other construction traffic and obtain necessary permits from the KYTC.

16. Martin County Solar will consult with the Martin County Road Department (MCRD) regarding truck and other construction traffic and obtain necessary permits from the MCRD.

17. Martin County Solar shall develop special plans and obtain necessary permits before bringing the very heavy loads, especially the substation transformer, onto state or county roads.

18. Martin County Solar shall comply with any road use agreement executed with MCRD. Such an agreement might consider special considerations for overweight loads, routes utilized by heavy trucks, road weight limits, and bridge weight limits.

19. Martin County Solar shall develop and implement a traffic management plan to minimize the impacts on traffic flow and keep traffic safe. Any such traffic management plan shall also identify any noise concerns during the construction phase and develop measures that would address those noise concerns.

20. Martin County Solar shall properly maintain construction equipment and follow best management practices related to fugitive dust throughout the construction process. Dust impacts shall be kept at a minimal level. The Siting Board expects the Applicant's compliance with 401 KAR 63:010.

21. Martin County Solar is required to limit the construction activity, process, and deliveries to the hours between 8 a.m. and 8 p.m. Monday through Saturday. Non-noise-causing and non-construction activities can take place on the site between 7 a.m. and 10 p.m., Monday through Sunday, including field visits, arrival, departure, planning meetings, mowing, surveying, etc.

22. Martin County Solar shall notify residents and businesses within 2,400 feet of the project boundary about the construction plan, the noise potential and mitigation plans one month prior to the start of construction.

23. Martin County Solar shall implement a Customer Resolution Program to address any complaints from surrounding landowners. Martin County Solar shall also submit annually a status report associated with its Customer Resolution Program, regardless of whether any complaints are received in any given year. The annual status report should provide, among other things, any individual complaints, how Martin County Solar addressed those complaints, and the ultimate resolution of those complaints identifying whether or not the resolution was to the complainant's satisfaction.

24. Martin County Solar shall place panels, inverters and substation equipment consistent with the distances to noise receptors indicated in Martin County Solar's noise and traffic study. Nevertheless, Martin County Solar shall not place solar panels closer than 590 feet from a residence, and shall not place an inverter or BESS closer than 1000 feet from a residence.

25. As applicable to individual landowner agreements, Martin County Solar, its successors, or assigns will abide by the specific land restoration commitments agreed to by individual property owners, as described in each landowner agreement.

26. Martin County Solar shall file a full and explicit decommissioning plan with the Siting Board. This plan shall commit Martin County Solar to removing all facility components, above-ground and below-ground, regardless of depth, from the project site and Martin County at the cessation of operations. If the facility components are properly disposed of at a permitted facility, they do not have to be physically removed from Martin County. Upon its completion, this plan shall be filed with the Siting Board or its successors. The decommissioning plan shall be completed at least one month prior to construction of the Project.

27. Martin County Solar shall be required to file a bond, equal to the amount necessary to effectuate the explicit decommissioning plan naming Martin County as a third-party (or secondary, in addition to individual landowners) beneficiary, in addition to the owners of the subject property insofar as the landowner agreements contain a decommissioning bonding requirement, so that Martin County will have the authority to draw upon the bond to effectuate the decommissioning plan. For land in which there is no bonding requirement otherwise, Martin County shall be the primary beneficiary of the decommissioning bond for that portion of the project. The bond(s) shall be filed with the Martin County Treasurer or with a bank, title company or financial institution reasonably acceptable to the county. That acceptance can be evidenced by a letter from the Judge Executive, the fiscal court, or the County Attorney. The bond shall be in place at the time of commencement of operation of the Project. The bond amount shall be reviewed every five years at Martin County Solar'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 Martin County Fiscal Court. Such certification shall be by letter and shall include the current amount of the anticipated bond and any change in the costs of removal or decommissioning.

28. 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, Martin County Solar or its successors or assigns shall provide explicit notice to the Siting Board and the Martin County Fiscal Court.

29. Martin County Solar or its assigns must provide notice to the Siting Board if during any two-year period, it replaces more than twenty percent of its facilities. Martin County Solar shall commit to removing the debris and replaced facility components from the project site and Martin County upon replacement. If the replaced facility components are properly disposed of at a permitted facility, they do not have to be physically removed from Martin County. However, if the replaced facility components remain in Martin County, Martin County Solar must inform the Siting Board of where the replaced facility are being disposing of.

