

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

In the Matter of:

ELECTRONIC APPLICATION OF LYNN BARK)	
ENERGY CENTER, LLC FOR A CERTIFICATE)	
OF CONSTRUCTION FOR AN UP TO 200)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2024-00104
GENERATING FACILITY IN MARTIN COUNTY,)	
KENTUCKY)	

ORDER

On June 7, 2024, Lynn Bark Energy Center, LLC (Lynn Bark Energy) filed an application with the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) seeking a Construction Certificate to construct an approximately 200-megawatt, ground-mounted solar photovoltaic electric generating facility (Project) comprising approximately 1,514 acres of land in Martin County, Kentucky.

There are no intervenors in this matter. Pursuant to a procedural schedule established on June 20, 2024, Lynn Bark Energy responded to two rounds of discovery.¹ A site visit was held on July 29, 2024. Siting Board consultant, BBC Research Consulting (BBC) filed its report (BBC Report) on September 23, 2024. Lynn Bark Energy submitted its response to the BBC Report on October 7, 2024. Prior to the formal hearing numerous public comments were filed in the record that focused on the impact the Project will have on wildlife, topography of the area, and scenic concerns. A formal hearing was held on

¹ Lynn Bark Energy's Response to Siting Board Staff's First Request for Information (Staff's First Request) (filed on Aug. 5, 2024); Lynn Bark Energy's Response to Siting Board Staff's Second Request for Information (Staff's Second Request) (filed on Sept. 9, 2024).

October 16, 2024. Lynn Bark Energy filed its responses to post-hearing requests for information on October 28, 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 Lynn Bark Energy 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 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 Lynn Bark Energy 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 Lynn Bark Energy; and (8) whether the applicant has a good environmental compliance history.

PROPOSED FACILITY

The Project will be located on 1,541 acres in Martin County, Kentucky.² The Project will contain approximately 357,588³ photovoltaic solar panels, associated ground-mounted racking, 51 inverters, a collection station, overhead transmission line, and a substation.⁴ A project substation will connect to an approximately 5.61-mile, 138 kV nonregulated transmission line to be constructed between the Project site and the existing Inez Substation which is owned and operated by Kentucky Power Company (Kentucky Power)/American Electric Power, Inc. (AEP).⁵ Lynn Bark Energy is not requesting approval of a transmission line from the Siting Board at this time.⁶

DISCUSSION AND FINDINGS

I. KRS 278.708: SAR Filing Requirements and Mitigation Measures

Mitigation Measures Proposed by Lynn Bark Energy and Siting Board Consultant

² Application, Tab 12 Site Assessment Report at 2.

³ SAR, Exhibit F, at 5.

⁴ SAR, Exhibit F at 5.

⁵ Application, Tab 12 Site Assessment Report at 3.

⁶ Lynn Bark Energy's Response to Staff's First Request, Item 15 and Hearing Video Testimony (HVT) of the October 16, 2024 hearing at 24:05-24:10, Caleb Lemoine.

As required by KRS 278.708(4), Lynn Bark Energy proposed various mitigation measures consistent with the statutes regarding traffic, noise, roadway preservation, permitting, public safety, glare, and scenic preservation.⁷

In accordance with KRS 278.708(5), the BBC Report recommended mitigation measures in the following areas: site development, compatibility with scenic surroundings; noise levels during construction and operation, road and traffic degradation, economic impacts, decommissioning, and complaint resolution programs.⁸

Lynn Bark Energy disagreed with certain recommendations in the BBC Report proposed mitigation measures. The BBC Report recommended “[L]ynn Bark Energy should cultivate at least two acres of native pollinator-friendly species onsite.”⁹ Lynn Bark Energy stated that, because the project will be on a reclaimed surface coal mine, the area would not support growth without significant and costly topsoil.¹⁰ Lynn Bark Energy also stated that the project site does not have any areas of pollinator species.¹¹

The BBC Report recommended the “[L]ynn Bark Energy Center should conduct construction activity only between 8 a.m. until 7 p.m., Monday through Sunday, and pile driving only between 9 a.m. and 5 p.m. Monday through Friday.”¹² Lynn Bark Energy requested that construction be permitted Monday through Sunday from 7 a.m. to 6 p.m.¹³

⁷ Application, Tab 12, SAR at 8–9.

⁸ Review and Evaluation of Lynn Bark Energy Center, LLC Site Assessment Report (BBC Report) (filed on Sept. 23, 2024) Section B at 7–9.

⁹ BBC Report, Section B at 8.

¹⁰ Lynn Bark Energy’s Response to the BBC Report (filed on Oct. 7, 2024) at 1.

¹¹ Lynn Bark Energy’s Response to the BBC Report at 1.

¹² BBC Report, Section B at 8.

¹³ Lynn Bark Energy’s Response to the BBC Report at 2.

