

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
KENTUCKY UTILITIES COMPANY AND	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	CASE NO.
FOR A SITE COMPATIBILITY CERTIFICATE FOR	)	2023-00361
THE CONSTRUCTION OF A SOLAR FACILITY IN	)	
MERCER COUNTY, KENTUCKY	)	

ORDER

On November 13, 2023, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (jointly, LG&E/KU) tendered an application to the Commission seeking a Site Compatibility Certificate pursuant to KRS 278.216 to construct an approximately 120-megawatt ground-mounted solar photovoltaic electric generating facility (Project or Mercer Solar Facility) comprising approximately 900 acres of land in Mercer County, Kentucky. On May 10, 2024, after responding to two rounds of discovery, LG&E/KU tendered an amendment to a site assessment report (SAR), which LG&E/KU had submitted as part of its application pursuant to KRS 278.216(2), along with a motion to deviate from the statutory set back requirements in KRS 278.704(2).<sup>1</sup> There are no intervenors in this matter. LG&E/KU requested that this matter be taken under submission and decided based upon the written record. The matter now stands submitted for a decision.

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<sup>1</sup> Pursuant to 807 KAR 5:001, Section 4(5), an amendment shall not relate back to the date of the original paper unless the Commission orders otherwise.

## BACKGROUND

### Case No. 2022-00402 and Stipulation Agreement

On November 6, 2023, the Commission approved a Certificate of Public Convenience and Necessity (CPCN) for the Project, based on a finding that it is needed to reduce costs and mitigate fuel price and regulatory risk, and will not result in wasteful duplication.<sup>2</sup> LG&E/KU explained that it was not requesting a site compatibility certificate for the Project at that time but that, once the SAR was prepared, LG&E/KU would file an application for a Site Compatibility Certificate.<sup>3</sup>

The Mercer County Fiscal Court initially opposed the CPCN because they intended to build an industrial park on the land LG&E/KU purchased for the solar facility.<sup>4</sup> However, LG&E/KU and the Mercer County Fiscal Court entered into a stipulation in which LG&E/KU agreed to move the Project to a nearby piece of land to allow for the construction of the industrial park at the site on which LG&E/KU originally proposed to construct the Project and the Mercer County Fiscal Court withdrew its opposition to the Project and offered support for it.

The stipulation included several key agreements aimed to balance the development of renewable energy infrastructure with economic growth and environmental

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<sup>2</sup> Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements* (Ky. PSC Nov. 6, 2023), Order.

<sup>3</sup> Case No. 2022-00402, Nov. 6, 2023 Order.

<sup>4</sup> Case No. 2022-00402, *Mercer County Fiscal Court Direct Testimony of Sarah Steele* (Steele Direct Testimony) (filed July 13, 2023) at 2.

considerations in Mercer County.<sup>5</sup> LG&E/KU agreed to sell nearly all of the 858 acres on which it originally planned to construct the Project to Mercer County for the development of an industrial park,<sup>6</sup> contingent on LG&E/KU acquiring 1,007 acres in Mercer County near the planned industrial park for the construction of the Project, obtaining a CPCN and Site Compatibility Certificate for the Project, and receiving approval for the sale under KRS 278.218.<sup>7</sup> The stipulation further required certain mitigation measures for the Project to minimize the impacts of the facility, stating:

If approved, the Mercer County Solar Facility shall be maintained with appropriate plantings and ground maintenance consistent with the that provide a reasonable perimeter screening to reduce the effects to the viewscape of Mercer County Solar Facility from occupied residences. Utilities may satisfy the screening requirements by incorporating one or a combination of the following:

(1) Where practical, any existing natural tree growth and landforms along the applicable boundary of the site shall be preserved and may create a sufficient buffer.

(2) A vegetative buffer which shall incorporate a double row of evergreens a minimum of 8' in height at planting with a minimum height of 15' at full growth planted no more than 20ft from exterior of security fence. Trees are to be replaced upon dying within 30 days.

(3) In lieu of vegetative buffers, an opaque fence may be used, provided, that the fencing material or veneer is, or has the appearance, of wood, stone, or other natural materials and is constructed so that it is at least eight (8) feet high when measured at grade.

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<sup>5</sup> LG&E/KU's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Jan. 19, 2024), Item 08, Attachment, Stipulation and Recommendation at 3.

<sup>6</sup> LG&E/KU's Response to Staff's First Request, Item 08, Attachment, Stipulation and Recommendation at 4.

<sup>7</sup> LG&E/KU's Response to Staff's First Request, Item 08, Attachment, Stipulation and Recommendation at 4.

LG&E/KU and Mercer County indicated that their agreement “will facilitate economic development in and for Mercer County and the Commonwealth of Kentucky by creating the opportunity for a unique industrial park in Mercer County adjacent to the Project.”<sup>8</sup> LG&E/KU and the Mercer County Fiscal Court agreed that the stipulation represents a fair, just and reasonable resolution of the issues.<sup>9</sup> The Commission approved the stipulation agreement in Case No. 2022-00402 when granting LG&E/KU’s request to transfer the original property, and concluded that the transfer is for a proper purpose and consistent with public interest.<sup>10</sup>

### SAR

With its application, LG&E/KU submitted an SAR that was prepared by Trinity Consultants (Trinity).<sup>11</sup> LG&E/KU also submitted a noise impact study;<sup>12</sup> glint and glare impact study;<sup>13</sup> a legal description and consolidated deed record;<sup>14</sup> a baseline noise monitoring data;<sup>15</sup> visual resource assessment data;<sup>16</sup> and property valuation data.<sup>17</sup>

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<sup>8</sup> LG&E/KU’s Response to Staff’s First Request, Item 08, Attachment, Stipulation and Recommendation at 3.

<sup>9</sup> LG&E/KU’s Response to Staff’s First Request, Item 08, Attachment, Stipulation and Recommendation at 5.

<sup>10</sup> Case No. 2022-00402, Nov. 6, 2023 Order.

<sup>11</sup> Application, Exhibit 1, SAR.

<sup>12</sup> Application, Exhibit 1, SAR at 3-1 to 3-9.

<sup>13</sup> Application, Exhibit 1, SAR at 3-24 and 3-25; Appendix C.

<sup>14</sup> Application, Exhibit 1, Appendix A.

<sup>15</sup> Application, Exhibit 1, Appendix B.

<sup>16</sup> Application, Exhibit 1, Appendix C.

<sup>17</sup> Application, Exhibit 1, Appendix D.

LG&E/KU submitted a geotechnical investigation on January 19, 2024, conducted by Savion, LLC.<sup>18</sup>

LG&E/KU stated that that they may need the following permits in relation to the Project: (1) a Kentucky Pollutant Discharge Elimination System (KPDES) & Stormwater Pollution Prevention Plan (SWPP) from Kentucky Division of Water (KDOW); (2) a Grading Permit from Mercer County; (3) a Roadway Encroachment Permit from the Kentucky Transportation Cabinet; (4) a Building Information Sheet from Mercer County Property Valuation Administrator (PVA); and (5) a Building Permit from the Office of the Mercer County Building Inspector.<sup>19</sup>

The SAR contained a map showing project boundaries, with preliminary locations of the substations, interconnecting switchyard, and existing transmission lines.<sup>20</sup> On May 10, 2024, LG&E/KU provided a more detailed preliminary site plan.<sup>21</sup> The proposed site plan included construction site entrances, site boundaries, location of vegetative screening, projected collection substation location, karst features, proposed solar arrays, and inverter skid assembly.<sup>22</sup> The preliminary design of the AC collection system is underground from the inverters to the collector substation, though LG&E/KU noted that the EPC contractor is responsible for the final design of the AC collection system.<sup>23</sup>

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<sup>18</sup> LG&E/KU's Response to Staff's First Request, Item 17, Attachment.

