

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 5, 2023, Dogwood Corners, LLC (Dogwood Corners) filed an application with the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) seeking a Construction Certificate to construct an approximately 125-megawatt ground-mounted solar photovoltaic electric generating facility (Project) comprising approximately 670 acres of land in Christian County, Kentucky. On September 6, 2023, an Order was issued by the Siting Board rejecting the application as deficient for failure to comply with KRS 278.706(2)(d).¹ On September 6, 2023, Dogwood Corners responded, denying that the application was deficient; however, Dogwood Corners did attach Christian County Fiscal Court Ordinance 22-004.² On September 7, 2023, the Siting Board issued another deficiency letter rejecting the application pursuant

¹ “A statement certifying that the proposed plant will be in compliance with all local ordinances and regulations concerning noise control and with any local planning and zoning ordinances. The statement shall also disclose setback requirements established by the planning and zoning commission as provided under KRS 278.704(3);”

² Dogwood Corners’ Response to the Deficiency Letter (filed Sept. 6, 2023), Attachment.

to KRS 278.706(2)(d). On September 11, 2023, Dogwood Corners responded to the second deficiency letter asking the Siting Board to reconsider its decision that the application was deficient.³ Dogwood Corners argued that the Christian County ordinance was not a local planning and zoning ordinance, and as such, Dogwood Corners' statement that it is in compliance with all local planning and zoning ordinances is accurate.⁴ The Siting Board issued an order on September 20, 2023, accepting the filing of the application as of September 11, 2023.

There are intervenors in this matter. On October 12, 2023, the Siting Board granted intervention to Christian County Fiscal Court.⁵ Pursuant to a procedural schedule established on September 27, 2023, Dogwood Corners responded to two rounds of discovery. On October 16, 2023, Judge Executive Jerry Gilliam filed a request for a local public hearing.⁶ A site visit was held on November 1, 2023. On December 4, 2023, the Siting Board issued an Order setting a local public hearing in this matter for January 29, 2024. Siting Board consultant, BBC Research and Consulting (BBC), filed its report (BBC Report) on January 12, 2024. Dogwood Corners submitted its response to the BBC Report on January 19, 2024. Christian County Fiscal Court also responded to the BBC Report on January 24, 2024.⁷ On February 1, 2024, Christian County Fiscal Court filed

³ Dogwood Corners' Response to Second Deficiency Letter (filed Sept. 11, 2023) at 1–3.

⁴ Dogwood Corners' Response to Second Deficiency Letter at 3.

⁵ On Sept. 18, 2023, Christian County Fiscal Court filed a Motion to Intervene. On Sept. 25, 2023, Dogwood Corners filed a Response to the Motion to Intervene.

⁶ Pursuant to KRS 278.712(1), the Siting Board must have a local public hearing when a request is made by a judge executive in the county of the proposed project.

⁷ A Christian County's response to the consultant reports were not timely per the procedural schedule responses to the consultant reports were due on January 19, 2024.

a witness list for the hearing and on February 5, 2024, Dogwood Corners filed an objection to the witness list because it was untimely.⁸ Dogwood Corners also argued that witnesses should not be allowed to testify on conclusions of law.⁹ On February 6, 2024, Christian County Fiscal Court filed a motion for the Siting Board to accept the late filing of the witness list. A formal hearing was held on February 7, 2024. From the bench, the Chairman of the Siting Board overruled Dogwood Corners' motion objecting to the witness list.¹⁰ Dogwood Corners filed its responses to post-hearing requests for information on February 16, 2024. Both Christian County Fiscal Court and Dogwood Corners filed post-hearing briefs in support of their respective positions on February 23, 2024. The matter now stands submitted for a decision.

LEGAL STANDARD

The filing requirements and standard of review for requests to construct a merchant generating facility are set forth in KRS 278.700–.718. KRS 278.704(1) requires that an application be filed with and approved by the Siting Board before the construction of a merchant electric generating facility can commence. KRS 278.706 requires that the application include evidence of public notice and compliance with local planning and zoning ordinances.

KRS 278.708(2) requires Dogwood Corners to prepare a site assessment report (SAR) that includes (1) a detailed description of the proposed site; (2) an evaluation of the compatibility of the facility with scenic surroundings; (3) potential changes in property

⁸ Dogwood Corners' Objection to Intervenor's Witness List (filed Feb. 5, 2024) at 1.

⁹ Dogwood Corners' Objection to Intervenor's Witness List at 2.

¹⁰ The ruling was memorialized in the post-hearing schedule Order issued by the Siting Board on Feb. 9, 2024.

values and land use resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the site; (4) evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; (5) the impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility; and (6) any mitigating measures to be suggested by Dogwood Corners to minimize or avoid adverse effects identified in the SAR.

KRS 278.710(1) delineates the criteria on which the Siting Board will grant or deny the certificate, which include (1) impact on scenic surroundings, property values, and surrounding roads; (2) anticipated noise levels during construction and operation of the facility; (3) economic impact on the region and state; (4) whether the proposed facility meets all local planning and zoning requirements existing on the date the application was filed; (5) impact of the additional load on the reliability of jurisdictional utilities; (6) setback requirements; (7) efficacy of mitigation measures proposed by Dogwood Corners; and (8) whether the Applicant has a good environmental compliance history.

PROPOSED FACILITY

The Project will be located on 670 acres in Hopkinsville, Christian County, Kentucky. The Project will contain approximately 273,052 photovoltaic solar panels, associated ground-mounted racking, 35 inverters, and a Battery Energy Storage System (BESS), substation transformer.¹¹ The Project will interconnect with an approximately

¹¹ Application, Attachment I at 4.