Lynn Bark Energy also requested that pile driving be permitted to take place from 8 a.m. to 5 p.m. Monday through Friday.¹⁴

The BBC Report recommended that, “[L]ynn Bark Energy should implement a Customer Resolution Program to address any complaints from surrounding landowners”.¹⁵ Lynn Bark Energy requested clarification of the term Customer Resolution Program to Complaint Resolution Plan for consistency.¹⁶

The BBC Report also recommended that “[L]ynn Bark Energy should implement a ridesharing program between construction workers and use appropriate traffic controls or allow flexible working hours outside of peak hours to minimize any potential delays during morning and afternoon peak hours.”¹⁷ Lynn Bark Energy contested this sentence. Lynn Bark Energy requested that the ridesharing program only be implemented if it is feasible and if needed.¹⁸

The Siting Board has reviewed the mitigation measures proposed by Lynn Bark Energy and BBC Report, and finds that, in addition to those Lynn Bark Energy has initially proposed, 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.

¹⁴ Lynn Bark Energy's Response to the BBC Report at 2.

¹⁵ BBC Report, Section B at 8.

¹⁶ Lynn Bark Energy's Response to the BBC Report at 2.

¹⁷ BBC Report, Section B at 8.

¹⁸ Lynn Bark Energy's Response to the BBC Report at 2.

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.

Lynn Bark Energy submitted the required SAR with its application.¹⁹ The SAR contained a preliminary site plan,²⁰ which was updated during the pendency of the proceedings.²¹ The site plan included the project boundary, parcel boundaries, existing roads, proposed access roads, proposed access points, solar arrays, proposed gen-tie route, security fence, gates, and proposed substation location.²² Lynn Bark Energy estimated approximately 640-acres of vegetation would be cleared for construction.²³ A vegetative screening plan was not proposed.²⁴ A two-story metal barn located on the proposed project site will likely be removed during construction.²⁵ Lynn Bark Energy

¹⁹ Application, Tab 12, Site Assessment Report.

²⁰ Application, Tab 2, Attachment A.

²¹ Lynn Bark Energy's Response to Staff's Second Request, Attachment A.

²² Lynn Bark Energy's Response to Staff's Second Request, Attachment A.

²³ Lynn Bark Energy's Response to Staff's First Request, Item 70.

²⁴ Lynn Bark Energy's Response to Staff's First Request, Item 66.

²⁵ Lynn Bark Energy's Response to Staff's First Request, Item 11.

stated that it would not be using railways for any construction or operational activities.²⁶ The legal boundaries of the proposed site were contained in the application.²⁷

According to Lynn Bark Energy, a six-foot chain link type fencing meeting National Electrical Safety Code (NESC) requirements will secure the solar panel arrays clusters with locked access gates. In addition, a six-foot chain link type fencing with three-strand barbed wire angled outward, meeting NESC requirements, will secure the substation.²⁸ Construction and operational entrances will be locked outside of normal working hours.²⁹ Lynn Bark Energy representatives plan to engage with local enforcement and fire services to provide information and to ensure they are familiar with the plan for security and emergency protocols during construction and operations.³⁰ Local electrical service will be required during construction and operation of the Project and is expected to be provided via distribution line by the local electric utility, Kentucky Power.³¹

The Facility will be located on a reclaimed, mountaintop-removal coal mine site in an unincorporated area of Martin County, Kentucky.³² The area leased for the Project Site includes approximately 1,514 acres of private land (the Project Site). The footprint of the Project Site will only be approximately 641 acres based on the area underneath the

²⁶ SAR at 9.

²⁷ Application, Tab 12, SAR, Exhibit C.

²⁸ Application, Tab 2, Proposed Site Description at 2.

²⁹ Lynn Bark Energy's Response to Staff's First Request, Item 6.

³⁰ Lynn Bark Energy's Response to Staff's First Request, Item 8.

³¹ Lynn Bark Energy's Response to Staff's First Request, Item 12

³² Application, Tab 2, Proposed Site Description at 2.

solar arrays, inverters, and private access roads.³³ According to Lynn Bark Energy, full reclamation of the prior surface mining site has been completed.³⁴ Overall, agricultural land comprises 96 percent of adjoining acres, while 1.2 percent is zoned agricultural/residential, and about 2.7 percent is solely residential. Measured by the number of properties rather than their acreage, agricultural use constitutes 41 percent of adjoining parcels, while 4 percent of adjoining parcels are agricultural/residential, and 53 percent are residential in use.³⁵ The nearest aircraft facility is Big Sandy Regional Airport (KSJS), located 4.0 miles southwest of the Project Site.³⁶ Two areas identified as residential neighborhoods are located within 2,000 feet of the Project Site.³⁷ There are no schools, public parks, or private parks within a 2-mile radius of the Facility Area.³⁸

Having reviewed the record of this proceeding, the Siting Board finds that Lynn Bark Energy 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 that 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 Lynn Bark Energy keep the Siting Board apprised of changes throughout the development of the Project and, as such, will order Lynn Bark Energy to provide the final site plan before the commencement of construction. The final site plan should indicate

³³ Application, Tab 2, Proposed Site Description.

