

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

| | |
|---|------------|
| APPLICATION OF ECOPOWER GENERATION-) | |
| HAZARD, LLC FOR A CERTIFICATE TO) | |
| CONSTRUCT AND OPERATE A MERCHANT) | CASE NO. |
| ELECTRIC GENERATING FACILITY AND A 69) | 2009-00530 |
| KV TRANSMISSION LINE IN PERRY) | |
| COUNTY, KENTUCKY) | |

APPLICANT’S MOTION FOR DEVIATION FROM SETBACK REQUIREMENTS

Comes the Applicant, ecoPower Generation-Hazard, LLC (“ecoPower”), by counsel, and moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Board”) to grant a deviation from the setback requirements of KRS 278.704(2). As grounds for its Motion, ecoPower states as follows:

On February 18, 2010, ecoPower filed its Application for a Certificate to Construct a Merchant Electric Generating Facility and Transmission Line in Perry County, Kentucky (the “Application”). The setback requirements for the ecoPower facility are addressed in the Application. (See Application, Vol. One, Section 5.0, p. 13). As stated in the Application, the setback requirements of KRS 278.704(2) are applicable to the ecoPower facility. The statute provides in part that:

Except as provided in subsections (3), (4), and (5) of this section, no person shall commence to construct a merchant electric generating facility unless the exhaust stack of the proposed facility is 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.

KRS 278.704(2).

Under the statute, the exhaust stack of the ecoPower facility must be at least 1,000 feet from the property boundary of any adjoining property owner, and 2,000 feet from any residential neighborhood, school, hospital or nursing home facility. The Application demonstrates that the exhaust stack of the ecoPower facility is located more than 2,000 feet from any residential neighborhood, school, hospital or nursing home facility and is therefore in compliance with the 2,000 foot setback requirement. [See Application, Vol. One, p. 13].

As noted in the Application, however, the ecoPower exhaust stack is less than 1,000 feet from adjacent properties owned by two property owners. The properties within the 1,000 foot radius are depicted in the Application (See Application, Vol. One, at Figure 3, entitled Setback, Site Layout and 2000-foot Vicinity Map). Portions of the Coal Fields Regional Industrial Park, located directly south of the facility, are within the 1,000 foot radius from the proposed ecoPower exhaust stack location. These lots are vacant and waiting for industrial development in accordance with the purpose of the industrial park. In addition, a portion of property owned by Mountain Properties, Inc., located to the west of the facility, is within a 1,000 foot radius. This property is vacant and was previously surface mined.

Pursuant to KRS 278.704(4), the Board may grant a deviation from the setback requirements of KRS 278.704(2), if the proposed facility is designed and located to meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in KRS 278.704(2).

The statutory language and legislative history suggest that the primary purpose of the setback requirement is to protect the expectations of property owners who had no reason to expect the construction of a merchant power plant near their property. As to ecoPower's Application, however, both the Coal Fields Regional Industrial Park and Mountain Properties, Inc. are aware of ecoPower's proposal to construct its merchant electric generation facility, have expressed their support for the same and have no objection to the proposal to construct the facility. (See Application, Vol. One, Exhibit D, copies of which are attached as Exhibit I). Since the goals of the statutes referenced in KRS 278.704(4) are satisfied, and as both the Coal Fields Regional Industrial Park and Mountain Properties, Inc. are aware of and in support of ecoPower's proposed facility, ecoPower requests that the Board grant a deviation from the setback requirements contained in KRS 278.704(2), and find that the proposed project as contained in the Application is designed and located to meet the goals of all applicable statutes at a distance closer than a 1,000 feet.

WHEREFORE, ecoPower Generation-Hazard, LLC respectfully requests a deviation from the setback requirements of KRS 278.704(2).

Respectfully submitted,

WYATT, TARRANT & COMBS, LLP

A handwritten signature in black ink, appearing to read "George L. Seay, Jr.", written over a horizontal line.