500-foot nonregulated transmission line that will connect with a Tennessee Valley Authority (TVA) switchyard.¹²

DISCUSSION AND FINDINGS

I. KRS 278.708: SAR Filing Requirements and Mitigation Measures

Mitigation Measures Proposed by Dogwood Corners and Siting Board Consultant

As required by KRS 278.708(4), Dogwood Corners proposed various mitigation measures consistent with the statutes regarding traffic, noise, roadway preservation, permitting, setbacks, public safety, scenic preservation, and decommissioning.¹³

In accordance with KRS 278.708(5), BBC recommended mitigation measures in the following areas: site development planning; compatibility with scenic surroundings, noise levels during construction and operation, road traffic and degradation; economic¹⁴ impact, decommissioning; public outreach; and complaint resolution programs.¹⁵ Dogwood Corners generally agreed with the mitigation measures recommended by the BBC Report, but stated it is not necessary to have both time limitations for pile driving and additional noise suppression methods.¹⁶ Dogwood Corners did not agree with the implementation of ride sharing as part of traffic management nor the recommendation that Dogwood Corners would repair any damage to public road by fixing or compensating the transportation authorities for any damage or degradation to the existing roads that it

¹² Application, Dogwood Corners Pleading at 2.

¹³ Application, SAR at 8–11.

¹⁴ Christian County Reply to Dogwood Corners Response to Consultant Report at unnumbered page 1.

¹⁵ BBC Report (filed Jan. 12, 2024) at B8–B11.

¹⁶ Applicant's Response to the Consultant's Report (filed on Jan. 19, 2024) at unnumbered page 5.

causes or materially contributes.¹⁷ The intervenor's argued that Christian County Circuit Court dismissed Civil Action No. 22-CI-01010 because Ordinance 22-004 obviated the controversy cited as the basis for Dogwood Corners' declaratory action.¹⁸

The Siting Board has reviewed the mitigation measures proposed by Dogwood Corners and in the BBC Report and finds that in addition to those initially proposed by Dogwood Corners, the mitigation measures set forth in Appendix A to this Order and discussed throughout this Order are appropriate and reasonable because they achieve the statutory purpose of mitigating the adverse effects identified in the SAR and the BBC Report in accordance with KRS 278.708.

Detailed Site Description

KRS 278.708(3)(a)(1–6) requires that the detailed site description in the SAR include a description of (1) surrounding land uses for residential, commercial, agricultural, and recreational purposes; (2) the legal boundaries of the proposed site; (3) proposed access control to the site; (4) the location of facility buildings, transmission lines, and other structures; (5) location and use of access ways, internal roads, and railways; and (6) existing or proposed utilities to service the facility.

Dogwood Corners submitted the required SAR with its application.¹⁹ The SAR contained a preliminary site plan,²⁰ which was updated to reflect changes in the location

¹⁷ Applicant's Response to the Consultant's Report (filed on Jan. 19, 2024) at unnumbered page 6.

¹⁸ Applicant's Response to the Consultant's Report (filed on January 19, 2024) at unnumbered page 5.

¹⁹ Application, SAR.

²⁰ Application, SAR, Appendix B.

of electric generation facilities.²¹ The proposed site plan included project parcels, existing roadways, existing transmission line, proposed fence line, proposed access roads, proposed access points, proposed photovoltaic array, proposed vegetative screening, wetlands, streams, proposed inverter locations, proposed substation location, and proposed BESS location.²² There are no railways present at the proposed site.²³ Dogwood Corners anticipates approximately 124 acres of vegetation will be cleared for construction.²⁴ Dogwood Corners anticipates that two structures will be demolished during construction. Dogwood Corners does anticipate that two structures will be demolished during construction. Prior to any planned demolition, owners of the parcels of land will be notified.²⁵ The legal boundaries of the proposed site were described in the application and in maps of tax parcels.²⁶

A fence meeting the National Electrical Safety Code (NESC) requirements, minimum seven feet, will enclose the solar panels and associated infrastructure.²⁷ A separate fence will enclose the substation and BESS facility.²⁸ In addition, Dogwood

²¹ Dogwood Corners Solar's Responses to Siting Board Staff's Second Request for Information (Staff's Second Request) (filed Dec. 22, 2023), Item 1.

²² Application, SAR, Appendix B, and Dogwood Corners Solar's Responses to Staff's Second Request, Item 1.

²³ BBC Siting Assessment Review, Section C at 7.

²⁴ Dogwood Corners Solar's Responses to Siting Board Staff's First Request for Information (Staff's First Request) (filed Nov. 3, 2023), Item 29.

²⁵ Dogwood Corners Solar's Responses to Staff's First Request, Item 30.

²⁶ Application, SAR, Appendix C – Property Legal.

²⁷ Application, SAR at 2.

²⁸ Application, SAR at 2.

Corners or its contractor will control access to the site during construction and operation.²⁹ All construction entrances will be gated and locked when not in use.³⁰ TVA access to the substation will be part of the Interconnection Agreement between TVA and Dogwood Corners LLC.³¹ If retail telecommunications service is needed, the Project will request service from a local service provider.³² If retail electrical service is required, the Project will receive it from the certified retail provider, the Pennyriple Rural Electric Cooperative. The Project does not anticipate needing retail water service.³³

Overall, agricultural land comprises 61 percent of adjoining acres, while 31 percent is zoned agricultural/residential, and about 7 percent is solely residential³⁴. Land zoned for churches and a cemetery comprises about 0.5 percent of adjoining acres.³⁵ Measured by the number of adjoining properties rather than the acreage, the land use is as follows: agricultural uses constitutes 17 percent, 18 percent are agricultural/residential, 60 percent are residential, and 4 percent are for religious or cemetery use.³⁶ The site consists of eight parcels secured pursuant to six real estate agreements.³⁷ Project parcels consist of a mix of row-crop agriculture, residential uses, and recreational wooded areas.³⁸

²⁹ Application, SAR at 2.

³⁰ Application, SAR at 2.

³¹ Application, SAR at 2.

³² Application, SAR at 3.

³³ Application, SAR at 3.

³⁴ BBC Siting Assessment Review, Section B at 2.

³⁵ BBC Siting Assessment Review, Section B at 2.

³⁶ BBC Siting Assessment Review, Section B at 2.

³⁷ Application at 4.

³⁸ Application at 4.