³⁴ Lynn Bark Energy's Response to Staff's First Request, Item 79.

³⁵ BBC Report, Section B at 2.

³⁶ SAR at 4–5.

³⁷ Application, Tab 2, Attachment A.

³⁸ Application, Tab 2, Proposed Site Description.

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 and, in particular, mitigation measures 1 through 10.

Compatibility with Scenic Surroundings

As noted above, the proposed Project site is on a reclaimed mine with areas of intact, forested land and undeveloped land adjacent to the area disturbed during mining activities.³⁹ The BBC Report stated that the facility would be in a rural, hilly area surrounded by some density agricultural and residential land.⁴⁰ Most of the solar panels will be located on previously cleared and disturbed areas which occupy the hilltops that were partially flattened during past mining operations.⁴¹ The BBC Report stated that the Project is very unlikely to be visible from nearby residences.⁴² The BBC Report reviewed the effect on the surroundings and concluded the facility would be generally compatible with scenic surroundings.⁴³

The Siting Board finds that the location of the proposed solar facility, given its elevation and distance from the nearest residences combined with the preexisting vegetation will mitigate the effects of the proposed facility will have on the scenic

³⁹ SAR at 6.

⁴⁰ BBC Report, Section C at 29.

⁴¹ SAR at 6.

⁴² BBC Report, Section C at 29.

⁴³ BBC Report, Section C at 29.

surroundings of the site. However, to ensure the continued compatibility of scenic surroundings, mitigation measures addressing obligations to maintain or further develop vegetative buffers and keep the Siting Board informed of potentially material changes to the site plan are necessary. Those requirements are set forth in Appendix A to this Order, and, in particular, mitigation measures 11 to 14.

Impact on Property Values

Lynn Bark Energy submitted a property value impact report conducted by Kirkland Appraisals (Kirkland Report), a certified real estate appraiser.⁴⁴ The Kirkland Report found that, based upon matched pair analysis, the solar facility will have no impact on the property values of abutting or adjoining residential or agricultural properties.⁴⁵ The report indicated that the solar facility would function in a harmonious manner with the nearby surroundings and that operation of the Project would not generate the level of noise, odor, or traffic to negatively impact the nearby surroundings as compared to a fossil fuel generating facility or other industrial facilities.⁴⁶

The BBC Report concluded that, because the Project sites existing vegetation and substantial elevation above neighboring residences that will obscure the project from nearby residences and roads, the proposed Project is unlikely to have measurable adverse impact on the property values of most adjacent properties.⁴⁷

⁴⁴ SAR, Exhibit B, Property Value Impact.

⁴⁵ SAR, Exhibit B, Property Value Impact.at 1–2.

⁴⁶ SAR, Exhibit B, Property Value Impact at 1–2 and 106.

⁴⁷ BBC Report, Section C at 35.

Having reviewed the record, the Siting Board finds sufficient evidence to conclude that the proposed Lynn Bark Energy facility will not have a significant adverse impact on scenic surroundings or 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

Lynn Bark Energy's Acoustic Assessment Report was completed by Environmental Resources Management, Inc (ERM).⁴⁸ ERM used representative noise levels from the Federal Highway Administration's Roadway Construction Noise Model.⁴⁹ ERM stated the estimated maximum noise levels during construction will occur during pile driving, and estimated that at the closest receiver, 1,607 feet from the closest panel, would have noise levels during pile driving of 47 decibels A-weighted scale (dBA).⁵⁰ Lynn Bark Energy stated that construction related activity is expected to occur between 7 a.m. and 6 p.m.⁵¹

ERM found operational noise will emanate from inverters and transformers.⁵² Based on ERM's operational sound modeling, the highest sound level at nearby sensitive

⁴⁸ Application, Tab 12, Exhibit D, Acoustic Assessment Report.

⁴⁹ Application, Tab 12, Exhibit D, Acoustic Assessment Report at 7.

⁵⁰ Application, Tab 12, Exhibit D, Acoustic Assessment Report at 7.

⁵¹ Lynn Bark Energy's Response to the BBC Report (filed on Oct. 7, 2024) at 2.

⁵² Application, Tab 12, Exhibit D, Acoustic Assessment Report at 6.

receptors was 20 dBA.⁵³ ERM stated that the Project's proposed generated noise levels for daytime and nighttime operation are estimated to be below the U.S. Environmental Protection Agency's recommended protective noise level of 48.6 dBA for 24-hour operation.⁵⁴ ERM concluded that no one particular Noise Sensitive Area will be exposed to the same sound levels over an extended period of time, as construction progresses through the site.⁵⁵ BBC evaluated the Acoustic Assessment Report conducted by ERM and concluded that the Project's construction phase will produce the highest noise levels especially during pile-driving activity.⁵⁶

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 ERM and the BBC Report, the noise will be loudest during the construction phase but will not be permanent to nearby residents. The Siting Board 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 Lynn Bark Energy's application is in compliance with the statutory requirements for 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, Lynn Bark Energy will be required to implement specific mitigation measures to ensure the impact of construction noise does not unduly impact nearby residents. The mitigation measures

⁵³ Application, Tab 12, Exhibit D, Acoustic Assessment Report at 6.