<sup>19</sup> LG&E/KU's Response to Commission Staff's Second Request for Information (filed May 10, 2024), Item 16.

<sup>20</sup> Application, Exhibit 1, SAR at 3-26, Figure 3-6.

<sup>21</sup> LG&E/KU's Response to Staff's Second Request, Item 9a, Attachment.

<sup>22</sup> LG&E/KU's Response to Staff's Second Request, Item 9a, Attachment.

<sup>23</sup> LG&E/KU's Response to Staff's Second Request, Item 24.

LG&E/KU stated that the Project will be located on 900 acres of an 1,865-acre site and includes approximately 272,727 photovoltaic solar panels, associated ground-mounted racking, 26 inverters, and will supply energy to an existing 138 kV transmission line adjacent to the site.<sup>24</sup> The interconnection tie point to this line is contained within the overall project site and is expected to be less than 0.2 miles.<sup>25</sup> The EPC contractor will be responsible for the final design of the gen-tie line.<sup>26</sup> LG&E/KU stated that it will install a new substation adjacent to the existing 138 kV transmission line.<sup>27</sup> Additionally, the proposed facility is anticipated to include a single transmission interconnection facility, substation infrastructure, underground cable connections, onsite storage structures, facility access and interior roadways, and perimeter security fencing.<sup>28</sup> The Project components will tie into existing transmission infrastructure.<sup>29</sup>

#### Detailed Site Description

LG&E/KU provided the legal boundaries of the proposed site,<sup>30</sup> and stated that it has secured purchase options for all parcels contained within the 1,865-acre site.<sup>31</sup> LG&E/KU stated that the site is situated in a currently undeveloped area adjacent to

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<sup>24</sup> Application, Exhibit 1, SAR at 2-1.

<sup>25</sup> LG&E/KU's Response to Staff's Second Request, Item 19.

<sup>26</sup> LG&E/KU's Response to Staff's Second Request, Item 19.

<sup>27</sup> LG&E/KU's Response to Staff's Second Request, Item 31.

<sup>28</sup> Application, Exhibit 1, SAR at 2-1.

<sup>29</sup> LG&E/KU's Response to Staff's Second Request, Item 31.

<sup>30</sup> Application, Exhibit 1, SAR at 1-3, 2-2, and Appendix A.

<sup>31</sup> Application, Exhibit 1, SAR 2-2.

residential land uses.<sup>32</sup> The Project is within a zoning district that is designated as a mix of agricultural and rural residential use.<sup>33</sup> The property adjacent to the boundaries surrounding the site is used for single family residential, industrial, agricultural and rural use.<sup>34</sup>

A Threatened and Endangered Species Habitat Survey Report was conducted by Ecology and Environment, Inc.<sup>35</sup> The study concluded that the majority of the Project area is composed of agricultural land that provides either poor or unsuitable habitat for threatened or endangered species that were identified during a desktop assessment as having the potential to occur in the Project area.<sup>36</sup> However, the gray bat, Indiana bat, northern long-eared bat, grape honeysuckle, hispid false mallow, running buffalo clover, snow trillium, softleaf arrowwood, western hairy rockcress, and stitchwort may occur in the various non-agricultural habitat types present within the Project area, primarily woodlands, herbaceous areas, and wetlands/stream habitat.<sup>37</sup> The study indicated that if potential threatened or endangered species habitat cannot be avoided, then additional coordination with U.S. Fish and Wildlife Service (USFWS), Kentucky Department of Fish and Wildlife (KDFW), and Office of Kentucky Nature Preserves (KNP) may be required.<sup>38</sup>

LG&E/KU plans to install a seven-foot-high security fence with swing and

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<sup>32</sup> Application, Exhibit 1, SAR at 2-2.

<sup>33</sup> Application, Exhibit 1, SAR at 2-2.

<sup>34</sup> Application, Exhibit 1, SAR at 2-2.

<sup>35</sup> LG&E/KU's Response to Staff's Second Request, Item 10, Attachment.

<sup>36</sup> LG&E/KU's Response to Staff's Second Request, Item 10, Attachment at 8.

<sup>37</sup> LG&E/KU's Response to Staff's Second Request, Item 10, Attachment at 8.

<sup>38</sup> LG&E/KU's Response to Staff's Second Request, Item 10, Attachment at 8.

cantilever access gates in multiple locations along the secured perimeters for operations and maintenance access.<sup>39</sup> LG&E/KU stated that the security fencing will be installed per NESC Section 11, Rule 110A prior to energization of electrical components.<sup>40</sup> LG&E/KU stated that the substation and related facilities will have a separate security fence.<sup>41</sup> LG&E/KU stated that “no trespassing” signs will be installed along the perimeter of the security fence and that the final design, content, and spacing of the “no trespassing” signs will be established during installation of the security fence.<sup>42</sup> LG&E/KU stated that site access will be controlled and maintained via video surveillance.<sup>43</sup> The EPC contractor will control access to the site during construction,<sup>44</sup> and LG&E/KU will control site access upon initial and on-going commercial operation.<sup>45</sup>

LG&E/KU stated that there were several karst features based on readily available topographical and geotechnical data.<sup>46</sup> LG&E/KU stated that the conceptual design of the facility has avoided those areas.<sup>47</sup> LG&E/KU stated that the EPC contractor will be responsible for identifying known and suspected karst formations and establishing setback requirements and will be incorporated into the final design and layout of the

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<sup>39</sup> LG&E/KU's Response Staff's Second Request, Item 8a.

<sup>40</sup> LG&E/KU's Response to Staff's Second Request, Item 8b.

<sup>41</sup> LG&E/KU's Response to Staff's Second Request, Item 8c.

<sup>42</sup> LG&E/KU's Response to Staff's Second Request, Item 8c.

<sup>43</sup> Application, Exhibit 1, SAR at 2-2.

<sup>44</sup> LG&E/KU's Response to Staff's Second Request, Item 8d.

<sup>45</sup> LG&E/KU's Response to Staff's Second Request, Item 26.

<sup>46</sup> LG&E/KU's Response to Staff's Second Request, Item 19.

<sup>47</sup> LG&E/KU's Response to Staff's Second Request, Item 19.



project.<sup>48</sup> Responsibility for getting these permits will be a requirement of the EPC contractor.<sup>49</sup>

LG&E/KU stated that a portion of the site is located in a FEMA 100-year floodplain, but installation of the equipment will not be impacted by the 100-year floodplain.<sup>50</sup> During construction, the EPC contractor will utilize appropriate best management practices to control site runoff and attain necessary construction permits such as a Kentucky Pollution Discharge Elimination System (KPDES) stormwater construction permit.<sup>51</sup> Prior to commercial operation of the facility, LG&E/KU stated that they will attain the appropriate KPDES permits.<sup>52</sup> LG&E/KU also stated that the Project is designed to avoid Waters of the United States and 100-year floodplains and does not believe permitting is necessary.<sup>53</sup>

LG&E/KU stated that it will utilize the existing electrical transmission including KU's 138 kV line.<sup>54</sup> LG&E/KU stated that existing structures such as barns, silos, houses, etc. not utilized during construction will be demolished prior to or during construction.<sup>55</sup>

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<sup>48</sup> LG&E/KU's Response to Staff's First Request, Item 18.