Many of the cultivated fields, roadsides, and forest edges contain grassy swales and heavy erosional gullies and rills.³⁹ Fencerows and forest edges are dominated by relatively young mixed forest lots containing a variety of oaks, hickories, and maples, with a shrub understory of primarily greenbrier and brambles, and relatively open herbaceous layers of goldenrods, asters, nettles, and grasses.⁴⁰ The forested patches within the Project area are scattered and concentrated along stream or drainage features.⁴¹ The topography is gently sloping with prevalence of erosion and bedrock lithology.⁴² The Project area is not predisposed to prolonged inundation or hydric conditions expected to facilitate the formation of wetlands.⁴³ The Project does not have any residential neighborhood, school, hospital, or nursing home facility within 2,000 feet from facilities to be used for generation of electricity.⁴⁴

Having reviewed the record of this proceeding, the Siting Board finds that Dogwood Corners has complied with the requirements for describing the facility and a site development plan as required by KRS 278.708. However, the Siting Board finds it necessary to impose specific mitigation measures and requirements related to the description of the facility and the proposed site development plan. The Siting Board will require that Dogwood Corners keep the Siting Board apprised of changes throughout the development of the Project and, as such, will order Dogwood Corners to provide the final

³⁹ Application at 4.

⁴⁰ Application at 4.

⁴¹ Application at 4.

⁴² Application at 4.

⁴³ Application at 4.

⁴⁴ Application at 9.

site plan before the commencement of construction. The final site plan should indicate and highlight any change, including those to the design and boundaries of the Project, from the proposed site plan provided to the Siting Board during the pendency of this matter. Furthermore, based on the findings and proposals of the BBC Report, the Siting Board finds that additional mitigation measures are required. These mitigation measures are outlined in Appendix A to this Order, specifically mitigation measures 1 through 7.

Compatibility with Scenic Surroundings

Dogwood Corners indicated that the Project site is located in an agricultural and residential area of Christian County.⁴⁵ The view will be impacted by the structures that will be built on the site, including the solar panels. Dogwood Corners has planned landscaping and setbacks to mitigate potential visual impact.⁴⁶ Dogwood Corners has created a vegetative screening plan that includes a double row of staggered evergreen trees a minimum of five feet in height at planting and maturing to a minimum of 15 feet.⁴⁷ The BBC Report found that the Project will be compatible with scenic surroundings with the proposed vegetative screening.⁴⁸

Having reviewed the record, the Siting Board finds that there will be an impact on the scenery of neighboring properties. The Siting Board notes that although the BBC Report finds the Project to be compatible with the surroundings, the Siting Board does not necessarily agree. The Project pushes the limits of compatibility with scenic

⁴⁵ SAR at 4.

⁴⁶ SAR at 4.

⁴⁷ SAR at 4.

⁴⁸ BBC Report at B-3.

surroundings given the number of homes and the shape of the Project. The Siting Board puts all applicants on notice that more consideration needs to be given to the residences and shape of the Project. In this case, one home is surrounded entirely by solar panels.⁴⁹

Dogwood Corners should review the vegetative plan that it has proposed and make it more robust. The proposed vegetative buffer, along with other mitigation measures proposed by Dogwood Corners and BBC, will minimize the effect that the proposed facility will have on the scenic surroundings of the site. However, the Siting Board will require mitigation measures in addition to those proposed by Dogwood Corners. Those are set forth in Appendix A to this Order, specifically mitigation measures 8 to 12.

Impact on Property Values

Dogwood Corners submitted a property value impact report conducted by Kirkland Appraisals (Kirkland Report), a certified real estate appraiser.⁵⁰ The Kirkland Report found that based upon a comparative analysis, the solar facility will have no impact on the property values of abutting or adjoining residential or agricultural properties.⁵¹ The report indicated that the solar facility would function in a harmonious manner with the nearby surroundings, which is mostly agricultural, and that operation of the solar facility would not generate the level of noise, odor, or traffic impacts to negatively impact the

⁴⁹ The Hearing Video Transcript (HVT) of February 7, 2024, Hearing at 13:25:02–13:25:04. Public comment made by Heather Cook.

⁵⁰ SAR, Appendix A, Property Value Analysis.

⁵¹ SAR, Appendix A at 2.

nearby surroundings as compared to a fossil fuel generating facility or other industrial facilities.⁵²

BBC also evaluated the impact of the Project on property values.⁵³ The BBC Report noted that Kirkland Report contained a matched-pair analysis and a comparative study analyzing data from numerous solar facilities across the county of property values in proximity to such facilities.⁵⁴

Having reviewed the record, the Siting Board finds sufficient evidence to conclude that the proposed Dogwood Corners facility will not have a significant adverse impact on nearby property values as long as proper mitigation measures are implemented. The characteristics of the solar facility's operations are passive, and the facility will be temporary, with the land returned to its natural state after a few decades of operation. The facility does not produce any air, noise, waste, or water pollution, nor does it create any traffic issues during operations.

Anticipated Noise Level

Dogwood Corners' Noise Assessment was completed by Stantec.⁵⁵ Stantec used typical construction equipment sound emission levels from the Federal Highway Administration Roadway Construction Noise Model database as representative noise levels this project.⁵⁶ Stantec estimated maximum equipment noise levels during construction will occur during pile driving and is estimated to be 80.5 dBA at the nearest

⁵² Application, Section 2, SAR, Appendix A at 2 and 106.

⁵³ BBC Report C-35-40.

⁵⁴ BBC Report at 37.

⁵⁵ Application, Section 2, SAR, Appendix D.

⁵⁶ Application, Section 2, SAR, Appendix D at 5.

non-participating receptor.⁵⁷ Construction related activity is expected to occur during 7 a.m. and 9 p.m..⁵⁸

Stantec found operational noise will emanate from project solar inverters, the substation transformers, and single-axis tracking panel motors.⁵⁹ Based on Stantec's operational sound modeling the highest sound level at nearby sensitive receptors was 40.9 dBA at the nearest receptor.⁶⁰ Stantec stated that the trackers and the inverters for the panels themselves will not operate at night when residential receptors are most sensitive.⁶¹ Stantec concluded that construction activities will be audible to nearby residences or other sensitive receptors; however, not all equipment will be operating at the same time, and activities will be temporary in duration and spread throughout the Project area.⁶² BBC evaluated the Acoustic Assessment conducted by Stantec and concluded that the Project's construction phase will produce the highest noise levels especially during pile-driving activity. BBC also concluded that noise levels during pile driving are temporary and intermittent, the maximum noise levels from pile driving have the potential to be disruptive.⁶³

In its SAR, Dogwood Corners details a noise mitigation measure.⁶⁴

⁵⁷ Application, Section 2, SAR, Appendix D at 8.