⁵⁴ Application, Tab 12, Exhibit D, Acoustic Assessment Report at 6.

⁵⁵ Application, Tab 12, Exhibit D, Acoustic Assessment Report at 8.

⁵⁶ BBC Report, Section B at 4.

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 pile driving can occur. The Siting Board will require Lynn Bark Energy to mitigate construction noise up to 1,500 feet to ensure the surrounding community is not negatively impacted by the construction noise. Lynn Bark Energy 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 15 through 17.

Impact on Roads, Railways, and Fugitive Dust

Construction is anticipated to take 12-18 months.⁵⁷ The major road providing access to the Project is KY 3 on the western side of the project.⁵⁸ KY 3 is a rural, minor arterial road that provides local and regional access to the proposed project.⁵⁹ Lynn Bark Energy does anticipate that KY 3 will continue to operate at an acceptable level during the construction period.⁶⁰ During the construction of the project traffic flow will be impacted by the commute of construction workers to and from the site assuming it occurs during peak AM and PM hours.⁶¹ The traffic impact study concluded that with appropriate mitigation measures the Project site will not produce significant adverse traffic impacts during construction or operation.⁶²

⁵⁷ HVT of the October 16, 2024 hearing at 06:58-07:06, Caleb Lemoine.

⁵⁸ BBC Report, Section B at 5.

⁵⁹ SAR, Exhibit E at 4.

⁶⁰ SAR, Exhibit E at 8.

⁶¹ BBC Report, Section B at 45.

⁶² SAR, Exhibit E at 1 and 8.

BBC found that during construction, daily deliveries and commuter traffic will substantially increase the amount of traffic on primary roadways near the project. However, the road will continue to maintain a high level of service.⁶³ The BBC Report found that, during the operational phase of the project, one vehicle will travel to the site each day.⁶⁴ No impact on traffic is expected during operations.⁶⁵

The Siting Board finds that traffic and road degradation issues can be addressed with Lynn Bark Energy mitigation measures, the additional measures proposed by BBC and mitigation measures set forth in Appendix A to this Order, in particular mitigation measures 19 through 27.

The Siting Board anticipates some fugitive dust from the construction phase. Lynn Bark Energy stated it will follow best management practices including proper construction equipment maintenance and use of water trucks.⁶⁶ Dust will not be a factor during the operations phase. The Siting Board will require additional mitigation measures to reduce any potentially harmful effects on the area, which are outlined in Appendix A to this Order. The Siting Board will require Lynn Bark Energy to inform the Siting Board and the Energy and Environment Cabinet (EEC) Division of Waste Management of the date construction will commence, 30 days prior, to ensure the proper permits have been obtained and whether proper steps have been taken to comply with the mitigation measures set forth in Appendix A to this Order.

⁶³ BBC Report, Section B at 5.

⁶⁴ SAR, Exhibit E at 7.

⁶⁵ SAR, Exhibit E at 7.

⁶⁶ SAR at 8–9.

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

Lynn Bark Energy's economic impact report discusses the proposed solar facility and its investment into the surrounding Martin County economy. The projected local total investment includes architecture, engineering, site preparation and other development and construction costs.⁶⁷ The project is expected to generate significant positive economic impacts to Martin County over the thirty-five year to forty-year life of the project.⁶⁸ The project will be conducted in two phases: a construction phase which is estimated to last 12 to 18 months and an operation phase, which will last the remaining life of the project.⁶⁹

The IMPLAN model used for the economic impact analysis focused on Martin County only because of the lack of industrial linkages in the region.⁷⁰ During the project construction phase, Lynn Bark Energy estimated that approximately 480 temporary, full time jobs will be created over the construction period with a direct payroll of approximately \$29.1 million including fringe benefits.⁷¹ This equates to an average wage of \$60,700 per construction job as compared to the 2022 average annual pay for all jobs in Martin County

⁶⁷ Application, Tab 10 at 8.

⁶⁸ Lynn Bark Energy's Response to Staff's First Request, Item 88.

⁶⁹ Application, Tab 10 at 8.

⁷⁰ Application, Tab 10 at 7 and 11.

⁷¹ Application, Tab 10 at 10.

of \$47,970.⁷² The indirect economic impacts are estimated to contribute another 93 jobs with an additional \$3.2 million in payroll.⁷³

According to Lynn Bark Energy the total construction phase economic impact is estimated to be 573 full-time equivalent jobs in Martin County with a payroll of \$32.3 million.⁷⁴ The vast majority of these jobs will be filled by skilled workers and contractors such as fencers, electricians, panel installers, equipment operators and construction managers.⁷⁵ Lynn Bark Energy stated that it prefers to hire local workers⁷⁶ and intends to include terms in the Engineering, Procurement, and Construction (EPC) contract that includes more rigorous contract requirements for hiring local workers.⁷⁷

Lynn Bark Energy stated that 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 6.4 jobs for the job site. According to Lynn Bark Energy, the project will support 19 total jobs with an estimated employee compensation of \$102,000 per job and a total labor income of \$1.2 million.⁷⁸

⁷² Application, Tab 10 at 10.