<sup>49</sup> LG&E/KU's Response to Staff's First Request, Item 18.

<sup>50</sup> LG&E/KU's Response to Staff's Second Request, Item 18.

<sup>51</sup> LG&E/KU's Response to Staff's Second Request, Item 18

<sup>52</sup> LG&E/KU's Response to Staff's Second Request, Item 18.

<sup>53</sup> The permits LG&E/KU determined are not applicable or necessary are: Clean Water Act Section 404 Individual Construction and/or Nationwide Permit 12 (Utilities Line Activity) and 51 (Land-based Renewable Energy Generation Facilities from the U.S. Army Corps of Engineers); Water Quality Certification – Section 401 of the Clean Water Act from KDOW; and Stream Construction Permit for Construction In Or Along a Stream (i.e., Floodplain Permit from Mercer County Floodplain Manager and KDOW, Floodplain Management Section). LG&E/KU's response to Staff's Second Request, Item 12.

<sup>54</sup> Application, Exhibit 1, SAR at 2-4.

<sup>55</sup> LG&E/KU's Response to Staff's Second Request, Item 25.

LG&E/KU stated upon completion of the project, all structures not utilized or needed during operations of the facility will be demolished.<sup>56</sup>

LG&E/KU stated that the solar field will not encroach upon the existing easement for the East Kentucky Power Cooperative (EKPC) 69 kV line that runs in a generally north/south direction from Jackson Pike parallel with the railroad track.<sup>57</sup> LG&E/KU stated that if grade changes are necessary for the perimeter road within the easement, LG&E/KU will ensure compliance with the easement and secure any necessary approvals from EKPC.<sup>58</sup>

LG&E/KU stated that there is one residential neighborhood, Cottonwood Subdivision, located within 2,000 feet of the KU property line.<sup>59</sup> The closest residential property within the subdivision will be located approximately 1,375 feet to the closest component of the solar facility.<sup>60</sup> The Lillard Family Graveyard is located within the project boundary.<sup>61</sup> LG&E/KU stated that unrestricted access to the grave site will be provided on KU property directly north from Jackson Pike along the western edge of the property parallel to the railroad tracks.<sup>62</sup> LG&E/KU notified the descendants of the persons buried in the cemetery, and they have agreed with this proposed access road

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<sup>56</sup> LG&E/KU's Response to Staff's Second Request, Item 25.

<sup>57</sup> LG&E/KU's Response to Staff's Second Request, Item 33.

<sup>58</sup> LG&E/KU's Response to Staff's Second Request, Item 33.

<sup>59</sup> LG&E/KU's Response to Staff's Second Request, Item 5c.

<sup>60</sup> LG&E/KU's Response to Staff's Second Request, Item 5c.

<sup>61</sup> LG&E/KU's Response to Staff's Second Request, Item 5d.

<sup>62</sup> LG&E/KU's Response to Staff's Second Request, Item 5d.

and parking area.<sup>63</sup> The solar array will be set back approximately 50 feet from the cemetery based upon the preliminary design.<sup>64</sup> The Jones Family Cemetery is within 1,117 feet of the property line, but outside of the project boundaries.<sup>65</sup> LG&E/KU stated that there are no schools, hospitals, or nursing homes within 2,000 feet of the project boundary line.<sup>66</sup>

LG&E/KU stated that they will work with the local landowners prior to and during construction as well as during operation of the Project to minimize the impact of each, but that they have not communicated with any landowners within 1,500 feet of the Mercer Solar Facility site.<sup>67</sup> LG&E/KU has not communicated with the Mercer County Road Department.<sup>68</sup> LG&E/KU has not entered into any contracts with non-participating landowners.<sup>69</sup> LG&E/KU expanded their Neighbor to Neighbor (“N2N”) newsletter to include the community surrounding the facility and that the newsletter also provides methods to contact LG&E/KU so that the community can respond to items or raise points of concern.<sup>70</sup>

### Compatibility with Scenic Surroundings

Trinity assessed visual impacts and stated that the visual impacts are presented

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<sup>63</sup> LG&E/KU's Response to Staff's Second Request, Item 5d.

<sup>64</sup> LG&E/KU's Response to Staff's Second Request, Item 5d.

<sup>65</sup> LG&E/KU's Response to Staff's Second Request, Item 5d.

<sup>66</sup> LG&E/KU's Response to Staff's Second Request, Item 6b.

<sup>67</sup> LG&E/KU's Response to Staff's First Request, Item 11.

<sup>68</sup> LG&E/KU's Response to Staff's First Request, Item 12/

<sup>69</sup> LG&E/KU's Response to Staff's Second Request, Item 15.

<sup>70</sup> LG&E/KU's Response to Staff's Second Request, Item 28.

and quantified utilizing applicable assessment practices employed by the Bureau of Land Management (BLM), and mitigation measures are recommended to protect viewsheds where visual impacts were determined to be potentially significant.<sup>71</sup> The project site is generally agricultural, with rural residences in the surrounding vicinity of the facility.<sup>72</sup> Furthermore, the areas surrounding include additional open fields and low-rolling hills.<sup>73</sup> The proposed solar arrays and ancillary structures would be partially visible to the rural residences surrounding the vicinity, with the views generally limited to the nearby roadways.<sup>74</sup>

LG&E/KU indicated that the Project equipment, including the proposed solar arrays and related infrastructure, is not anticipated to significantly change or adversely impact the viewpoints of surrounding residences.<sup>75</sup> LG&E/KU stated that the solar panels will sit relatively low to the ground to limit visibility (stating they would sit approximately 5–7 feet above ground) and that the taller structures would be installed at discrete locations and have thin structural profiles.<sup>76</sup> The SAR stated that the solar arrays would either be fully obscured or only partially visible due to the existing vegetation and windbreak tree lines that border the facility.<sup>77</sup> LG&E/KU stated that development of the proposed Project would not be incompatible or incongruous with the

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<sup>71</sup> Application, Exhibit 1, SAR at 3-10.

<sup>72</sup> Application, Exhibit 1, SAR at 3-12.

<sup>73</sup> Application, Exhibit 1, SAR at 3-10.

<sup>74</sup> Application, Exhibit 1, SAR at 3-12.

<sup>75</sup> Application, Exhibit 1, SAR at 3-24.

<sup>76</sup> Application, Exhibit 1, SAR at 3-12.