⁵⁸ Application, Section 2, SAR, Appendix D at 6–7.

⁵⁹ Application, Section 2, SAR, Appendix D at 6.

⁶⁰ Application, Section 2, SAR, Appendix D at 7.

⁶¹ Application, Section 2, SAR, Appendix D at 8.

⁶² Application, Section 2, SAR, Appendix D at 7.

⁶³ BBC Report at 42–44, Section C.

⁶⁴ SAR, at 9.

If the pile-driving activity occurs within 500 feet of a noise-sensitive receptor, Dogwood Corners shall implement a construction method that will suppress the noise generated during the pile-driving process. Dogwood Corners can forego using noise suppression measures if it employs a panel installation method that does not use pile driving, so long as that method does not create noise levels similar to pile driving.

The Siting Board finds that noise from the construction phase will be intermittent and temporary but will be significant to the nearest residences. As indicated by Dogwood Corners and Stantec, the noise will be loudest during the construction phase but will not be permanently damaging to nearby residents. The Siting Board further finds that the operational noise from inverters and the main transformer should have little to no effect on residences in the area.

Based on the case record, the Siting Board finds that Dogwood Corners' application is in compliance with the statutory requirements in disclosing noise levels. However, the Siting Board further finds that, based on the entire record, to ensure the impact of construction noise does not unduly impact nearby residents, Dogwood Corners will be required to implement specific mitigation measures to ensure the impact of construction noise does not unduly impact nearby residents. The mitigation measures implemented by the Siting Board are designed to limit the effects of construction noise by controlling the hours of construction in general, as well as the time and manner in which pile driving can occur. The Siting Board will require Dogwood Corners to mitigate construction noise up to 1,000 feet to ensure the surrounding community is not negatively impacted by the construction noise. Dogwood Corners may forego noise suppression if it employs a panel installation method that does not involve pile driving, so long as the method does not produce noise levels similar to pile driving. These mitigation measures

are further outlined in Appendix A to this Order, specifically mitigation measures 13 through 16.

II. KRS 278.710(1) Criteria

In addition to the evaluation of the factors addressed in the SAR, the Siting Board considered the below described factors set forth in KRS 278.710(1) in rendering its decision.

Economic Impact on Affected Region and the State

According to Dogwood Corners' economic impact report, the proposed solar facility will invest over \$192 million in Christian County, including land acquisition, site preparation, solar panel and electrical equipment installation, landscaping, and security fencing.⁶⁵ The project is expected to generate significant positive economic and fiscal impacts to Christian County. Such impacts include the creation of hundreds of construction jobs, expansion of the local tax base, and the benefits of having a long-term employer and corporate citizen in the region. The project will be conducted in two phases: a construction phase and an operation phase.⁶⁶

The IMPLAN model used for the economic impact analysis focused on Christian County only because of the lack of industrial linkages in the region.⁶⁷ During the Project's construction phase, Dogwood Corners estimates that approximately 300 temporary, full-time jobs will be created over the construction period with a direct payroll of

⁶⁵ Application, Attachment G at 1.

⁶⁶ Application, Attachment G at 6.

⁶⁷ Application, Attachment G at 11.

approximately \$18.2 million including fringe benefits.⁶⁸ This equates to an average wage of \$60,700 per construction job as compared to the 2020 average annual pay for all jobs in Christian County of \$55,200.⁶⁹ The indirect and induced economic impacts are estimated to contribute another 71 jobs with an additional \$3.9 million in payroll.⁷⁰

The total construction phase economic impact is estimated to be 371 total full-time equivalent jobs in Christian County with a new payroll of \$22.1 million including fringe benefits.⁷¹ Most of these jobs will be filled by skilled workers and contractors such as construction managers, earth grader operators, panel installers, electricians, and fencers.⁷² Dogwood Corners intends to hire as many local workers as permitted by the subcontractors it chooses for the Project.⁷³

The ongoing economic impact from the Project's operational phase is estimated to be very small relative to the one-time impacts from the construction phase. The ongoing operational phase of the Project is expected to support approximately 4 jobs with a new payroll of \$466,000.⁷⁴

Dogwood Corners and Christian County do not plan to negotiate an Industrial Revenue Bond (IRB) and a Payment in Lieu of Taxes (PILOT) Agreement, based upon

⁶⁸ Application, Attachment G at 8.

⁶⁹ Application, Attachment G at 8.

⁷⁰ Application, Attachment G at 8–9. (calculated by subtracting direct jobs and payroll from total jobs and payroll: 371 Total Jobs minus 300 Direct Jobs equals 71 Induced Jobs; \$22.1 million Total Payroll minus \$18.2 million Direct Payroll equals \$3.9 million Induced Payroll).

⁷¹ Application, Attachment G at 9.

⁷² Application, Attachment G at 7.

⁷³ Dogwood Corners' Response to Staff's First Request for Information, Item 42.

⁷⁴ Application, Attachment G at 11 and Dogwood Corners' Response to Staff's First Request for Information, Item 44.

the Christian County Fiscal Court's hesitance to consider entering into any such agreements with solar projects.⁷⁵ Without an IRB and PILOT in place, Dogwood Corners estimates that it will pay property taxes to local governments of approximately \$5.2 million and the state would receive approximately \$6.7 million over the 36 year project life.⁷⁶ These payments, which average about \$144,000 annually, can be compared to the \$9,600 per year based upon the agricultural use value of the land.⁷⁷ No occupational taxes will be collected over the Project's life since Christian County does not levy that kind of payroll tax.⁷⁸

BBC evaluated the economic impact of the Project. BBC agreed with the finding of the economic impact study. The BBC report went on to note that additional information could have been provided that would have presented a more complete picture including the direct, indirect, and induced impacts from current land use would reduce the economic impact of the Project, while including the potential induced economic benefits from the additional income received by the participating landowners would slightly increase the economic impact. However, the net effect of including the additional information would likely not have a material effect on the overall estimate.⁷⁹

⁷⁵ Dogwood Corners' Response to Staff's First Request, Item 41, and Seth Wilmore HVT of the February 7, 2024 Hearing at 18:04:26–18:04:50.