⁷³ Application, Tab 10 at 9-10. (calculated by subtracting direct jobs and payroll from total jobs and payroll: 573 Total Jobs minus 480 Direct Jobs equals 93 Induced Jobs; \$32.3 million Total Payroll minus \$29.1 million Direct Payroll equals \$3.2 million Induced Payroll).

⁷⁴ Application, Tab 10 at 10.

⁷⁵ Application, Tab 10 at 9.

⁷⁶ HVT of the October 16, 2024 hearing at 26:19-26:27, Caleb Lemoine.

⁷⁷ HVT of the October 16, 2024 hearing, Erich Miarka Testimony (Miarka Testimony) at 01:44:17.

⁷⁸ Application, Tab 10 at 12.

Lynn Bark Energy and Martin County are in the early stages of negotiating an Industrial Revenue Bond (IRB) and a Payment in Lieu of Taxes (PILOT) Agreement, but no definitive terms have been agreed upon.⁷⁹ During the construction phase, an estimated \$647,000 in occupational taxes will be collected over the construction period. During the operations phase, an estimated \$25,000 per year in occupational taxes will be collected over the remaining project life.⁸⁰

BBC evaluated the economic impact of the project.⁸¹ Based upon its review and analysis, the BBC Report concluded that the project would provide significant positive economic effects to the region and the Commonwealth of Kentucky during the construction and operations phases of the project.⁸²

Having reviewed the record, the Siting Board finds that the Lynn Bark Energy facility will have a positive economic impact on the region.

Existence of Other Generating Facilities

Lynn Bark Energy indicated that there are no existing facilities near the proposed site that generate electricity.⁸³ Lynn Bark Energy stated that an existing bulk transmission line is located in the vicinity of the Project site.⁸⁴ Lynn Bark Energy stated that the onsite substation will connect to the existing electric grid via an 5.61 electric transmission line

⁷⁹ Lynn Bark Energy's Response to Staff's First Request, item 87 and HVT of the October 16, 2024 hearing, Lemoine Testimony at 09:32.

⁸⁰ Application, Tab 10 at 13.

⁸¹ BBC Report, Detailed Findings and Conclusions at C-49.

⁸² BBC Report, Detailed Findings and Conclusions at C-49-50.

⁸³ Application, Tab 7 at 2.

⁸⁴ Application, Tab 7 at 3.

that will be constructed between the Project site and an existing 138 kV Substation which is owned and operated by Kentucky Power/AEP.⁸⁵

Local Planning and Zoning Requirements

Martin County does not have planning and zoning and has not enacted any zoning ordinances or setback requirements.⁸⁶ The statutory requirements of KRS 278.706(2)(e) apply unless a deviation is applied for and granted by the Siting Board. 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. This Project will be closer than that to residences, but there are no schools, hospitals, or nursing homes within 2,000 feet.⁸⁷

Impact on Transmission System

The project is located within the territory of PJM Interconnection LLC (PJM). Lynn Bark Energy obtained a queue position with PJM on October 30, 2019.⁸⁸ It is anticipated that a 5.61-mile overhead transmission line would deliver electricity from the project substation to the point of interconnection with the existing 138 kV Inez Substation owned by Kentucky Power.⁸⁹ The Feasibility Study, System Impact Study, and the Facilities Study have been completed.⁹⁰

⁸⁵ SAR at 3.

⁸⁶ Lynn Bark's Energy's Notice of Intent (filed on April 12, 2024).

⁸⁷ Lynn Bark's Motion for Deviation from the Setback Requirements at 2.

⁸⁸ Application, Tab 9, Effect on the Electric Transmission System in Kentucky at 1.

⁸⁹ BBC Report, Section B at 1 and SAR at 3.

⁹⁰ HVT of the October 16, 2024 hearing, Lemoine Testimony at 24:16–24:36.

Based upon the case record, the Siting Board finds that Lynn Bark Energy 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 Lynn Bark Energy 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 Lynn Bark Energy's commitment to the interconnection process and protocols consistent with the requirements of KRS 278.212.

Compliance with Setback Requirements

Martin County does not have planning nor zoning, and has not enacted any zoning ordinances or setback requirements.⁹¹ KRS 278.706(2)(e) requires that all proposed structures or facilities used for electric generation be at least 2,000 feet from any residential neighborhood, school or hospital or nursing home facility.⁹² KRS 278.700(6) defines "residential neighborhood" as a populated area of five or more acres containing at least one residential structure per acre.⁹³ KRS 278.704(4) authorizes the Siting Board to grant a deviation from the setback requirements in KRS 278.706(2)(e), if requested.⁹⁴ Lynn Bark Energy has requested a deviation from the setback requirements in KRS 278.706(2)(e).⁹⁵ Lynn Bark Energy stated there are two residential neighborhoods within

⁹¹ Lynn Bark Energy's Notice of Intent (filed on April 12, 2024).