<sup>77</sup> Application, Exhibit 1, SAR at 3-24.

surrounding landscape in terms of visual quality and contrast.<sup>78</sup> LG&E/KU concluded that the project would not have a substantial adverse effect on visual or scenic resources surrounding the Mercer County site.<sup>79</sup> The SAR stated that the visual changes would be minimal, and that the facility has been designed with features such as setbacks from property line, maintenance of existing vegetative screening to minimize potential visual effects.<sup>80</sup>

ForgeSolar conducted a glint and glare study for the proposed PV solar arrays within the northern half of the property.<sup>81</sup> The analysis predicted no glare impacts for the residences as a result of the proposed PV solar arrays, but a green glare was predicted along Jackson Pike for approximately 5,924 hours annually at car height (4 feet) and 3,012 hours annually at truck height (8 feet).<sup>82</sup>

#### Impact on Property Values

The SAR concluded that the proposed Project would be unlikely to have a negative impact on local property values.<sup>83</sup> The data used for the property value assessment was obtained from the Mercer County Property Valuation Administrator.<sup>84</sup> The SAR cited Unbridled Solar, LLC's SAR as well as its property value impact report that found that "properties surrounding other solar farms operating in compliance with regulatory

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<sup>78</sup> Application, Exhibit 1, SAR at 3-24.

<sup>79</sup> Application, Exhibit 1, SAR at 3-24.

<sup>80</sup> Application, Exhibit 1, SAR at 3-25.

<sup>81</sup> Application, Exhibit 1, SAR at 3-24 and Appendix C.

<sup>82</sup> Application, Exhibit 1, SAR at 3-25.

<sup>83</sup> Application, Exhibit 1, SAR at 3-29.

<sup>84</sup> Application, Exhibit 1, SAR at 3-27.

standards will not be adversely affected in either short- or long-term periods.”<sup>85</sup> The SAR stated that “given the lack of existing evidence indicating a negative impact on property values for the surrounding area, it is reasonable to conclude that the proposed Project will not have a negative impact on local property values.”<sup>86</sup>

### Anticipated Noise Level

LG&E/KU’s Noise Assessment was completed by Trinity.<sup>87</sup> Trinity’s noise impact study was quantified using the A-weighted decibel scale (dBA).<sup>88</sup> Trinity stated that the construction equipment used will be typical of following property development activities such as site preparation, foundation setting, equipment installation, building development and demobilization.<sup>89</sup> Trinity stated that most noise will occur between 7 AM and 10 PM.<sup>90</sup> Two of the significant noise sources identified were the inverter and substation with power levels of 92 and 99 dBA respectively.<sup>91</sup> Trinity stated that these noise levels are expected to be in compliance with the United States Environmental Protection Agency (USEPA) exclusionary limits.<sup>92</sup> Trinity identified four locations at the boundary of the property where the sound modeling would be greater than the existing levels, but the sound would only

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<sup>85</sup> Application, Exhibit 1, SAR at 3-28.

<sup>86</sup> Application, Exhibit 1, SAR at 3-29.

<sup>87</sup> Application, Exhibit 1, SAR at 3-1.

<sup>88</sup> Application, Exhibit 1, SAR at 3-1.

<sup>89</sup> Application, Exhibit 1, SAR at 3-6.

<sup>90</sup> Application, Exhibit 1, SAR at 3-6.

<sup>91</sup> Application, Exhibit 1, SAR at 3-7.

<sup>92</sup> Application, Exhibit 1, SAR at 3-7.

be slight louder than ambient noise.<sup>93</sup> Trinity stated that no additional mitigation should be required for operation of the solar facility.<sup>94</sup> Trinity also stated that construction should be limited to daytime and mobile source and heavy construction equipment will be equipped with engine mufflers.<sup>95</sup>

With regards to construction, LG&E/KU stated that “typical workdays can range between 8-12 hours per day 4-7 days per week during daylight hours.” LG&E/KU stated that they do not anticipate the need for non-daylight work hours but non-daylight workhours will be utilized if required to maintain the project schedule. LG&E/KU stated that pile driving or other loud construction activities will be limited to daylight hours only, and that any pile-driving activities may require six to eight months to be completed.<sup>96</sup>

LG&E/KU was asked whether it would be reasonable to limit pile driving activities to Monday through Saturday and “to specific daylight hours when pile driving is less likely to disturb neighboring property owners, such as 8:00 a.m. to 6:00 p.m.,” and responded that:

Pile driving activities could be limited to daylight hours Monday through Saturday. The impact of such limitation could be an extension of pile driving activities, the EPC contractor’s ability to work extended hours to recover from adverse weather event, or both. At this point, the Companies cannot say for sure how long the construction timeline would be affected or how much additional cost would be incurred by limiting pile driving activities to daylight hours.<sup>97</sup>

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<sup>93</sup> Application, Exhibit 1, SAR at 3-7.

<sup>94</sup> Application, Exhibit 1, SAR at 3-10.

<sup>95</sup> Application, Exhibit 1, SAR at 3-29.

<sup>96</sup> LG&E/KU’s Response to Staff’s First Request, Item 13.

<sup>97</sup> LG&E/KU’s Response to Staff’s First Request, Item 13.

LG&E/KU also stated that other construction activities likely to cause noise could also be limited to daylight hours Monday through Saturday but it could have similar impacts to the limitation on pile-driving activities.<sup>98</sup>

#### Impact on Roads, Railways, and Fugitive Dust

As part of the SAR, Trinity conducted a traffic and rail impact assessment, including a roadway capacity analysis.<sup>99</sup> Construction is anticipated to take 12 to 18 months.<sup>100</sup> LG&E/KU stated that after construction is complete, operation of the Project will not result in permanent additional onsite personnel.<sup>101</sup> The main highways near to the Project are US Highway 127 (Louisville Road), KY 1160 (Talmage Mayo Road), KY 390 (Bohan Road).<sup>102</sup> LG&E/KU also stated that Jackson Pike and Bohon Road also provide access to the site.<sup>103</sup> Trinity estimated that the peak volume of vehicles entering and leaving on a daily basis during the site's construction would be 178 construction-related vehicles per day (individuals, carpools and trucks) and most likely to occur between 6:00 a.m. and 6:00 p.m. on weekdays.<sup>104</sup> Trinity determined that although the project would temporarily increase daily and peak-hour traffic on US Highway 127, KY 1160, and KY 390, the roadway has the capacity to accommodate additional vehicles and

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<sup>98</sup> LG&E/KU's response to Staff's Second Request, Item 11a.

<sup>99</sup> Application, Exhibit 1, SAR at 3-29.

<sup>100</sup> Application, Exhibit 1, SAR at 3-32.

<sup>101</sup> Application, Exhibit 1, SAR at 3-35.

<sup>102</sup> Application, Exhibit 1, SAR at 3-29 and 3-30.

<sup>103</sup> Application, Exhibit 1, SAR at 2-4.

<sup>104</sup> Application, Exhibit 1, SAR at 3-32.



thus is not expected to adversely affect the roadway usability.<sup>105</sup> Trinity stated that interference with traffic flow or damage to local roadways due to oversized loads is not expected as a result of the project.<sup>106</sup> Trinity found that no mitigation was merited for potential impacts on the surrounding transportation structures.<sup>107</sup>

LG&E/KU stated that US Route 127 (US 127) will be the local roadway for construction traffic as the project site has direct access to US 127.<sup>108</sup> US 127 is a Class AAA Highway with a Gross Weight capacity of 80,000 lbs.<sup>109</sup> LG&E/KU stated that the maximum load traversing US 127 will be the generator step-up transformer with an approximately 215,000 lbs. shipping weight.<sup>110</sup> The expected weights for the listed vehicles and equipment are unknown at this time but will likely require approval from the Kentucky Transportation Cabinet due to shipment weight.<sup>111</sup> However, LG&E/KU stated they will ensure the EPC contractor complies with Kentucky Transportation Cabinet requirements as well as posted weight limits for roads, bridges, culverts, etc.<sup>112</sup> LG&E/KU stated that they will work with the EPC contractor to establish transportation logistics, and

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<sup>105</sup> Application, Exhibit 1, SAR at 3-33.