⁷⁶ Application, Attachment G at 12. (State portion calculated by subtracting county amount from state and local total: \$11.9 million Total minus \$5.2 million Local equals \$6.7 million State.)

⁷⁷ Application, Attachment G at 12–13.

⁷⁸ Dogwood Corners' Response to Staff's First Request, Item 45 and Application, Attachment G at 12.

⁷⁹ BBC Report, Section B at 6.

Having reviewed the record, the Siting Board finds that the Dogwood Corners facility should have a positive economic impact on the region.

Existence of Other Generating Facilities

Dogwood Corners indicated that there were no existing facilities near the proposed site that generates electricity.⁸⁰ Dogwood Corners stated that the Project was sited in a location with proximity to existing transmission infrastructure,⁸¹ and that the Project will tap into an existing transmission line owned by TVA.⁸²

Local Planning and Zoning Requirements

Christian County does not have Planning and Zoning. Christian County Fiscal Court has adopted an ordinance governing setbacks for solar facilities.⁸³ Dogwood Corners stated that it will comply with all local ordinances and regulations concerning noise control, and with any applicable local and planning and zoning ordinances that were valid and existed on the date the application was filed.⁸⁴ However, as noted above, Dogwood Corners' position is that no valid ordinance existed.

Impact on Transmission System

The Project is located within TVA's electric system in Kentucky. TVA manages the interconnection and is also the owner of the proposed point of connection. TVA issued a Feasibility Study Report in February 2021, and a revised report was issued on March 3,

⁸⁰ Application at 13.

⁸¹ Application at 13.

⁸² Application at 13.

⁸³ Application at 7.

⁸⁴ Application at 7.

2021.⁸⁵ A System Impact Study report was issued in March 2021, and a second revision was issued on June 23, 2022.⁸⁶ The System Impact Study identified impacts to the transmission to the transmission system, including neighboring transmission system. The study identified a need for Direct Assignment Facilities that will be included in the Project construction.⁸⁷

Based upon the case record, the Siting Board finds that Dogwood Corners has satisfied the requirements of KRS 278.710(f) and that the additional load imposed upon the electricity transmission system by the generation of electricity at Dogwood Corners' solar facility will not adversely affect the reliability of service for retail customers of electric utilities regulated by the Kentucky Public Service Commission. This finding is based upon Dogwood Corners' commitment to the interconnection process and protocols consistent with the requirements of KRS 278.212.

Dogwood Corners did not file a separate application for a nonregulated transmission line but is seeking a certificate of construction of a transmission line.⁸⁸ Dogwood Corners stated that the transmission line will be approximately 500 feet and will run from the Project's substation to a TVA switchyard.⁸⁹ Based on the case record, the Siting Board approves Dogwood Corners request for a construction certificate for a transmission line. The transmission line is minimal in length and is contained within the Project's boundaries. The transmission line will have minimal effects on the scenic

⁸⁵ Application at 15.

⁸⁶ Application at 15.

⁸⁷ Application at 15.

⁸⁸ Pleading, Unnumbered Application at 2.

⁸⁹ Pleading Unnumbered Application at 2.

surroundings and Dogwood Corners has stated it will abide by the NESC during the construction and operation of the transmission line.

Compliance with Setback Requirements

Christian County does not have any planning and zoning requirements applicable to the Project. Christian County Fiscal Court has adopted an ordinance addressing setbacks⁹⁰ Ordinance 22-004 provides a 2,000 feet setback requirement measured from the outer edge of the nearest panel to a boundary line of any adjacent property, residence, school, church, hospital, nursing facility, right-of-way, and cemetery.⁹¹ In Dogwood Corners' response to the Deficiency Letter, Dogwood Corners did not acknowledge the validity of the Ordinance 22-004.⁹² Dogwood Corners argued that the Project is in compliance with the planning and zoning ordinances that existed on the date of the application was filed because no planning and zoning ordinance existed to which it had to comply. Dogwood Corners also argued that the Siting Board should not consider Ordinance 22-004 because it was repealed by Ordinance 23-005.⁹³ The Intervenor, Christian County Fiscal Court, argued that Dogwood Corners should have to comply with Ordinance 22-004 because it was in effect at the time of the application.⁹⁴ Christian County Fiscal Court argued that the Christian County Circuit Court dismissed Civil Action 22-CI-01010 because the issue was moot. Ordinance 22-004 was repealed and replaced by Ordinance 23-005. Christian County Fiscal Court further argued that the ruling did not

⁹⁰ Hearing Exhibit 1.

⁹¹ Hearing Exhibit 1.

⁹² Dogwood Corners Response to Deficiency Letter (filed Sept. 6, 2023).

⁹³ Dogwood Corners Post-Hearing Brief (filed on Feb. 23, 2024).

⁹⁴ Christian County Post-Hearing Brief (filed on Feb. 23, 2024).

validate or invalidate the Ordinance; therefore, Dogwood Corners should be obligated to comply with the Ordinance.⁹⁵ Christian County Fiscal Court also argued that the Siting Board should not determine the validity of the Ordinance, but determine whether Dogwood Corners was in compliance with the local ordinance.⁹⁶

KRS 278.706(2)(e) requires that all proposed structures or facilities used for generation of electricity must be 2,000 feet from any residential neighborhood, school, hospital, or nursing home facility. The Project will not be within 2,000 feet of any residential neighborhood, school, hospital, or nursing home facility.⁹⁷ KRS 278.718 provides an ordinance, permit, or license issued by a local government shall have primacy over the provisions and requirements of KRS 278.700, 278.704, 278.706, and 278.708, and any conflict between an order of the board and a local ordinance, permit, or license shall be resolved in favor of the local government's ordinance, permit, or license.

The Siting Board finds that Christian County had a local ordinance at the time the application was filed, and the ordinance required of a 2,000-foot setback. In order to ensure that the Siting Board does not conflict with KRS 278.718, the Siting Board finds that Dogwood Corners' Project should comply any local ordinance.