⁹² KRS 278.706(2)(e).

⁹³ KRS 278.700(6).

⁹⁴ KRS 278.704(4).

⁹⁵ Lynn Bark's Motion for Deviation from Setback Requirements.

2,000 feet of the project's boundaries.⁹⁶ Lynn Bark Energy is requesting a setback of 1,500 feet.⁹⁷

Of the two residential neighborhoods, Neighborhood 2 is the closest.⁹⁸ The projects boundary line is proposed to be 478 feet from the closest residence in Neighborhood 2.⁹⁹ The closest solar panel is proposed to be 1,692 feet from the closest residence in Neighborhood 2.¹⁰⁰ Neighborhood 2 is closest to the project's inverters.¹⁰¹ The closest inverter is 2,348 feet from the closest home in Neighborhood 2.¹⁰² All neighborhoods are over 6,000 feet from the projects substation.¹⁰³

The Siting Board finds, given the totality of the mitigation measures proposed by Lynn Bark Energy, the nature of the surrounding property and the mitigation measures the Siting Board has imposed in Appendix A, the statutory purposes are met by the project. The Siting Board grants a deviation from this requirement as to residences and residential neighborhoods as set forth in Appendix A to this Order. Exceptions to these setback requirements for participating landowners and easement holders are included in Appendix A mitigation measure 18.

⁹⁶ Lynn Bark's Motion for Deviation from Setback Requirements at 2.

⁹⁷ Lynn Bark Energy's Response to Staff's Post Hearing Request, Item 5.

⁹⁸ Lynn Bark Energy's Response to Staff's Post Hearing Request, Item 4.

⁹⁹ Lynn Bark Energy's Response to Staff's Post Hearing Request, Item 4.

¹⁰⁰ Lynn Bark Energy's Response to Staff's Post Hearing Request, Item 4.

¹⁰¹ Lynn Bark Energy's Response to Staff's Post Hearing Request, Item 4.

¹⁰² Lynn Bark Energy's Response to Staff's Post Hearing Request, Item 4.

¹⁰³ Lynn Bark Energy's Response to Staff's Post Hearing Request, Item 4.

History of Environmental Compliance

In the application, Lynn Bark Energy stated that neither it, nor anyone with an ownership interest in it, has violated any environmental laws, rules or administrative regulations that resulted in criminal confiscation, or a fine greater than \$5,000.¹⁰⁴

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 Person¹⁰⁵ seeking the certificate, but also the entities that have an ownership interest in the Project.

Here, Lynn Bark Energy 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. Savion LLC (Savion) will employ the persons responsible for compliance with the construction certificate during construction and the persons responsible for the

¹⁰⁴ Application, Tab 11, Environmental Violation Record at 2.

¹⁰⁵ 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.

continued compliance during operations.¹⁰⁶ Without Savion, Lynn Bark Energy would not have the managerial, technical, or financial capability necessary to construct or operate the facility, nor to comply with the conditions required herein. As such, the Siting Board will require approval of the transfer of ownership or control of Lynn Bark Energy, to the Person seeking the construction certificate in this matter. Without knowledge of who is providing the resources and employees to Lynn Bark Energy 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 certificate to construct. 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, mitigation measure 28.

Decommissioning

Lynn Bark Energy submitted a decommissioning plan with the application.¹⁰⁷ The decommissioning plan and the applicable property leases contain covenants to remove all underground components.¹⁰⁸ Lynn Bark Energy indicated it will secure a bond to assure financial performance of the decommissioning obligation.¹⁰⁹

The Siting Board finds that Lynn Bark Energy 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

¹⁰⁶ HVT Testimony of the October 16, 2024 hearing, Caleb Lemoine at 22:06-22:12.

¹⁰⁷ SAR, Exhibit F.

¹⁰⁸ Application, Tab 12 SAR, Exhibit F at 10 and Lynn Bark Energy's Response to Staff's First Request, Item 89.

¹⁰⁹ Application, Tab 12, SAR Exhibit F at 10.

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 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 leaving 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 later 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, mitigation measures 29 through 32.

CONCLUSION

After carefully considering the criteria outlined in KRS Chapter 278, the Siting Board finds that Lynn Bark Energy 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. Lynn Bark Energy's application for a Construction Certificate to construct an approximately 200 MW merchant solar electric generating facility in Martin County, Kentucky, is conditionally granted subject to full compliance with the mitigation measures and conditions prescribed in Appendix A.
2. Lynn Bark Energy's motion for deviation from the setback requirements in KRS 278.704(2) is granted. Lynn Bark Energy shall comply with the setbacks prescribed in the mitigation measures.
3. Lynn Bark Energy shall fully comply with the mitigation measures and conditions prescribed in Appendix A to this Order.
4. 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.
5. This case is closed and removed from the Commission's docket.

