

**COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY STATE BOARD ON  
ELECTRIC GENERATION AND TRANSMISSION SITING  
CASE NO. 2020-00417**

**JOHN PITT AND STEVE BALDWIN, Intervening Parties**

In the Matter of:  
ELECTRONIC APPLICATION OF HORUS  
KENTUCKY 1 LLC FOR A CERTIFICATE  
OF CONSTRUCTION FOR AN APPROXIMATELY  
69.3 MEGAWATT MERCHANT ELECTRIC  
SOLAR GENERATING FACILITY IN SIMPSON  
COUNTY, KENTUCKY

**INTERVENING PARTIES' POST-HEARING MEMORANDUM**

Come now Intervening Parties John Pitt and Steve Baldwin, by and through counsel, for their Post-Hearing Memorandum, and provides as follows:

**SUMMARY OF FACTS AND PROCEDURAL POSTURE**

Horus Kentucky 1, LLC applied to the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board") for a construction certificate to construct a merchant electric generation facility ("solar farm"). Horus Kentucky 1, LLC proposes to construct a solar farm on a site that encompasses a total of about 550 acres of rural agricultural land in Simpson County, Kentucky, which will include 163,632 solar panels, racking structures, 22 inverters and a substation transformer. John Pitt and Steve Baldwin were granted the ability to intervene in this matter as residents of Simpson County with land in close proximity to the proposed site of the solar farm.

Almost simultaneously with the application filed herein, Horus Kentucky 1, LLC filed two applications (each application involves a portion of the total 550 acres proposed) with the Franklin-Simpson Planning and Zoning Adjustment Board (“Board of Adjustments”) for the grant of conditional use permits to construct the proposed solar farm. Over the objections of John Pitt and Steve Baldwin, along with other neighboring property owners, the Board of Adjustments approved each application for the conditional use permits. Next, Steve Baldwin and John Pitt appealed said decisions to the Simpson Circuit Court, complaining of violations of the Planning and Zoning Regulations and a decrease in value of their neighboring property. One such appeal is currently pending with the Court of Appeals of Kentucky, while the other appeal is pending with Simpson Circuit Court.

As of now, it cannot be disputed that whether Horus Kentucky 1, LLC has complied with the applicable Planning and Zoning Regulations or not, is not final and still subject to review and potential reversal. A number of pertinent documents from the appellate review of the conditional use permits have been filed in this matter by John Pitt and Steve Baldwin.

As part of the application process, on or about October 14, 2021, a Review and Evaluation of the Horus Kentucky 1, LLC Site Assessment Report (“Report”) was provided by Edward F. Harvey of Harvey Economics. In Section II-3 of said Report, the same confirms that the area of proposed placement of the solar farm contains only sparse vegetation and would cause the solar panels to be visible

from many different angles. (See Report, Page II-3). Further, said Report confirms that the solar panels will be located very close to several homes along Tyree Chapel Road and in full view from local roads and homes. (See Report, Page II-3). Horus Kentucky 1, LLC intends upon placing “vegetative” buffers that would at least partially shield the project but has provided no specific plan for the same. (See Report, Page II-3). Further, the Report states that Horus Kentucky 1, LLC has stated that it will “work with neighboring homeowners and business owners to address concerns related to the” Project. (See Report, Page II-3).

In its conclusions and recommendations, notably, the Report confirms that the proposed solar farm does not meet the Simpson County Planning and Zoning Regulations for setbacks from residential properties in multiple instances. (See Report, Page II-2). It is unclear from the record as to whether this has been remedied by Horus Kentucky 1, LLC, although there was some testimony provided at the evidentiary hearing herein consistent with the same. As it relates to the impact on property values, the Report concludes in a summary fashion that the solar farm will not negatively impact the values, yet confirms that uncertainty exists. (See Report, Page II-3 and 4). As it relates to roadway access to the proposed solar farm location for construction purposes, the Report confirms that the roadways are not large enough for construction equipment to access the property and will annoy local residents. (See Report, Page II-5).