<sup>106</sup> Application, Exhibit 1, SAR at 3-35.

<sup>107</sup> Application, Exhibit 1, SAR at 3-36.

<sup>108</sup> LG&E/KU's Response to Staff's Second Request, Item 4a.

<sup>109</sup> LG&E/KU's Response to Staff's Second Request, Item 4d.

<sup>110</sup> LG&E/KU's Response to Staff's Second Request, Item 4b.

<sup>111</sup> LG&E/KU's Response to Staff's Second Request, Item 4b.

<sup>112</sup> LG&E/KU's Response to Staff's Second Request, Item 4b.

will ensure that the EPC contractor complies with Kentucky Transportation Cabinet requirements as well as posted weight limits for roads, bridges, culverts, etc.<sup>113</sup>

Trinity stated that best management practices will be used during construction to limit fugitive dust emissions such as watering the roadways, periodic sweeping/maintenance of paved roads, limiting the area of open excavation/grading, and providing temporary cover for soil stockpiles.<sup>114</sup> Trinity stated that plans and practices to minimize and control fugitive dust resulting from construction, may include minimizing the area of exposed soil; application of water, mulch, or seeding; surface roughening; structural barriers and windbreaks; or application of dust suppression chemicals.<sup>115</sup>

### Mitigation Measures

In addition to mitigation measures and construction plans previously discussed, Trinity laid out several mitigation measures in the SAR. First, Trinity stated that construction contracts will be required to develop and implement practices and procedures to control, prevent, and respond to any spills or releases of materials that could potentially impact water quality.<sup>116</sup> Trinity stated that contractors will be prohibited from dumping solid waste into waterways, and the facility will be designed to provide secondary and appropriate containment.<sup>117</sup> Trinity stated that potential increases in peak stormwater discharge rates will be evaluated, and engineering controls applied as

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<sup>113</sup> LG&E/KU's Response to Staff's Second Request, Item 4c.

<sup>114</sup> Application, Exhibit 1, SAR at 3–35.

<sup>115</sup> Application, Exhibit 1, SAR at 5–1.

<sup>116</sup> Application, Exhibit 1, SAR at 5–1.

<sup>117</sup> Application, Exhibit 1, SAR at 5–1.

necessary.<sup>118</sup> Trinity stated that the proposed facility will likely not generate hazardous waste during the operation phase, except for PV panels at the end of their life.<sup>119</sup> Trinity stated that containers will be placed for the accumulation of solid waste.<sup>120</sup> Trinity stated that since no hazardous waste is anticipated, no mitigation strategies are necessary for the operation of the facility.<sup>121</sup>

LG&E/KU also discussed various mitigation measures. LG&E stated that it will work with the EPC contractor to ensure local emergency services are fully informed on the project prior to initiating construction activities.<sup>122</sup> In addition, LG&E/KU stated it will ensure that the annual meeting with emergency responders at E.W. Brown appropriately discusses the status and pending progress of this project.<sup>123</sup> This meeting is usually executed in October/November and has previously covered solar installations.<sup>124</sup>

### Setback Requirements

LG&E/KU argued that they are exempt from local planning and zoning requirements pursuant to KRS 100.324 and *Oldham County Planning and Zoning Commission v. Courier Communications Corporation*.<sup>125</sup> Initially, LG&E/KU also argued that the Mercer County Planning and Zoning requirements superseded the statutory

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<sup>118</sup> Application, Exhibit 1, SAR at 5-2.

<sup>119</sup> Application, Exhibit 1, SAR at 5-2.

<sup>120</sup> Application, Exhibit 1, SAR at 5-2.

<sup>121</sup> Application, Exhibit 1, SAR at 5-2.

<sup>122</sup> LG&E/KU's Response to Staff's Second Request, Item 27.

<sup>123</sup> LG&E/KU's Response to Staff's Second Request, Item 27.

<sup>124</sup> LG&E/KU's Response to Staff's Second Request, Item 27.

<sup>125</sup> Application, Exhibit 1, SAR at 2-5. *Oldham County Planning and Zoning Commission v. Courier Communications Corporation*, 722 S.W.2d 904 (Ky. App. 1987)

setback requirements of KRS 278.704(2) such that the statutory setbacks of 1,000 feet and 2,000 feet, depending on the circumstances, also did not apply.<sup>126</sup> However, in response to a request for information, LG&E/KU acknowledged that the setback requirements in KRS 278.704(2) would apply; therefore, LG&E/KU would need a deviation pursuant to KRS 278.216(4) to precede with the construction.<sup>127</sup>

On May 10, 2024, LG&E/KU filed an amended version of its SAR and a motion for deviation from setback requirements.<sup>128</sup> LG&E/KU proposed to deviate from the setback requirements by (1) placing all solar facilities at least 150 feet from any residence, church, school, or public-facing commercial building; (2) placing all solar facilities at least 50 feet from non-participating adjoining parcels; and (3) placing all solar facilities at least 50 feet from adjacent roadways.<sup>129</sup> Other setback requirements in LG&E/KU's preliminary design include 50 feet minimum setbacks from streams/wetlands, rights-of-way, and karst features.<sup>130</sup>

LG&E/KU noted that pursuant to KRS 278.216(4) the Commission may grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of KRS 278.216 and KRS 224.10-280, 278.010, 278.212, 278.218, and 278.700 to 278.716.<sup>131</sup> LG&E/KU stated that the Project meets

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<sup>126</sup> Application, Exhibit 1, SAR at 2-5.

<sup>127</sup> LG&E/KU's Response to Staff's Second Request, Item 1a.

<sup>128</sup> LG&E/KU's Response to Staff's Second Request, Item 1a, Attachment; LG&E's Motion for Deviation (filed May 10, 2024).

<sup>129</sup> LG&E's Motion for Deviation at 5.

<sup>130</sup> LG&E/KU's Response to Staff's First Request, Item 20; LG&E/KU's Response to Staff's Second Request, Item 9a, Attachment.

