

SEP 26 2024

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON ELECTRICAL
GENERATION AND TRANSMISSION SITING
Case NO 2021-00141

In the Matter of:

ELECTRONIC APPLICATION OF
BLUEBIRD SOLAR LLC FOR A
CERTIFICATE OF CONSTRUCTION FOR
AN APPROXIMATELY 100 MEGAWATT
MERCHANT ELECTRIC SOLAR
GENERATING FACILITY IN HARRISON
COUNTY, KENTUCKY PURSUANT TO
KRS 278.700 AND KAR 5:110

RESPONSE OF HARRISON FISCAL COURT TO BLUEBIRD SOLAR LLC'S MOTION FOR
APPROVAL OF TRANSFER OF OWNERSHIP AND CONTROL

Comes now the Harrison Fiscal Court, by and through counsel, and makes the following as its response to the motion to approve transfer of ownership interest in the solar project located in Harrison Co. Kentucky from Bluebird Solar LLC to MN8 DevCo 3, LLC.

The sale of the project from Bluebird Solar to MN8 DevCo 3 LLC is of great concern to the Harrison Fiscal Court due to the challenges that have been created during the course of construction of the project beginning March of 2024. With the filing of this motion to transfer, the Fiscal Court now faces a situation where it wonders if Bluebird is making an attempt to avoid outstanding obligations owed to the Fiscal Court for unpaid occupational taxes for the thousands of work hours that have occurred on the site and whether Bluebird is attempting to duck out on the extensive damages that have occurred to Allen Pike as a result of the construction equipment accessing the job site.

PAYMENT OF OCCUPATIONAL TAXES

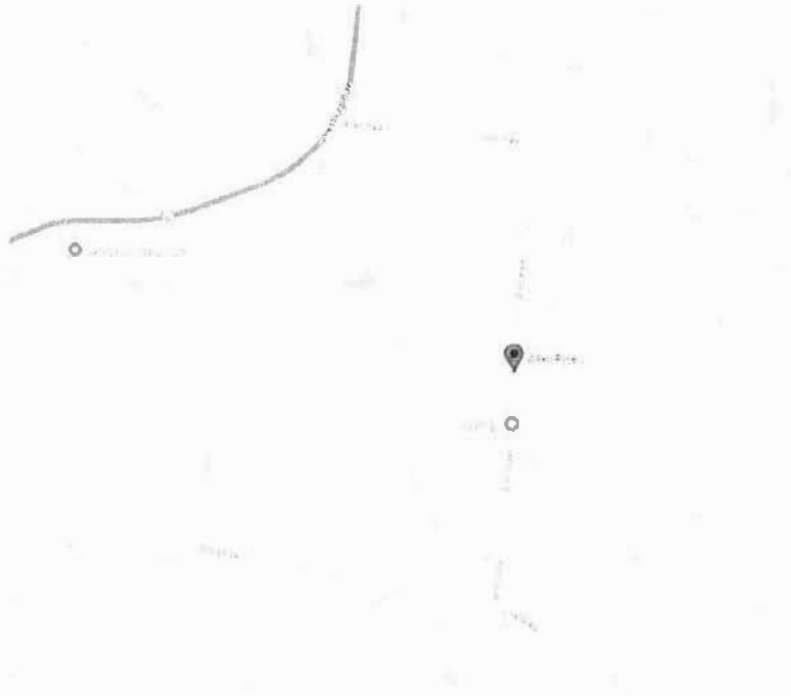
At present, the Fiscal Court is unable to determine how many dollars have been paid to the individuals employed by the numerous construction companies on site at the solar project. This is due to no returns being filed with the Tax Administrator for the work done on the project. Understanding the complex nature of this project, it is not unusual for there to be a delay in making arrangements for the payment of tax obligations. However, the lack of any payments for any of the employees working at the project suggests that this is a systemic issue, and that Bluebird may be attempting to “duck out” of its obligations to the Fiscal Court by executing this sale.