An evidentiary hearing was held on November 15, 2021 in this matter. At said hearing, Horus Kentucky 1, LLC presented various witnesses, including Managing Director of Solar Development, Braden Houston. In response to requests for information from this Siting Board, Horus Kentucky 1, LLC purportedly provided both Conditional Use Permit applications and the accompanying exhibits to the Siting Board for review, with Mr. Houston being the affiant for the same. However, Mr. Houston was unsure and could not confirm at the evidentiary hearing that this was all of the information that was provided to the Board of Adjustments or not. (See Video Record, 14:38-14:44:37). On the contrary, Mr. Houston could directly confirm that no development plan was filed with the conditional use permit applications. (See Video Record, 14:44:37).

Steve Baldwin is a resident of Simpson County and owns 154 acres of land that adjoins the proposed site of the solar farm herein. (See Video Record, 2:18:00 - 2:26:00). Mr. Baldwin has used his property for the past 20 years to raise cattle and hay. He has specific concerns that he will be able to see the solar panels from his property and believes that the value of his land as it exists is \$10,000.00 an acre, however, he will have a difficult time selling this property if the solar farm is placed next to him as he does not believe anyone will want to buy property that adjoins a solar farm. (See Video Record, 2:18:00 - 2:26:00). He is also concerned about the water runoff.

Mr. Baldwin confirmed that the property as it is now could be subdivided however, he does not believe anybody would want to buy a lot to build a house on a property in such a close proximity to the proposed solar farm. He also stated that the roadway around the proposed solar farm site is not sufficiently wide to allow construction vehicles to access the property without causing a major traffic disruption. Mr. Baldwin confirmed that the appeals of the conditional use permit are still pending and are not final. Finally, Mr. Baldwin set forth that no representative or person associated with Horus Kentucky 1, LLC had ever met with him to discuss his issues with the proposed placement of the solar farm. (See Video Record, 2:18:00 - 2:26:00).

Next, John Pitt testified that he also is a resident of Simpson County and lives in a house located across the road from the proposed location of the solar farm. He farms the land that Mr. Baldwin owns, and he says that 75 acres of said land is currently used for cattle, while the rest of the acreage is used for hay/woods. He testified that the roads surrounding the proposed site of the solar farm are only between 12 feet and 16 feet wide. He is also concerned that the water runoff from the proposed site will be a detriment to his farming operations. (See Video Record, 2:26:57 - 2:37:09).

Mr. Pitt testified that the location of the solar farm will have a negative impact upon his property values and the visual appeal of the property around his residence in that it will not conform to the agricultural nature of the neighborhood. The solar farm will also negatively impact his ability to

subdivide the property in the future and try to sell the same, as nobody will want to live in a subdivision that is so close to a solar farm. Also, Mr. Pitt confirmed that the property value of the land as it sits would be between \$8,500.00 and \$12,000.00 per acre, and the same would go down if the solar farm is placed next to it. Finally, Mr. Pitt set forth and confirmed that he is a party to the pending appeals of the conditional use permit mentioned previously and the same are still pending. (See Video Record, 2:26:57 – 2:37:09).

### **ARGUMENT**

A review of the pertinent factors in KRS 278.710(1) requires the denial of the requested Certificate of Construction by the Siting Board in this matter.

In addition to the evaluation of pertinent factors contained in the Site Assessment Report, KRS 278.710(1) directs the Siting Board to consider the following additional criteria in rendering its decision:

- Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property and surrounding roads; and
- Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed. *Id.*

Steve Baldwin and John Pitt are both of the position that the facility will have a negative impact on scenic surroundings. The Siting Board Consultant's Report and the testimony of Mr. Baldwin and Mr. Pitt, all confirm that the property around the proposed site is currently used for agricultural purposes and the solar panels will be clearly visible from the surrounding properties. Mr.