<sup>131</sup> LG&E/KU's Motion for Deviation from Setback Requirements at 6.

the goals of the applicable provisions of KRS Chapters 224 and 278 with the requested deviations such that they should be approved. LG&E/KU stated that if no deviation were permitted, the name plate rating of the facility would be significantly reduced, rendering the project uneconomic.<sup>132</sup> LG&E/KU stated that enforcement of the 1,000 feet and 2,000 feet setbacks without deviation could effectively halt development of solar generation in Kentucky due to the additional costs associated with procuring the incremental land, and the nameplate rate would be reduced by more than 98 percent.<sup>133</sup>

### Mercer Planning and Zoning Requirements

The Mercer County Planning and Zoning Commission requires that Level 3-Solar Energy Facilities (SEFs), which would generally include utility scale solar projects, obtain a Conditional Use Permit issued by the Harrodsburg/Mercer County Joint Board of Adjustments & Appeals.<sup>134</sup> Mercer County Planning and Zoning also requires all SEFs, measured from the outer edge of the panels or perimeter fencing, whichever is closer to the applicable property lines, shall be setback a minimum of one thousand five hundred (1,500') feet from property lines of non-participating adjacent landowners, and a minimum of two thousand (2,000') feet from any residentially zoned land, school, hospital or nursing home facility.<sup>135</sup> If the SEF is located on multiple adjacent tracts, no interior setbacks from contiguous parcels interior to the property lines shall be required.<sup>136</sup> SEFS can

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<sup>132</sup> LG&E/KU's Response to Staff's Second Request, Item 3a.

<sup>133</sup> LG&E/KU's Response to Staff's Second Request, Item 3a.

<sup>134</sup> LG&E/KU's Response to Staff's Second Request, Item 1b, Attachment at 57.

<sup>135</sup> LG&E/KU's Response to Staff's Second Request, Item 1b, Attachment at 59-60.

<sup>136</sup> LG&E/KU's Response to Staff's Second Request, Item 1b, Attachment at 59-60.

request variance on specific setbacks on a case by case basis as part of the Conditional Use Approval process.<sup>137</sup>

A decommissioning plan required by Mercer County Planning and Zoning for permitting approval should include (1) the estimated cost to remove the SEF and related infrastructure, including but not limited to, foundations, pads, piers, underground collector lines, and permanent roads built for support of the SEF, all to a depth of four (4) feet below natural surface grade; and (2) the estimated cost to restore the subject property to a condition substantially similar to the condition of the subject property prior to commencement of installation of the SEF and (5) the estimated salvage value of the SEF.<sup>138</sup>

#### Mercer County Judge Executive Public Comment

The Mercer County Judge Executive, Sarah Steele, filed a public comment stating:

my understanding is that in this Site Compatibility case, KU and LG&E now seek the Commission's approval of the site to be used for the solar facility. It is my further understanding that, as part of that process, KU and LG&E have requested a deviation from certain setback requirements. I write to express my continued support of the construction of the solar facility and ask that the commission grant approval to KU and LGE in this case.<sup>139</sup>

#### LEGAL STANDARD

KRS 278.216(1) states that no utility shall begin the construction of a facility for the generation of electricity capable of generating in aggregate more than ten megawatts (10MW) without having first obtained a site compatibility certificate from the Commission.

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<sup>137</sup> LG&E/KU's Response to Staff's Second Request, Item 1b, Attachment at 60.

<sup>138</sup> LG&E/KU's Response to Staff's Second Request, Item 1b, Attachment at 58.

<sup>139</sup> County Judge Executive Sarah Steele Public Comment (filed May 15, 2024).

KRS 278.216(3) states that the Commission may deny an application for a site compatibility certificate or require reasonable mitigation of impacts disclosed in the site assessment report but the Commission shall, in no event, order relocation of the facility.

KRS 278.216(2) states that:

An application for a site compatibility certificate shall include the submission of a site assessment report [SAR] as prescribed in KRS 278.708(3) and (4), except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3).

The requirement that a utility file a SAR like those filed before the siting board when a merchant generator seeks to obtain a construction certificate indicates that the legislature intended for the Commission to consider the factors discussed in the SAR when determining whether to approve a site compatibility certificate or impose mitigation measures.<sup>140</sup> However, KRS 278.216(2) also states that “[a] utility may submit and the commission may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report,” which indicates that the Commission is able to consider other factors, at least compliance with NEPA, in lieu of at least certain factors in the SAR.

KRS 278.708(3) and (4), which are written in reference to merchant generating facilities as opposed to utility owned facilities, state that the SAR shall include (1) a detailed description of the proposed site, including surrounding land uses, compliance

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<sup>140</sup> See Case No. 2014-00133, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Site Compatibility Certificates for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station* (Ky. PSC Dec. 19, 2014), Order at 2–3 (applying factors required to be discussed in the SAR when granting the site compatibility certificate for a solar facility).

with applicable setback requirements as provided under KRS 278.704(2), (3), (4), or (5), and evaluation of the noise levels expected to be produced by the facility; (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 LG&E/KU to minimize or avoid adverse effects identified in the SAR.

KRS 278.704(2) states that:

For purposes of applications for **site compatibility certificates pursuant to KRS 278.216**, only . . . the proposed structure or facility to be actually used for **solar or wind generation** shall be required to be at least **one thousand (1,000) feet from the property boundary** of any adjoining property owner and **two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility**.<sup>141</sup>

Notably, the reference to site compatibility certificates required pursuant to KRS 278.216, which are only required for utilities as defined by KRS 278.010, indicates that the legislature intended for KRS 278.704(2) to establish explicit setback requirements for utilities that must be met in order to obtain a site compatibility certificate. However, KRS 278.216(4) allows the Commission to:

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<sup>141</sup> KRS 278.704(2) (emphasis added).



grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of this section and KRS 224.10-280 [cumulative environmental assessment], 278.010 [definitions statute], 278.212 [cost of transmission upgrades for interconnection by merchant generators], 278.214 [governing interruption of service], 278.218 [ownership change statute], and 278.700 to 278.716 [siting board statutes] at a distance closer than those provided by the applicable setback requirements.

Thus, while KRS 278.216 generally allows other factors included in the SAR to be weighed to determine whether to grant a site compatibility certificate, KRS 278.704(2) establishes explicit setback requirements that must be met for a utility to obtain a site compatibility certificate, unless the utility can establish that it is entitled to a deviation pursuant KRS 278.216(4).

KRS 278.704(3) states that local planning and zoning commissions may establish setback requirements from a property boundary, residential neighborhood, school, hospital, or nursing home facility, which shall have primacy over statutory setback requirements, “[i]f the merchant electric generating facility is proposed to be located in a county or a municipality with a planning and zoning commission.” However, KRS 100.324 generally provides that “public utilities operating under the jurisdiction of the Public Service Commission . . . shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities,”<sup>142</sup> which the Kentucky Court of Appeals has interpreted as exempting utility service facilities from the jurisdiction of

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<sup>142</sup> KRS 100.324(1).

local planning and zoning commissions.<sup>143</sup> KRS 278.216(5) also states that “nothing in this section shall be construed to limit a utility’s exemption provided under KRS 100.324.”

### DISCUSSION AND FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that LG&E/KU have satisfied the requirements of KRS 278.216 for the Mercer Solar Facility, subject to the conditions discussed herein. First, LG&E/KU chose the location of the Project pursuant to an agreement with Mercer County and subject to mitigation measures to limit the visual effects on other properties imposed by Mercer County in the agreement. The Mercer Solar Facility is also now tied to an industrial park that Mercer County plans to construct in the area, and the Mercer County Judge Executive filed comments in this case expressing support for the solar facility and urging the Commission to approve the Site Compatibility Certificate. Thus, the evidence indicates that the facility is consistent with the county’s plans for the use of the area.