KRS 278.710(3)(b)(2) provides. “The acquirer has the financial, technical, and managerial capacity to meet the obligations imposed by the terms of the approval and have the ability to contract to meet these obligations.” The motion before the Siting board provides no proof of the ability of the purchaser to meet the financial obligations of this project. Due to the lack of payments from Bluebird to the Harrison Fiscal Court the county is the least bit concerned that the subsequent purchaser is not going to engage in the same behavior.

It is the position of the Harrison Fiscal Court that until Occupational Tax Returns have been filed and payment made to bring the accounts current, that the transfer of this property to MN8 DevCo 3, LLC should not be permitted. At such time should the tax issue be resolved the Fiscal Court requests this board scrutinize that the ability of MN8 DevCo 3, L.L.C, to comply with KRS 278.710(3)(b)(2). The citizens of Harrison County are not in a position to provide the solar industry with a no interest loan.

DAMAGE TO ALLEN PIKE

The Fiscal Court is also forced to deal with extensive and ongoing damage to Allen Pike, the primary access road to the Bluebird construction site. See the insert of Allen Pike below:



This was Harrison County's first foray into solar electrical generation and until construction began on this project the Court was blissfully unaware of the damage that would occur to Allen Pike, a Harrison County maintained road, due to the heavy equipment being delivered to the site. Since early spring the residents of Allen Pike have had real and legitimate complaints about collapsing blacktop, collapsing shoulders, and heavy traffic. To the credit of Bluebird, the road has been stabilized with temporary repairs. This is much appreciated but it does not address the long-term damage and the long-term repairs that will be needed once the facility is generating electricity. It would be the request of the Harrison Fiscal Court that this board address the repair or replacement of the damage to Allen Pike, and that it be made clear in the agreement to transfer ownership, that the responsibility for the repairs, to the satisfaction of the Harrison Co. Road

Supervisor, be a term of approval. These are costs that are not appropriately borne by the Harrison Fiscal Court—especially when the entity causing the damage has failed to meet its tax obligations.

MODIFICATION TO DECOMMISSIONING AGREEMENT

As part of the transfer of ownership the Harrison Fiscal Court believes it is appropriate for the purchaser to return to the Harrison Planning commission and the Harrison Fiscal court for modification of the Decommissioning Agreement. In 2023 the county evaluated the Decommissioning Plan of Bluebird and entered into an agreement with Bluebird. In effect the sale of the project to MN8 DevCo 3 LLC creates a situation where the county is now in a relationship regarding the decommissioning bond where it knows nothing about the entity posting the bond. The Harrison Co Solar Ordinance (Article 23 Paragraph 6) provides that the Decommissioning plan may be revised as appropriate based on the revised cost estimate. With the change of ownership, change in project status, and it is logical to expect that the bond will need to be modified and a review prior to the 5th year is appropriate.

CONCLUSION

Since 2021 , the Harrison Fiscal Court has attempted to balance the numerous concerns of its citizens with the potential benefits of a solar generation project. Now that construction has begun Bluebird appears to have forgotten the responsibilities it has to the Harrison Fiscal Court and the residents of Allen Pike specifically. For all intents and purposes, Bluebird must be held accountable for what has occurred to date at the project site and the Harrison Fiscal Court seeks the assistance of the Public Service Commission in making that happen. Until these issues are addressed, the transfer of the ownership interest to NM8 DevCo 3, LLC is not appropriate and permission to do so should not be granted by this Board.

Respectfully Submitted,

OFFICE OF HARRISON CO ATTORNEY



Brian T. Canupp
110 S. Main Street
Cynthiana, KY 41031
859-988-9658
Brian@canupplaw.com

CERTIFICATE OF SERVICE

I, Brian t. Canup do here by certify that a true and correct copy of the above response was delivered upon the following on this the 23rd day of September 2024 via US Mail postage prepaid:

Hon. M. Todd Osterloh
Sturgill Turner Barker and Moloney, PLLC
333 West Vine St Suite 1500
Lexington, KY 40507

Kentucky Public Service Commission
211 Sower Blvd
Frankfort, KY 40601



Brian T. Canupp