

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

In the Matter of:

ELECTRONIC APPLICATION OF DOGWOOD	)	
CORNERS LLC FOR CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY 125	)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR	)	2023-00246
GENERATING FACILITY IN CHRISTIAN	)	
COUNTY, KENTUCKY PURSUANT TO KRS	)	
278.700 AND 807 KAR 5:110	)	

ORDER

On September 18, 2023, the Christian County Fiscal Court (Fiscal Court) filed a motion requesting full intervention. As a basis for its motion, the Fiscal Court stated that it has a special interest in these proceedings because it has enacted an ordinance that will apply to Dogwood Corners LLC (Dogwood Corners) merchant solar facility.

LEGAL STANDARD

The regulatory standard for permissive intervention, set forth in 807 KAR 5:110, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(2), requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding, or (2) that the participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

DISCUSSION AND FINDINGS

The Fiscal Court has enacted an ordinance that establishes setbacks for the proposed project. The Fiscal Court stated it will represent the residents of Christian County in the proceedings and without its intervention these interests will not be

represented.<sup>1</sup> Pursuant to KRS 278.710(1)(e) the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) must consider whether or not the project is in compliance with local planning and zoning ordinances that existed at the time the application was filed when making the decision to grant or deny a construction certificate. The Fiscal Court also argued it has a special interest in ensuring the Siting Board receives all of the information regarding the local ordinance.

Dogwood Corners filed a response to the Fiscal Court's request for intervention.<sup>2</sup> Dogwood Corners argued the Fiscal Court does not have a special interest because the Fiscal Court Ordinance speaks for itself.<sup>3</sup> Dogwood Corners also argued that the Siting Board does not have the authority to decide whether the ordinance is valid, only whether the project is in compliance with the local ordinance, making the Fiscal Court's intervention unnecessary.<sup>4</sup> Dogwood Corners also argued there is a potential conflict of interest between the Fiscal Court's intervention and the Christian County Planning and Zoning Chairman serving as a member of the Siting Board.<sup>5</sup> Dogwood Corners argued this creates due process concerns because the Planning and Zoning Chairman serving on the Siting Board and the Fiscal Court as an intervening party could create a biased decision maker.<sup>6</sup>

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<sup>1</sup> Motion to Intervene (filed Sept. 18, 2023) at 2.

<sup>2</sup> Response to Motion to Intervene (filed Sept. 25, 2023).

<sup>3</sup> Response to Motion to Intervene at 2.

<sup>4</sup> Response to Motion to Intervene at 2.

<sup>5</sup> Response to Motion to Intervene at 3–4. *See also* KRS 278.702(1)(d)(1)(a) for the appointment of the Christian County Planning and Zoning Chairman

<sup>6</sup> Response to Motion to Intervene at 3–4.

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Siting Board finds that the Fiscal Court has demonstrated that it has a special interest in the proceeding over which the Siting Board has jurisdiction or that the Fiscal Court's participation in the proceeding will assist the Siting Board in reaching its decision and would not unduly interrupt the proceeding. The Siting Board is not persuaded by Dogwood Corners arguments that the Fiscal Court does not have a special interest in the proceedings. The Fiscal Court is the governing body for Christian County, and therefore represents the interests of the Christian County citizens. This alone creates a special interest in the proceedings for the Fiscal Court. Additionally, the Siting Board finds any conflict-of-interest issues can be resolved internally with the Siting Board. Finally, the Siting Board continues to caution Dogwood Corners regarding KRS 278.710(1)(e) and statements alleging the ordinance is not valid without any supporting decisions or opinions from the Christian County Circuit Court.<sup>7</sup>

Based on the above, the Siting Board finds that the Fiscal Court should be granted full rights of a party in this proceeding. The Siting Board directs the Fiscal Court to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>8</sup> regarding filings with the Siting Board.

IT IS HEREBY ORDERED that:

1. The Fiscal Court's motion to intervene is granted.

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<sup>7</sup> See Response to Motion to Intervene at 1–2 and Order (Ky. Siting Board Sept. 20, 2023).

<sup>8</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

2. The Fiscal Court is entitled to the full rights of a party and shall be served with the Siting Board's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. The Fiscal Court shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.

4. The Fiscal Court shall adhere to the procedural schedule set forth in the Siting Board's September 27, 2023 Order and as amended by subsequent Orders.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, the Fiscal Court shall file a written statement with the Siting Board that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

*Hurt Cole*

Chairman, Public Service Commission

*Cynthia Hadden*

Vice Chairman, Public Service Commission

*Mary Pat Regen*

Commissioner, Public Service Commission

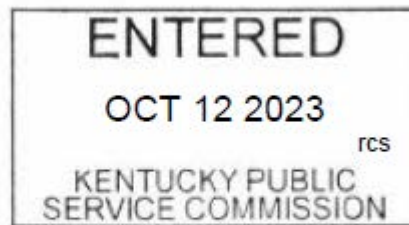
*John Lyons*

Secretary, Energy and Environment Cabinet,  
or her designee

*Sydney Montgomery*

Secretary, Cabinet for Economic Development,  
or his designee

*by KAC  
w/permission*



ATTEST:

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and Transmission Siting

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