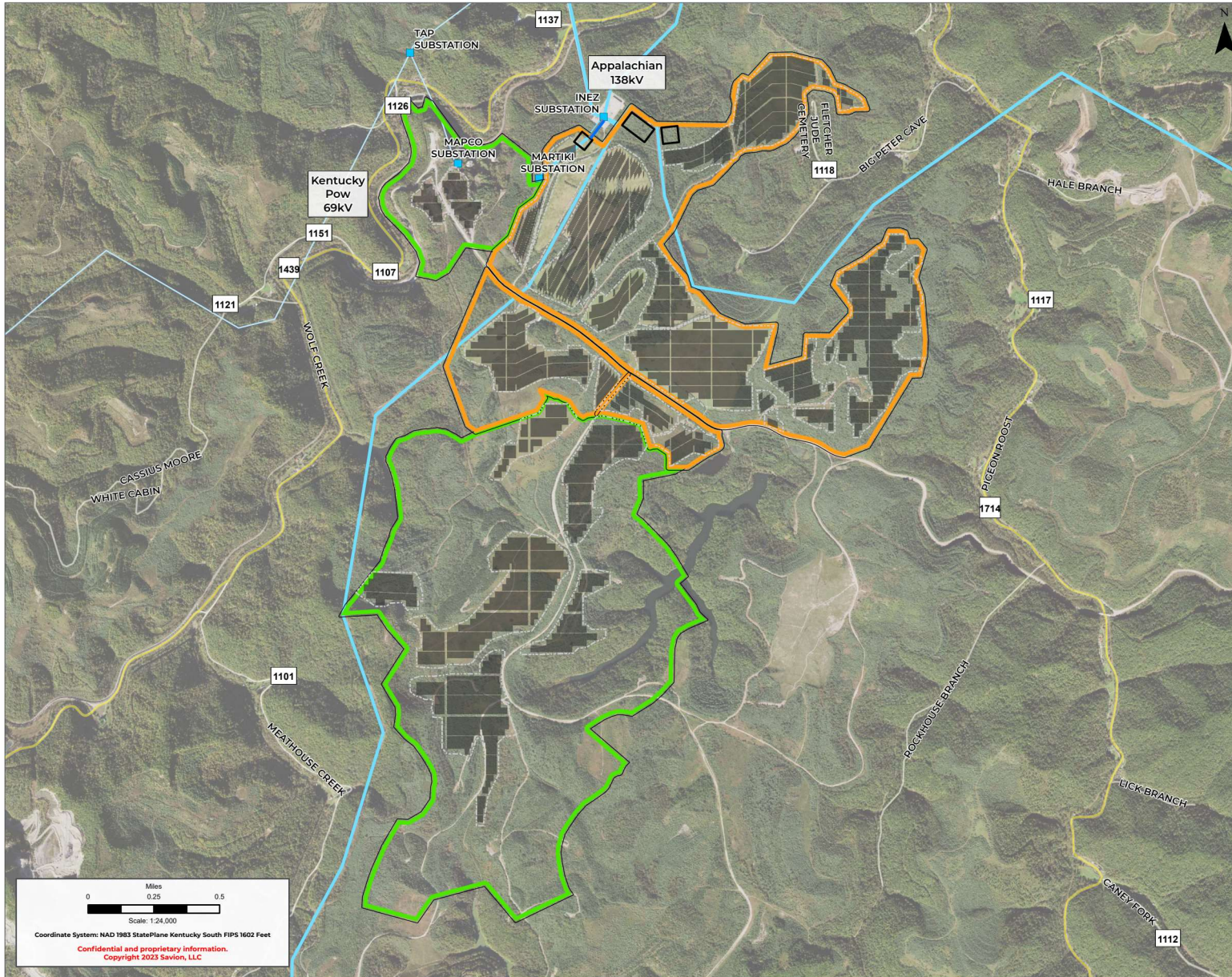
30. Any disposal or recycling of Project equipment, during operations or decommissioning of the Project, shall be done in accordance with applicable laws and requirements.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING IN
CASE NO. 2022-00362 DATED APR 12 2023

ONE PAGE TO FOLLOW

MARTIN COUNTY



- Martin County Solar Project, LLC
- Martin County II Solar Project, LLC

Transmission Lines

Voltage kV

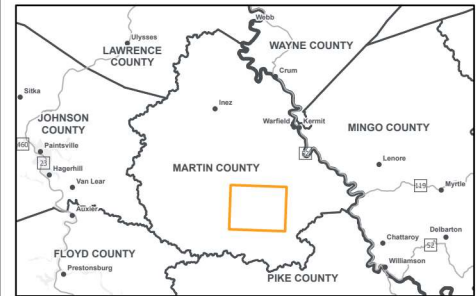
- 69
- 138
- Substations

Solar Array

- Panel
- Facilities
- Fence

Electrical

- Project Gen-Tie



PRELIMINARY DESIGN – NOT FOR CONSTRUCTION

PROJECT: MARTIN COUNTY	
DEVELOPER: SAVION, LLC	ENGINEER: JOSHUA CRUMPLER
DATE: 2/20/2023	SCALE: 1 INCH : 2,000 FEET
NOTES:	

SHEET:
LAYOUT



The following companies and organizations provided data that contributed to the production of this map - CoreLogic, Inc., Environmental Systems Research Institute (ESRI), ReGrid, Loveland Technologies, U.S. Department of Agriculture (USDA), U.S. Federal Aviation Administration (FAA), U.S. Geological Survey (USGS), WhiteStar Corporation, Ventyx, Inc., An ABB Company, Imagery © 2022 Hexagon and data partners.

*Gregory T Dutton
Frost Brown Todd, LLC
400 West Market Street
32nd Floor
Louisville, KENTUCKY 40202-3363

*Pierce T. Stevenson
Frost, Brown, Todd, LLC
250 West Main Street
Suite 2800
Lexington, KENTUCKY 40507