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

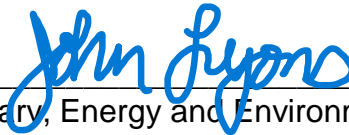


Commissioner, Public Service Commission

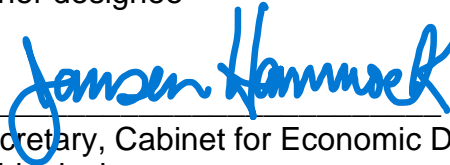


Commissioner, Public Service Commission

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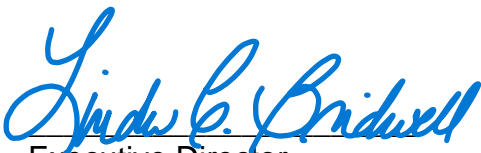


Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee

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. 2024-00104 DATED NOV 27 2024

MITIGATION MEASURES AND CONDITIONS IMPOSED

The following mitigation measures and conditions are hereby imposed on Lynn Bark Energy Center, LLC (Lynn Bark Energy) 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. Lynn Bark Energy shall provide the date that construction will commence to the Siting Board and the Kentucky Energy and Environment Cabinet (EEC) 30 days prior to the date.

5. Lynn Bark Energy shall submit a status report every six months until the project commences construction to update the Siting Board on the progress of the Project. The report shall reference this case number and be filed in post-case correspondence in this case.

6. Lynn Bark Energy shall comply with all requirements in KRS 278.710 for monitoring by EEC.

7. Prior to construction, Lynn Bark Energy shall provide a finalized Emergency Response Plan to the local fire district, first responders, and any county emergency management agency. Lynn Bark Energy 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.

8. Lynn Bark Energy 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.

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

10. 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.

11. If any components of the facility are visible to neighboring homes after construction, Lynn Bark Energy 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. 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.

13. Lynn Bark Energy will not remove any existing vegetation except to the extent it must remove such vegetation for the construction and operation of Project components.

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

15. Lynn Bark Energy is required to limit construction activity, process, and deliveries to the hours between 8:00 a.m. and 6:00 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 9:00 a.m. to 5:00 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.

16. If the pile-driving activity occurs within 1,500 feet of a noise-sensitive receptor, Lynn Bark Energy 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). Lynn Bark Energy 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.

17. Lynn Bark Energy 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 33 of this Appendix, at least one month prior to the start of construction.

18. Lynn Bark Energy shall place panels, inverters, and substation equipment consistent with the distances to noise receptors to which it has committed in its maps and site plans. The Siting Board approves Lynn Bark Energy's proposed setback from residences of 1,500 feet from any panel or string inverter. The Siting Board also approves a distance of 1,500 feet between any solar panel or string inverter and any residential neighborhood and 100 feet from any exterior property line. Nevertheless, Lynn Bark Energy shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church, or school, 25 feet from non-participating adjoining parcels, or 50 feet from adjacent roadways. Lynn Bark Energy shall not place a central inverter, and if used, energy storage systems, closer than 450 feet from any adjacent residences, church, or school. These further 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.

19. Lynn Bark Energy 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.

20. Lynn Bark Energy shall comply with all laws and regulations regarding the use of roadways.

21. Lynn Bark Energy 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 AM and PM peak hours.

22. Lynn Bark Energy shall consult with the Kentucky Transportation Cabinet (KYTC) regarding truck and other construction traffic and obtain necessary permits from the KYTC.

23. Lynn Bark Energy shall consult with the Martin County Road Department (MCRD) regarding truck and other construction traffic and obtain any necessary permits from the MCRD.

24. Lynn Bark Energy shall develop special plans and obtain necessary permits before transporting heavy loads, especially the substation transformer, onto state or county roads.

25. Lynn Bark Energy shall comply with any road use agreement executed with MCRD. Such an agreement might include special considerations for overweight loads, routes utilized by heavy trucks, road weight limits, and bridge weight limits.

26. Lynn Bark Energy 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.

27. Lynn Bark Energy 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 Lynn Bark Energy's compliance with 401 KAR 63:010.

28. If any Person as defined by KRS 278.700(3) shall acquire or transfer ownership of, or control, or the right to control Lynn Bark Energy, by sale of assets, transfer of stock, or otherwise, or abandon the same, Lynn Bark Energy 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, Lynn Bark Energy shall certify its compliance with KRS 278.710(1)(i).

29. As applicable to individual lease agreements, Lynn Bark Energy, 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.

30. Lynn Bark Energy did file a complete and explicit decommissioning plan with the Siting Board. If this decommissioning plan should change, Lynn Bark Energy shall submit an updated decommissioning plan pursuant to KRS 278.710(8).

31. Lynn Bark Energy 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. Lynn Bark Energy shall commit to removing the debris and replaced facility components from the Project site and from Martin County upon replacement. If the replaced 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 the county, Lynn Bark Energy must inform the Siting Board of the location where the components are being disposed.