There are also limited structures in the area that could be affected by the proposed facilities. There are no schools, hospitals, or nursing homes within 2,000 feet of the project boundary line. There are 13 homes within 1,000 feet of the project boundary line but the SAR indicated that the operation of the Mercer Solar Facility would have limited visual impacts with mitigation measures, which the Commission finds to be credible given the height of proposed facilities, the proposed visual mitigation measures, and Mercer County’s agreement to and support for the Project with the mitigation measures. The SAR also credibly indicated the siting and operation of the Mercer Solar Facility would

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<sup>143</sup> *Oldham County Planning and Zoning Com’n v. Courier Communications Corp.*, 722 S.W.2d 904, 906 (Ky. App. 1987)

have limited noise impacts and effects on property value. Finally, the SAR did not indicate any adverse environmental effects. Thus, consideration of the information required by the SAR generally supports approving the Site Compatibility Certificate.

As required by KRS 278.708(4), LG&E/KU proposed various mitigation measures consistent with the statutes regarding traffic, noise, roadway preservation, permitting, setbacks, public safety, scenic preservation, and LG&E/KU is also required to apply mitigation measures related to visual screening pursuant to its agreement with Mercer County. The Commission finds that LG&E/KU's proposed mitigation measures are generally reasonable and should be implemented as proposed, unless modified or added to herein. However, the Commission finds that a few of LG&E/KU's mitigation measures should be modified and that some additional mitigation measures should be included to ensure that the goals of KRS 278.216 are met.

First, the Commission finds that pile driving should be limited to Monday through Saturday, 8:00 a.m. to 6:00 p.m. instead of being limited to daylight hours and that other loud construction activities, such as the use of heavy equipment, should be limited to Monday through Saturday, 7:30 a.m. to 7:30 p.m. instead of being limited to daylight hours only as proposed by LG&E/KU. Given LG&E/KU's statement that "typical workdays can range between 8-12 hours per day 4-7 days per week during daylight hours," the Commission does not believe that limiting pile driving to 10 hours a day and other loud construction activities to 12 hours hour a day will have a significant effect of LG&E/KU's construction schedule. Conversely, by limiting such activities to periods when nearby residents are likely to be at work and unlikely to be sleeping, it should minimize the effects of the construction work on nearby residents.

However, the Commission recognizes that there may be limited circumstances caused by matters outside of LG&E/KU's control, such as significant weather events, in which it would be appropriate to deviate from the limitations imposed on pile driving and loud construction activity for a short period. Thus, the Commission finds that the executive director should be authorized to grant deviations from the limits on pile driving and loud construction activities for short periods upon a showing of good cause, such as when a minor deviation, necessitated by matters outside of LG&E/KU's control, could avoid significant delays or costs.

To ensure that the Commission can follow what is occurring with respect to the project, the Commission also finds that it is necessary to require LG&E/KU to make various filings with the Commission as the Project progresses, such as a final plan layout and any changes in the Project boundary, as explained in more detail in the Appendix, which lists some but not all mitigation measures proposed by LG&E/KU and those required by the Commission herein. Further, while LG&E/KU indicated it would work to keep local residents informed regarding the project, which is appropriate, the Commission finds that as part of that outreach that LG&E/KU should notify residents and businesses within 2,000 feet of the Project boundary about the construction plan, the noise potential, and any mitigation plans, at least one month prior to the start of construction. Finally, as part of LG&E/KU's or their contractor's outreach to emergency services, the Commission finds that LG&E/KU shall provide a finalized emergency response plan to the local fire district, first responders, and any county emergency management agency, and provide site-specific training for local emergency responders at their request after consultation with local authorities to ensure they have access to information about the Project site.

For the reasons discussed above, the evidence presented by LG&E/KU supports approving the Site Compatibility Certificate subject to the mitigation measures proposed by LG&E/KU, and listed in the stipulation agreement, and finds that, in addition to those LG&E/KU has initially proposed, the mitigation measures set forth in the Appendix 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 in accordance with KRS 278.708.

However, as noted above, LG&E/KU's plans for the Mercer Solar Facility are inconsistent with the setback requirements in KRS 278.704(2) applicable to the facility such that LG&E/KU must obtain a deviation pursuant to KRS 278.216(4) for the Commission to approve the site compatibility certificate. To obtain such a deviation, LG&E/KU must establish that the proposed facility is designed and located to meet the goals of KRS 278.216, 224.10-280, 278.010, 278.212, 278.214, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the applicable setback requirements.

Notably, KRS 278.010 is the general definitions statute for KRS Chapter 278, KRS 278.212 pertains to the allocation of costs for transmission upgrades for interconnection by merchant generators, and KRS 278.218 governs transfers in utility property, such that the setback requirements would have limited effect on the goals of those statutes. Conversely, the goals of KRS 224.10-280, KRS 278.216, and KRS 278.700 to 278.716, which look at the environmental effects and the effects on nearby properties of generation siting, could be significantly affected by deviations from the setback requirements. KRS 278.214 governs the order in which service should be interrupted in the event of an emergency and generally requires that service be interrupted to customers outside of a

utilities certified territory before it is interrupted inside a utility's certified territory, such that its application could be affected by the location of generation.

As the Commission indicated when granting the CPCN for the Mercer Solar Facility, the facility does support the broad goal of KRS Chapter 278 that utilities provide adequate service at fair, just and reasonable rates. Similarly, to the extent the siting of the Mercer Solar Facility involved the transfer of property, it was already approved in Case No. 2022-00402. The Mercer Solar Facility is also being constructed near existing transmission facilities and in the same county as other generation resources operated by LG&E/KU, and should have limited to no effect on LG&E/KU's ability to interrupt service in the event of an emergency, regardless of the setback requirements. Finally, as discussed above, the Mercer Solar Facility with the mitigation measures proposed and the additional mitigation measures required herein is unlikely to have environmental effects or any material effects on nearby property owners. Thus, the Commission finds that the Mercer Solar Facility is designed and located to meet the goals of KRS 278.216, 224.10-280, 278.010, 278.212, 278.214, 278.218, and 278.700 to 278.716 at a distance closer than those provided by KRS 278.704(2), and therefore, that LG&E/KU's deviation should be granted.

Mercer County does have local planning requirements that establish set back requirements that are stricter than those established by KRS 278.704(2), which could potentially apply to the Mercer County Facility pursuant to KRS 278.216(2), KRS 278.708(3)(a)(7), and KRS 278.704(3). However, LG&E/KU argued that this provision does not apply to utilities seeking a site compatibility certificate, because utilities are exempt from the jurisdiction of local planning units pursuant to KRS 100.324, and

because KRS 278.216(5) states that “nothing in this section shall be construed to limit a utility’s exemption provided under KRS 100.324.”

The Commission agrees that KRS 100.324 and KRS 278.216(5), taken alone, indicate that set back requirements established by local planning and zoning commissions would not apply to a utility seeking a site compatibility certificate. However, as noted above, KRS 278.216(2) generally requires that a utility seeking a site compatibility certificate file a SAR as prescribed in KRS 278.708(3) and (4) but then states “except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3).”

When interpreting a statute, it should be presumed that the legislature “intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes.”<sup>144</sup> The conditional exemption to the local setback requirements in KRS 278.216(2) creates ambiguity regarding the applicability of local set back requirements pursuant to KRS 278.704(3), because the language would be superfluous and have no meaning if KRS 100.324 and KRS 278.216(5) exempted utilities from local setback requirements in all circumstances.

