

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF WEIRS CREEK)	
SOLAR, LLC FOR A CERTIFICATE TO)	
CONSTRUCT AN APPROXIMATELY 150)	
MEGAWATT MERCHANT SOLAR ELECTRIC)	CASE NO.
GENERATING FACILITY IN WEBSTER COUNTY)	2024-00099
AND HOPKINS COUNTY, KENTUCKY)	
PURSUANT TO KRS 278.700 AND 807 KAR)	
5:110)	

ORDER

On April 23, 2026, Weirs Creek Solar, LLC (Weirs Creek Solar) filed a motion for a declaratory order that Siting Board approval is not necessary for anticipated financial transactions, or in the alternative, an order approving the transactions. Weirs Creek Solar requested the Siting Board address one of the mitigation measures contained in the December 3, 2024 Order (final Order) that restricted transfers of ownership of the project.¹

BACKGROUND

Weirs Creek Solar filed an application construct an approximately 150-megawatt merchant solar generating facility in Webster and Hopkins counties, Kentucky, on June 6, 2024. During the pendency of the case, Weirs Creek Solar responded to two rounds of discovery,² a site visit was conducted, the Siting Board hired a consultant who issued

¹ Order (Ky. Siting Board Dec. 3, 2024), Appendix A, mitigation measure 29.

² Weirs Creek Solar's Response to Siting Board Staff's First Request for Information (filed Aug. 5, 2024) and Weirs Creek Solar's Response to Siting Board Staff's Second Request for Information (filed Sept. 9, 2024).

a report about the project,³ Weirs Creek Solar responded to the consultant's report,⁴ and a hearing was held. The Siting Board evaluated the entire record before issuing the final Order on December 3, 2024.⁵ In the final Order, the Siting Board conditioned its approval of the construction certificate on forty-one mitigation measures that Weirs Creek Solar must comply with during the construction and operation of the project.⁶ As part of the underlying motion before the Siting Board, Weirs Creek Solar requested the Siting Board address Mitigation Measure 29, which stated:

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, Weirs Creek Solar or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Webster and Hopkins County Fiscal Court. In any application requesting such abandonment, sale, or change of control, Weirs Creek Solar shall certify its compliance with KRS 278.710(1)(i).⁷

Weirs Creek Solar requested the Siting Board issue a declaratory order in anticipation of transfer of the project. Weirs Creek Solar requested a declaratory order finding that the transactions do not require Siting Board approval. In the alternative, should the Siting Board find the transactions do require approval, Weirs Creek Solar requests Siting Board approval for the anticipated transfer.

³ Elliot Engineering Report (filed Sept. 23, 2024).

⁴ Weirs Creek Solar's Response to Consultant Report (filed Oct. 2, 2024).

⁵ Order (Ky. Siting Board Dec. 3, 2024).

⁶ Order (Ky. Siting Board Dec. 3, 2024), Appendix A.

⁷ Order (Ky. Siting Board Dec. 3, 2024), Appendix A at 6, mitigation measure 29.

DISCUSSION AND FINDINGS

Weirs Creek Solar is owned and operated by ESI Energy, LLC (ESI). ESI has owned Weirs Creek Solar throughout the application process. ESI is a direct subsidiary of NextEra Energy, Inc. (NextEra).⁸

Weirs Creek Solar is anticipating three possible transactions to finance the construction of the Weirs Creek Solar project: a development and construction loan to be funded by one or more commercial lenders (Construction Revolving Credit Facility or Option 1); a tax equity financing involving the sale of non-controlling stock (Tax Equity Financing or Option 2); or a back leverage financing to be funded by one or more commercial lenders (Back Leverage Credit Facility or Option 3).⁹

In Option 1, Construction Revolving Credit Facility, ESI would contribute Weirs Creek Solar to a wholly owned indirect subsidiary of ESI, which would also include other renewable energy projects owned by ESI, in order to secure a financing loan using the Weirs Creek Solar project as collateral.¹⁰ However, control of the project would remain with ESI, unless there was a default on the loan which may result in a transfer of ownership and control of the project.¹¹

In Option 2, Tax Equity Financing, ESI would contribute Weirs Creek Solar to one or more wholly owned subsidiaries, along with other renewable energy projects owned by ESI.¹² Investors would then purchase noncontrolling ownership interests in the

⁸ Motion for Declaratory Order at 2.