Pitt, as a neighboring resident, testified that this will not be in conformity with the rest of the countryside, and he does not want to look at this solar farm when he looks across the road. It cannot be disputed that there will have to be mitigating measures take place to attempt to conceal the solar farm, however, there is no way that the solar farm can be completely concealed with vegetation. If the solar farm is placed on the proposed site herein, this will have the result of transforming a quaint and quiet agricultural neighborhood to an industrial powerplant zone. There can be no doubt that 160,000 solar panels will stick out in this area, like the proverbial sore thumb.

There was no proof at the hearing in this matter from Horus Kentucky 1 LLC that the facility would have either a positive or negative impact on the property values of adjoining properties. To the contrary, Steve Baldwin and John Pitt both testified to the current value of their acreage and that they would be unable to sell their property for this price or ever subdivide the same if the solar farm is placed next to them. The Siting Board Consultant's Report also set forth that the impact on the value of property is uncertain. Given this evidence, this certificate should be denied.

Mr. Pitt and Mr. Baldwin also testified that the proposed solar farm is contrary to the pattern and type of development of adjacent property and surrounding roads. It appears that this will not be disputed as solar panels contrast starkly with cattle and hay. Further, Mr. Pitt and Mr. Baldwin set forth

that the roads as they exist do not have sufficient space to allow construction vehicles to access the proposed solar farm site.

Consistent with the documents filed in the record by intervening parties, whether the proposed facility will meet all local Planning and Zoning requirements that existed on the date the application was filed is still in question and is not final. On or about January 5, 2021, Horus Kentucky 1, LLC, through an agent, applied for a conditional use permit to be heard before the Franklin-Simpson Planning and Zoning Adjustment Board ("Franklin-Simpson BOA") on behalf the land owners of the subject property. Pursuant to the Franklin-Simpson County Zoning Regulations, Article 12 (Board of Adjustment), Section 12.1.2, all conditional use permit applications are heard and decided by the Franklin-Simpson BOA. A public hearing for this matter was held before the Franklin-Simpson BOA on February 22, 2021. During said hearing, various neighbors of the subject property attended the hearing and voiced their concerns, including the intervening parties herein.

The application of the conditional use permit described above included no "plan" meeting the requirements of Sections 9.8 and/or 12.2.2(b) of the Franklin-Simpson County Zoning Regulations. This was confirmed by Horus Kentucky 1, LLC at the evidentiary hearing herein. In addition to this application flaw, the main concern of the intervening parties herein, and other neighboring landowners, is that the proposed solar farm would significantly alter the basic



agricultural zoning character acreage, as well as the surrounding properties, in contradiction of Franklin-Simpson Zoning Regulations Section 8.2.3.


Ultimately, the Franklin-Simpson BOA granted the conditional use permit, without making any kind of written or oral adjudicative findings of fact. On the basis of all of the errors cited above, and because the intended use of the acreage does not align with the character of the surrounding properties, which has caused harm and reduced the property value of the intervening parties, two (2) separate Verified Complaints were filed by Mr. Pitt and Mr. Baldwin in Simpson Circuit Court, Division I, pursuant to KRS 100.347(1), seeking a reversal of the grant of the conditional use permit, as well as declaratory and injunctive relief. One Verified Complaint was dismissed and is pending before the Court of Appeals of Kentucky, while the second Verified Complaint was not dismissed and is moving forward before Simpson Circuit Court, Division I.

Thus, it cannot be disputed that it is presently in question whether the conditional use permit and the proposed facility does not presently comply with the Franklin-Simpson Zoning Regulations. As set forth above, intervening parties are of the position that the requested facility is in fact out of compliance. On this basis, intervening parties request that the certificate of construction be denied.

This 22 day of November, 2021.

Respectfully Submitted,

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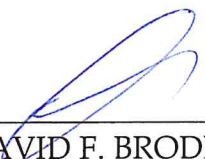
DAVID F. BRODERICK  
BRANDON T. MURLEY

**CERTIFICATION**

This is to certify that a true and exact copy of the foregoing was filed electronically with the Kentucky Public Service Commission by using the Commission's eFiling system, and that a true and exact copy of the same was sent via electronic mail to:

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This 22 day of November, 2021.



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DAVID F. BRODERICK  
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