GEORGE L. SEAY, JR.
250 West Main Street, Suite 1600
Lexington, KY 40507-1746
Telephone: 859.233.2012
Facsimile: 859.259.0649
Email: gseay@wyattfirm.com

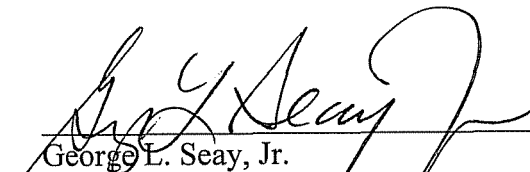
*Counsel for ecoPower Generation-Hazard,
LLP*

CERTIFICATE OF SERVICE

This is to certify that the original and six true and correct copies of the foregoing have been served upon the following, via regular U.S. mail, postage prepaid, on this the 8th day of April, 2010:

Hon. Rick Bertelson
Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602-0615

Mr. Jeff Derouen
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602


George L. Seay, Jr.
Counsel for Applicant, *ecoPower Generation-Hazard, LLC*

December 31st 2009

Kentucky State Board on Electric Generation and Transmission Siting
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RE: ecoPower Generation, LLC

To Whom It May Concern:

I represent Mountain Properties which owns property adjacent to the approximately 125 acres of previously mined land within the Coal Fields Regional Industrial Park, Chavies, Perry County, Kentucky where ecoPower Generation, LLC ("ecoPower") proposes to construct its merchant electric generation facility. Our properties will share a common boundary.

I am in receipt of a letter from ecoPower which describes the facility to be constructed at 1244 Coalfields Industrial Drive, Chavies, Kentucky 41727, and further gives a description of the proposed operations and the rights which may be exercised to petition the Board regarding local and evidentiary hearings.

It is my understanding that the site and/or the exhaust stack of the proposed merchant electric generating facility will be within 1,000 feet of the Mountain Properties boundary which adjoins the ecoPower property.

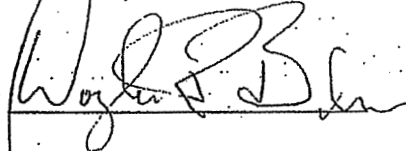
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I have reviewed the materials provided to me and have been given an opportunity to seek additional information from representatives of ecoPower regarding the construction and operation of the proposed 50 megawatt merchant electric generating facility.

I understand that for this facility the law requires the site and/or the exhaust stack of such a facility to be at least 1,000 feet from the property boundaries of any adjoining property, unless a waiver or deviation of this requirement is granted by the Kentucky State Board on Electric Generation and Transmission Siting.

After reviewing the materials provided to me, the responses to my inquiries, and as an owner of property adjacent to the ecoPower facility, Mountain Properties has no objection to the facility, the site, or the operation's exhaust stack being located within 1,000 feet of the property boundary which adjoins the ecoPower property.

Sincerely,



title

Director of Engineering

address

122 Roy Campbell Drive
Hazard, Ky 41701

**Coal Fields Regional
Industrial Authority, Inc.**

917 Perry Park Road Hazard, Kentucky 41701

Phone: 606-436-3158 Fax: 606-436-2144

Email: Annette@kradd.org

January 6, 2010

*Kentucky State Board on Electric Generation and Transmission Siting
211 Sower Boulevard
PO Box 615
Frankfort, KY 40602*

RE: ecoPower Generation, LLC

To Whom it May Concern:

I represent the Coal Fields Regional Industrial Authority, Inc. which owns property adjacent to the approximately 125 acres of previously mined lined within the Coal Fields Regional Business Park, Chavies, Perry County, Kentucky where ecoPower Generation LLC proposes to construct its merchant electric generation facility. Our properties will share a common boundary.

I am in receipt of a letter from ecoPower which describes the facility to be constructed at 1244 Coalfields Industrial Drive, Chavies, KY 41727, and further gives a description of the proposed operations and rights which may be exercised to petition the Board regarding local and evidentiary hearings.

It is my understanding that the site and/or the exhaust stack of the proposed merchant electric generating facility will be within 1,000 feet of the Authority's property boundary which adjoins the ecoPower property.

I have reviewed the materials provided to me and have been given an opportunity to seek additional information from representatives of ecoPower regarding the construction and operation of the proposed 50 megawatt merchant electric generation facility.

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I understand that for this facility the law requires the site and/or the exhaust stack of such a facility be at least 1,000 feet from the property boundaries of any adjoining property, unless a waiver or deviation of this requirement is granted by the Kentucky State Board on Electric Generation and Transmission Siting.

After reviewing the materials provided to me, the responses to my inquiries, and as an owner of property adjacent to the ecoPower facility, the Authority has no objection to the facility, the site, or the operation's exhaust stack being located within 1,000 feet of the property boundary which adjoins the ecoPower property.

If you have questions, or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Charles Colwell".

*Charles Colwell
Chairman*