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

33. Prior to construction, Lynn Bark Energy shall initiate and maintain the Complaint Resolution Program provided to the Siting Board in the case record to address any complaints from community members. Lynn Bark Energy shall also submit to the Siting Board, annually, a status report associated with its Complaint Resolution Program, providing, among other things, the individual complaints, how Lynn Bark Energy addressed those complaints, and the ultimate resolution of those complaints, identifying whether the resolution was to the complainant's satisfaction. Lynn Bark Energy shall submit a final report within 30 days after commencement of electric generation.

34. Lynn Bark Energy shall provide the Martin County Fiscal Court 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. Lynn Bark Energy shall update this contact information yearly, or within 30 days of any change in contact information.

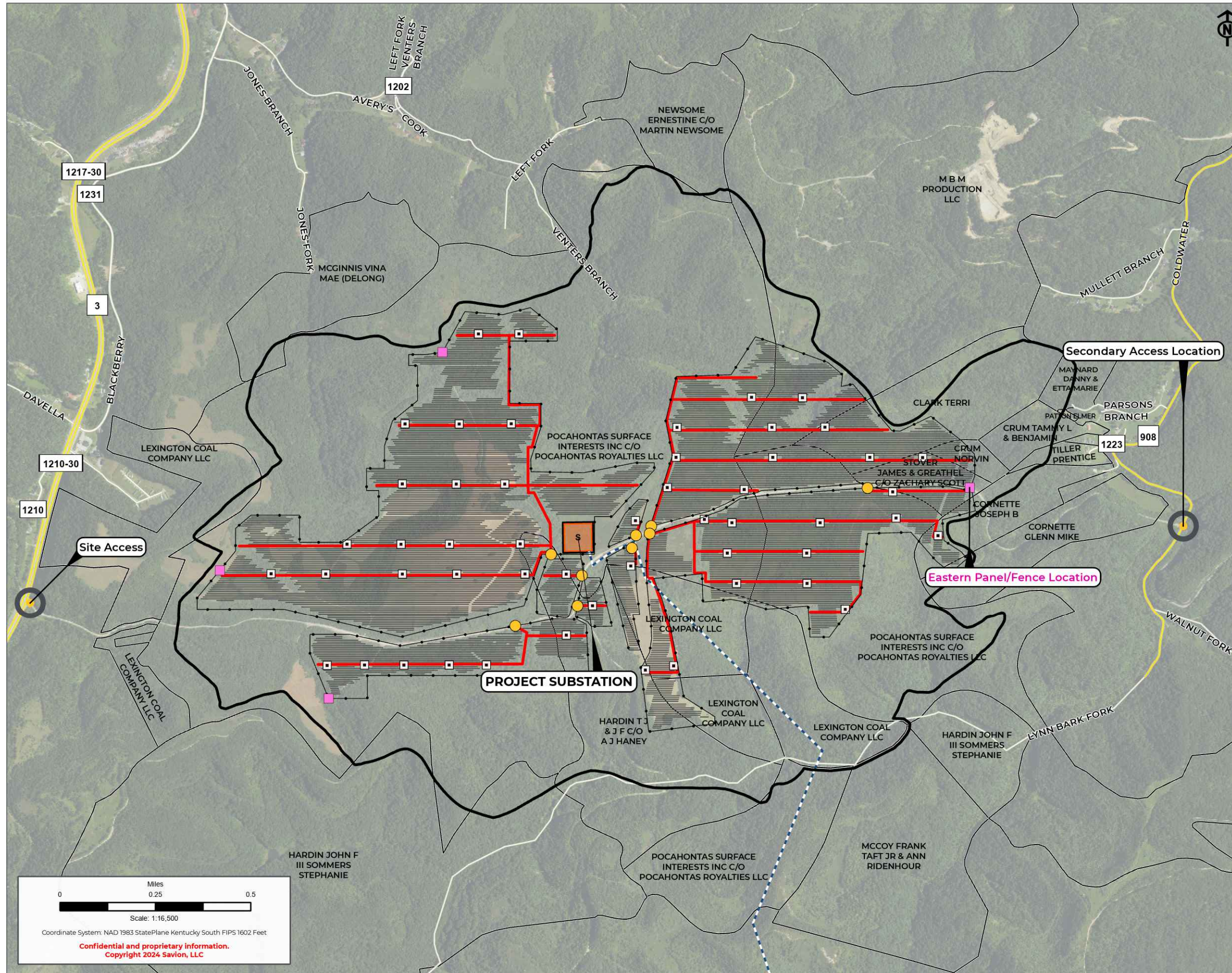
35. The Siting Board can reconvene to enforce any of the above mitigation measures until the generation of electricity commences.

36. Within 30 days of service of this Order, Lynn Bark Energy 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. 2024-00104 DATED NOV 27 2024

ONE PAGE TO FOLLOW



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