The Commission does not need to resolve the ambiguity created by KRS 278.216(2), KRS 278.216(5), and KRS 100.324 in this case. Notably, KRS 278.216(4) allows the Commission to grant deviations from “any applicable setback requirements” when determining whether to grant a site compatibility certificate. KRS 278.704(4) similarly allows the siting board to grant a deviation from setback requirements under the

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<sup>144</sup> *Shawnee Telecom Resources, Inc. v. Brown*, 354 S.W.3d 542, 551 (Ky. 2011).

same circumstances as a utility may be granted a deviation pursuant to KRS 278.216(4) but the siting boards authority is explicitly limited to granting deviations from the statutory setback requirements and does not permit the siting board to grant deviations from the local planning and zoning requirements. The distinction between the deviation statutes indicates that the legislature intended to give the Commission broader authority. Thus, to the extent local setback requirements would need to be considered by the Commission when determining whether to approve site compatibility certificate, the Commission finds that KRS 278.216(4) would allow it to grant a site compatibility certificate if it finds that the facility is designed and located to meet the goals of KRS 278.216, 224.10-280, 278.010, 278.212, 278.214, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the local planning zoning requirements, which the Commission has done in this case.<sup>145</sup>

### CONCLUSION

After carefully considering the criteria in KRS 278.216 and the record and being otherwise sufficiently advised, the Commission finds that LG&E/KU has presented sufficient evidence to support the issuance of a Site Compatibility Certificate for the 120 MW solar electric generating facility in Mercer County, Kentucky, and therefore, finds that LG&E/KU's certificate should be approved as requested, along with LG&E/KU's requested deviations from the setback requirements. However, the Commission's approval of both the certificate and the deviations is conditioned on LG&E/KU's full

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<sup>145</sup> A potential interpretation that would give effect to the language in KRS 278.216(2), KRS 278.216(5), and KRS 100.324 would be that utilities are subject to the setback requirements established by local planning and zoning commissions to the extent that the Commission is required to consider the local requirements when determining whether to grant a site compatibility certificate but that the Commission could still grant a certificate despite the setback requirements if it makes the necessary finding pursuant to KRS 278.216(4).



compliance with all mitigation measures they committed to implement and all mitigation measures required by the Commission herein, including but not limited to those listed in the Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. LG&E/KU's motion for a deviation from setback requirements and application for a Site Compatibility Certificate to install and operate a 120 MW solar electric generating facility in Mercer County, Kentucky, is granted subject to their full compliance with all mitigation measures and conditions listed in the Appendix to this Order and all mitigation measures that LG&E/KU committed to implement in this matter.

2. LG&E/KU shall fully comply with the mitigation measures and conditions prescribed in the Appendix to this Order and any other mitigation measures that LG&E/KU committed to implement in this matter.

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

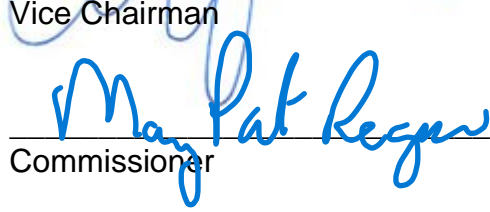
4. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

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Chairman,

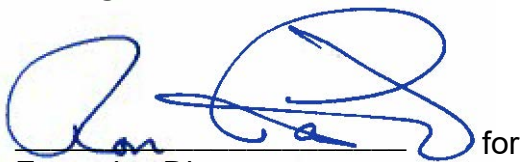


\_\_\_\_\_  
Vice Chairman



\_\_\_\_\_  
Commissioner

ATTEST:

 for

Executive Director  
Public Service Commission

ENTERED  
JUL 12 2024  
KENTUCKY PUBLIC SERVICE COMMISSION rcs

## APPENDIX

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE COMMISSION IN  
CASE NO. 2023-00361 DATED JUL 12 2024

### MITIGATION MEASURES AND CONDITIONS IMPOSED

The following mitigation measures and conditions are hereby imposed on LG&E/KU to ensure that the facilities proposed in this proceeding are constructed as ordered, though the failure to include any mitigation measure or plan to which LG&E/KU committed in this matter should not be construed as relieving LG&E/KU of any obligation to comply with such measures.

1. A final site layout plan shall be submitted to the Commission 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 Commission for review.

3. Prior to construction, LG&E/KU shall provide a finalized Emergency Response Plan to the local fire district, first responders, and any county emergency management agency. LG&E/KU 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.

4. LG&E/KU 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.

5. LG&E/KU's access control strategy shall also include appropriate signage to warn potential trespassers. LG&E/KU must ensure that all site entrances and boundaries have adequate signage, particularly in locations visible to the public, local residents, and business owners.

6. 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.

7. LG&E/KU shall maintain the Project with appropriate plantings and ground maintenance to provide a reasonable perimeter screening to reduce the effects to the viewscape of the Project from occupied residences and shall comply with mitigation measures included in the Stipulation Agreement with Mercer County Fiscal Court.

8. Pile driving should be limited to Monday through Saturday, 8:00 a.m. to 6:00 p.m. and other loud construction activities, such as the use of heavy equipment, should be limited to Monday through Saturday, 7:30 a.m. to 7:30 p.m., unless a deviation is granted by the executive director of the Commission, in writing, upon a showing of good cause by LG&E/KU.

9. LG&E/KU shall notify residents and businesses within 2,000 feet of the Project boundary about the construction plan, the noise potential, any mitigation plans, at least one month prior to the start of construction.

10. LG&E/KU shall provide the Mercer County Judge Executive 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. LG&E/KU shall update this contact information yearly or within 30 days of any change in contact information.

11. LG&E/KU 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. LG&E/KU shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church, or school, 50 feet from non-participating adjoining parcels, or 50 feet from adjacent roadways. 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 Commission prior to commencement of the Project.

12. LG&E/KU's Project shall be required a minimum setback of 50 feet from steams and wetlands; rights-of-way; and karst features.

13. LG&E/KU shall comply with all laws and regulations regarding the use of roadways.

14. LG&E/KU 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.

15. LG&E/KU shall develop necessary plans and obtain necessary permits before transporting heavy loads, especially the substation transformer, onto state or county roads.

16. LG&E/KU 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.

17. LG&E/KU 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.

18. LG&E/KU or their EPC contractor shall utilize appropriate best management practices to control site runoff and attain necessary construction permits such as Kentucky Pollution Discharge Elimination System (KPDES) stormwater construction permit.

19. LG&E/KU or their EPC contractor shall develop and implement practices and procedures to control, prevent and respond to any spills or releases of materials that could potentially impact water quality.

20. LG&E/KU and its contractors are prohibited from dumping solid waste into the waterways, and shall design the Project to provide secondary and appropriate containment.

21. LG&E/KU or its contractor shall evaluate the potential increases in peak stormwater discharge rates, and apply any appropriate engineering controls.

22. If threatened and endangered species habitats cannot be avoided during construction of the Project, LG&E/KU or its contractor shall coordinate with USFWS, KDFW, and KNP and shall notify the Commission by making a filing in this case.

23. LG&E/KU shall acquire any permitting necessary for construction of the Project.

24. LG&E/KU shall file a decommissioning plan within 60 days of the Project ceasing operations.

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