History of Environmental Compliance

In the application, Dogwood Corners stated that neither it nor anyone with an ownership interest in Dogwood Corners has violated any environmental laws, rules or administrative regulations that resulted in criminal confiscation, or a fine greater than

⁹⁵ Christian County Post-Hearing Brief (filed on Feb. 23, 2024).

⁹⁶ Christian County Post-Hearing Brief (filed on Feb. 23, 2024).

⁹⁷ Application at 9.

\$5,000.⁹⁸ Further Dogwood Corners is not the subject of any pending judicial or administrative actions.⁹⁹ No information appears in the record of any environmental violations by the applicant.

Transfer of Ownership

Solar developments are often sold to other companies during the planning, construction, and operation of projects. When a construction certificate for 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 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. As noted in the preceding section, the Siting Board not only reviews the history and abilities of the person¹⁰⁰ seeking the certificate, but also the entities that have an ownership interest in the Project. Here, the applicant has no resources or employees of its own, and instead depends on the resources and employees of affiliates or entities with an ownership interest in it. Dogwood Corners will employ the persons responsible for compliance with the construction certificate during construction and the persons responsible for the continued compliance during operations.¹⁰¹ The Siting Board will require approval of the transfer of ownership or control of Dogwood Corners, the person seeking and being

⁹⁸ Application at 17.

⁹⁹ Application at 17.

¹⁰⁰ 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.

¹⁰¹ Dogwood Corners' Response to Staff's First Request, Item 6, and HVT of the Feb. 7, 2024 Hearing at 15:51–15:52, Seth Wilmore.

granted, with conditions, the construction certificate in this matter. Without knowledge of who is providing the resources and employees to Dogwood Corners to ensure ongoing compliance with the measures required herein, there is no way to ensure the requirements are adhered to throughout the life of the Project. To be clear, this condition does not apply to the actual transfer of the facility, but rather the transfer of ownership or control of the person holding the construction certificate. The measures related to the transfer of ownership or control of the person holding the construction certificate are set forth more fully in Appendix A to this Order, specifically mitigation measure 26.

Decommissioning

Dogwood Corners submitted a decommissioning plan with the application.¹⁰² The decommissioning plan and the applicable property leases contain covenants to remove all underground components.¹⁰³ The applicable property leases contain covenants to return the land to a condition reasonably similar to its original condition.¹⁰⁴

The Siting Board finds that Dogwood Corners must return the land to its original use, to the extent possible, at the end of the Project's life. Returning the land back to its original state and use after decades of operation is an important part of the Siting Board's finding regarding the impact of the facilities on scenic surroundings, property values, and the economy. The relatively temporary nature of the facilities compared to other types of more permanent development, such as thermal merchant generation facilities, industrial operations, or housing, is a prime consideration of the Siting Board in granting a

¹⁰² Application, Attachment I.

¹⁰³ Application, Attachment I at 2–3 and Dogwood Corner's Response to Staff's First Request, Item 1, DR 1-1.

¹⁰⁴ Application, Attachment I at 12.

certificate, with conditions, in this matter. An inability or unwillingness to return the land back to its prior state after the life of the facility, including the leaving of underground facilities in excess of three feet, increases the permanence of the facility. As such, the Siting Board requires the removal of all components above and below ground. Removal of all underground components and regrading or recompacting the soil for agricultural use will mitigate any damage to the land, thus returning the land to a state that provides at least as great of an economic impact as it does today. The Siting Board will also require additional mitigation measures related to decommissioning, which are outlined in Appendix A to this Order, specifically mitigation measures 27 through 31.

CONCLUSION

After carefully considering the criteria outlined in KRS Chapter 278, the Siting Board finds that Dogwood Corners has presented sufficient evidence to support the issuance of a Construction Certificate to construct the proposed merchant solar facility. The Siting Board conditions its approval upon the full implementation of all mitigation measures and other requirements described herein and listed in Appendix A to this Order. A map showing the location of the proposed solar generating facility is attached hereto as Appendix B.

IT IS THEREFORE ORDERED that:

1. Dogwood Corners' application for a Construction Certificate to construct an approximately 125 MW merchant solar electric generating facility in Christian County, Kentucky, is conditionally granted subject to full compliance with the mitigation measures and conditions prescribed in Appendix A to this Order.
2. Dogwood Corners shall fully comply with the mitigation measures and

conditions prescribed in Appendix A to this Order.

3. In the event mitigation measures within the body of this Order conflict with those prescribed in Appendix A to this Order, the measures in Appendix A shall control.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

Keith Cole

Chairman, Public Service Commission

MA

Vice Chairman, Public Service Commission

Margaret Regan

Commissioner, Public Service Commission

John Sevens

Secretary, Energy and Environment Cabinet,
or her designee

Sydney Motzger

Secretary, Cabinet for Economic Development,
or his designee

Ben Payne

Ben Payne, ad hoc

Ben Bolinger

Ben Bolinger, ad hoc

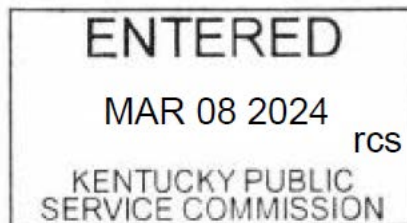
*by KAC
w/permission*

Ben Payne and Ben Bolinger
Concurring

ATTEST:

Linda Bindwell

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



Concurring Opinion of Ben Bolinger (ad hoc) and Ben Payne (ad hoc)
In Case No. 2023-00246

We concur in granting the applicant in this matter a construction certificate, subject to full compliance with mitigation measures and conditions. However, we write separately to express our concern and disagreement with the Order's conclusion regarding the impact of the facility on property values. We disagree that the Kirkland Report indicates there will be "no impact" on residential property values. The sales data used in the Report uses adjoining tracts next to "proposed" solar farms, not data in Kentucky from homes resold after the solar farms are built. We question how any conclusion can be made with no actual data. Given the evidence presented in this matter, we do not believe any conclusion can be made with the certainty represented in the Kirkland Report by Kirkland or ourselves. Therefore, we disagree with the Order's findings regarding sufficient evidence on the impact on property values.