⁹ Motion for Declaratory Order at 2.

¹⁰ Motion for Declaratory Order at 2-3.

¹¹ Motion for Declaratory Order at 3.

¹² Motion for Declaratory Order at 3.

subsidiary.¹³ Weirs Creek Solar maintains that a wholly owned indirect subsidiary of NextEra will continue to own all of the controlling shares of the project and will continue to be responsible for the day-to-day operation and management of Weirs Creek Solar.¹⁴

In Option 3, Back Leverage Credit Facility, ESI would contribute Weirs Creek Solar to a subsidiary along with other renewables energy projects owned by ESI.¹⁵ ESI would then use membership interests of the Class A Member as collateral to secure a loan financing the project.¹⁶ Weirs Creek Solar maintains that the transaction would not result in a change to the ultimate operational and management control of the project.¹⁷ Only in the event of default would control and ownership of the project transfer to a non-NextEra controlled entity.¹⁸

Having considered the motion, the Siting Board finds that the application for a declaratory Order should be denied. This finding is consistent with prior Siting Board Orders¹⁹ and reflects a desire for the Siting Board to continue to have authority to review transfers in order to ensure compliance with the final Order, including any mitigation measures.

¹³ Motion for Declaratory Order at 3.

¹⁴ Motion for Declaratory Order at 3–4.

¹⁵ Motion for Declaratory Order at 4.

¹⁶ Motion for Declaratory Order at 4.

¹⁷ Motion for Declaratory Order at 4.

¹⁸ Motion for Declaratory Order at 4.

¹⁹ Case No. 2020-00387, *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* (Ky. Siting Board Dec. 17, 2024), Order.

Based upon the motion and being otherwise sufficiently advised, the Siting Board finds that the transfer of Weirs Creek Solar into holding companies for anticipated transactions concerning Construction Revolving Credit Facility, Tax Equity Financing, and Back Leverage Credit Facility should be approved. NextEra was the original entity with a controlling interest in Weirs Creek Solar, and its information was reviewed in the underlying proceedings. 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 December 3, 2024 Order that ESI has violated the Migratory Bird Treaty Act, but otherwise has a good record of environmental compliance.²⁰

The Siting Board notes that these transactions are 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 Weirs Creek Solar 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 December 3, 2024 Order. It should be noted that the approval of these anticipated transactions in no way alleviates ESI or NextEra Energy of their obligations to comply with all mitigations measures from the December 3, 2024 Order.

²⁰ Order (Ky. Siting Board Dec. 3, 2024) at 20–21.

The Siting Board further finds that when each of the transfers of the project occur, Weirs Creek Solar should file notice 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. Weirs Creek Solar's request for a declaratory Order is denied.
2. Weirs Creek Solar's request for transfers between Weirs Creek Solar and affiliates to obtain funding for the project through three separate financings is granted.
3. Weirs Creek Solar shall provide proof to the Siting Board, in post-case correspondence referencing this case number, within 20 days of each of the financial transactions closing.
4. Weirs Creek 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 financial transactions closing.

Entered on this 22nd day of June, 2026.

KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING



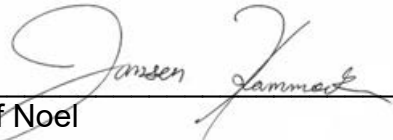
Angie Hatton
Chair, Public Service Commission



John Lyons
Secretary, Energy and Environment
Cabinet, or his designee




Mary Pat Regan
Vice Chair, Public Service Commission



Jeff Noel
Secretary, Cabinet for Economic
Development, or his designee



Andrew W. Wood
Commissioner, Public Service Commission

 - by AH w/
permission


Jack Whitfield Jr., ad hoc member



Barry L. Mayfield
Commissioner, Public Service Commission

Herb McKee, ad hoc member

ATTEST:



Linda C. Bridwell, PE
Executive Director
Public Service Commission
on behalf of the Kentucky State Board on
Electric Generation and Transmission Siting

Service List for 2024-00099

* L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

* Heather Temple
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

* Jason Andrews
NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, FL 33408

* Jack Whitfield, Jr.
Judge Executive
Hopkins County Fiscal Court
56 North Main Street
Madisonville, KY 42431

* Thomas P. Glover
Resident Representative
200 Stewart St.
Providence, KY 42450