For this reason, we respectfully concur.

Ben Bolinger and Ben Payne
Concurring

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION AND TRANSMISSION SITING IN CASE NO. 2023-00246 DATED MAR 08 2024

MITIGATION MEASURES AND CONDITIONS IMPOSED

The following mitigation measures and conditions are hereby imposed on Dogwood Corners LLC (Dogwood Corners) 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 should be clearly indicated on the revised graphic. Those changes could include, but are not limited to, location of solar panels, inverters, transformers, substation, operation and maintenance building, transmission line route, 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.

4. Prior to construction, Dogwood Corners shall provide a finalized Emergency Response Plan to the local fire district, first responders, and any county emergency management agency. Dogwood Corners shall provide site specific training for local emergency responders at their request. Access for fire and emergency units shall be set up after consultation with local authorities.

5. Dogwood Corners 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.

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

7. The security fence must be installed prior to activation of any electrical installation work in accordance with National Electrical Safety Code (NESC) standards. The substation shall have its own separate security fence and locked access installed in accordance with NESC standards.

8. Existing vegetation between solar arrays and nearby roadways and homes shall be left in place to the extent feasible to help minimize visual impacts and screen the Project from nearby homeowners and travelers. Dogwood Corners will not remove any existing vegetation except to the extent it must remove such vegetation for the construction and operation of Project components.

9. Dogwood Corners shall implement planting of native evergreen species as a visual buffer to mitigate visual viewshed impacts, in areas where those viewshed impacts occur from residences or roadways directly adjacent to the Project and there is not adequate existing vegetation. If it is not adequate, then vegetation ten feet thick reaching six feet at maturity (in four years) will be added by Dogwood Corners between Project infrastructure and residences, or other occupied structures, with a line of sight to the facility to the reasonable satisfaction of the affected adjacent property owners.

Planting of vegetative buffers may be done over the construction period; however, Dogwood Corners should prioritize vegetative planting at all periods of construction to reduce viewshed impacts. All planting shall be done prior to the operation of the facility.

10. Dogwood Corners shall cultivate at least two acres of native, pollinator-friendly species onsite.

11. Dogwood Corners shall develop a more robust visual screening plan than what was proposed in its application, SAR, and the maps. Dogwood Corners is required to ensure that the proposed new vegetative buffers are successfully established and developed as expected over time. Should vegetation used as buffers die over time, Dogwood Corners shall replace plantings as necessary.

12. To the extent that an affected adjacent property owner indicates to Dogwood Corners that a visual buffer is not necessary, Dogwood Corners will obtain that property owner's written consent and submit such consent in writing to the Siting Board.

13. Dogwood Corners is required to limit construction activity, process, and deliveries to the hours between 8 a.m. and 6 p.m. local time, Monday through Saturday. The Siting Board directs that construction activities that create a higher level of noise, such as pile driving, will be limited to 9 a.m. to 5 p.m. local time, Monday through Friday. Non-noise-causing and non-construction activities can take place on the site between 7:00 a.m. and 10:00 p.m. local time, Monday through Sunday, including field visits, arrival, departure, planning, meetings, mowing, surveying, etc.

14. If the pile-driving activity occurs within 1,000 feet of a noise-sensitive receptor, Dogwood Corners shall implement a construction method that will suppress the noise generated during the pile-driving process (i.e., semi-tractor and canvas method;

sound blankets on fencing surrounding the solar site; or any other comparable method). Dogwood Corners can forego using noise suppression measures if it employs a panel installation method that does not use pile driving, so long as that method does not create noise levels similar to pile driving.

15. Dogwood Corners shall notify residents and businesses within 2,400 feet of the Project boundary about the construction plan, the noise potential, any mitigation plans, and its Complaint Resolution Program referred to in Item 31 of this Appendix, at least one month prior to the start of construction.

16. Dogwood Corners shall comply with Christian County local ordinance 22-004 or any applicable local ordinance. Setbacks shall not be required for residences owned by landowners involved in the Project that explicitly agree to lesser setbacks and have done so in writing. All agreements by participating landowners to lesser setbacks must include language advising the participating landowners of the setbacks otherwise required herein. All agreements by participating landowners to lesser setbacks must be filed with the Siting Board prior to commencement of the Project.

17. Dogwood Corners shall fix or pay for repairs for damage to roads and bridges resulting from any vehicle transport to the site. For damage resulting from vehicle transport in accordance with all permits, those permits will control.

18. Dogwood Corners shall comply with all laws and regulations regarding the use of roadways.

19. Dogwood Corners shall implement ridesharing between construction workers when feasible, use appropriate traffic controls, or allow flexible working hours

outside of peak hours to minimize any potential traffic delays during a.m. and p.m. peak hours.

20. Dogwood Corners shall consult with the Kentucky Transportation Cabinet (KYTC) regarding truck and other construction traffic and obtain necessary permits from KYTC.

21. Dogwood Corners shall consult with the Christian County Road Department (CCRD) regarding truck and other construction traffic and obtain any necessary permits from CCRD.

22. Dogwood Corners shall develop special plans and obtain necessary permits before transporting heavy loads, especially the substation transformer, onto state or county roads.

23. Dogwood Corners shall comply with any road use agreement executed with CCRD. Such an agreement might include special considerations for overweight loads, routes utilized by heavy trucks, road weight limits, and bridge weight limits.

24. Dogwood Corners shall develop and implement a traffic management plan to minimize the impact on traffic flow and keep traffic safe. Any such traffic management plan shall also identify any traffic-related noise concerns during the construction phase and develop measures that would address those noise concerns.

25. Dogwood Corners shall properly maintain construction equipment and follow best management practices related to fugitive dust throughout the construction process, including the use of water trucks. Dust impacts shall be kept at a minimal level. The Siting Board requires Dogwood Corner's compliance with 401 KAR 63:010.

26. 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, Dogwood Corners or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Christian County Fiscal Court. In any application requesting such abandonment, sale, or change of control, Dogwood Corners shall certify its compliance with KRS 278.710(1)(i).

27. As applicable to individual lease agreements, Dogwood Corners, its successors, or assigns will abide by the specific land restoration commitments agreed to by individual property owners as described in each executed lease agreement.

28. Dogwood Corners shall file a complete and explicit decommissioning plan with the Siting Board. This plan shall commit Dogwood Corners to remove all facility components, above ground and below ground, regardless of depth, from the Project site. 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 before the construction of the Project.

29. Dogwood Corners or its assigns shall provide notice to the Siting Board, if, during any two-year (730 days) period, it replaces more than 20 percent of its facilities. Dogwood Corners shall commit to removing the debris and replaced facility components from the Project site and from Christian County upon replacement. If the replaced components are properly disposed of at a permitted facility, they do not have to be physically removed from Christian County. However, if the replaced facility components remain in the County, Dogwood Corners must inform the Siting Board of the location where the components are being disposed.

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

31. Dogwood Corners shall initiate and maintain the Complaint Resolution Program provided to the Siting Board in the case record to address any complaints from community members. Dogwood Corners shall also submit annually a status report associated with its Complaint Resolution Program, providing, among other things, the individual complaints, how Dogwood Corners addressed those complaints, and the ultimate resolution of those complaints identifying whether the resolution was to the complainant's satisfaction.

32. Dogwood Corners shall provide the Christian County Community and Development Services contact information for individuals within the company that can be contacted with concerns. This shall include contact information for the general public to reach individuals that can address their concerns. Dogwood Corners shall update this contact information yearly, or within 30 days of any change in contact information.

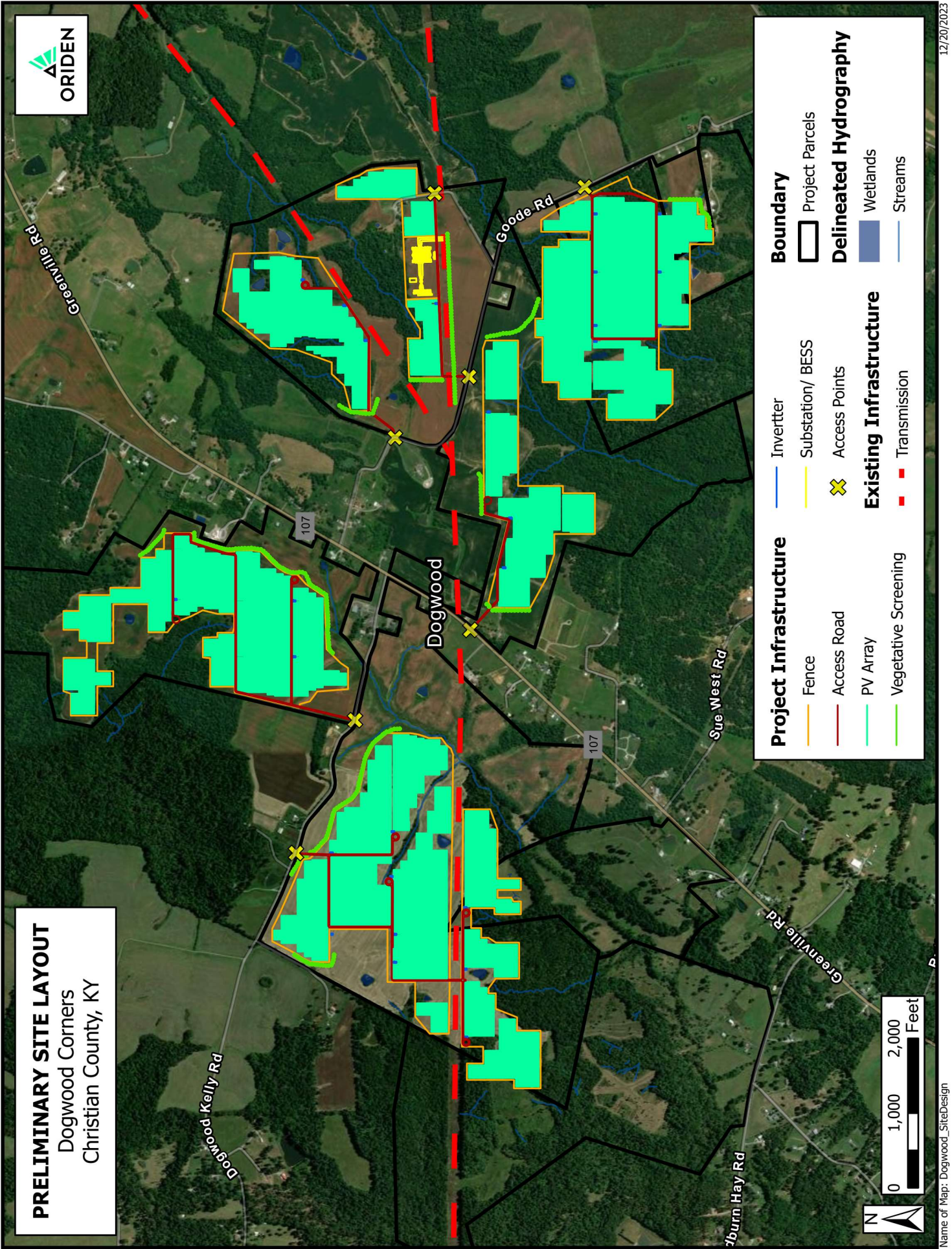
33. Within 30 days of the date of service of this Order, Dogwood Corners shall send a copy of this Order to all the adjoining landowners who previously were required to receive notice of this Project.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING IN
CASE NO. 2023-00246 DATED MAR 08 2024

ONE PAGE TO FOLLOW

PRELIMINARY SITE LAYOUT
 Dogwood Corners
 Christian County, KY



Project Infrastructure

- Fence
- Access Road
- PV Array
- Vegetative Screening

Existing Infrastructure

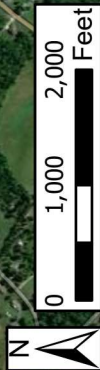
- Inverter
- Substation/ BESS
- Access Points
- Transmission

Boundary

- Project Parcels

Delineated Hydrography

- Wetlands
- Streams



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