

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

In the Matter of:

ELECTRONIC APPLICATION OF HORUS)
KENTUCKY 1 LLC FOR A CERTIFICATE OF)
CONSTRUCTION FOR AN APPROXIMATELY)
69.3 MEGAWATT MERCHANT ELECTRIC) Case No. 2020-00417
SOLAR GENERATING FACILITY IN SIMPSON)
COUNTY KENTUCKY PURSUANT TO KRS)
278.700 AND 807 KAR 5:110)

**HORUS KENTUCKY 1 LLC’S
POST-HEARING MEMORANDUM**

COMES NOW Horus Kentucky 1 LLC (“Horus” or “Applicant”), by and through counsel, and summarily responds to Intervening Parties’ Post-Hearing Memorandum (“Intervenor’s Memorandum”) through the filing of its Post-Hearing Memorandum. The Applicant files the instant Memorandum in conformity with 807 KAR 5:110 Section 7 for the sole purpose of refuting certain claims made within Intervenor’s Memorandum. In support of this Brief in Opposition, the Applicant states as follows:

1. On July 5, 2021, the Applicant filed its Application, including exhibits, for a Certificate for Construction from the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”).
2. On September 2, 2021 and September 30, 2021, respectively, Horus filed its responses to the Siting Board Staff’s First and Second Requests for Information.
3. On October 28, 2021, following the submission of the Siting Board’s Consultant’s Report (“Consultant’s Report”), Horus filed its Response to the Siting Board Consultant’s Site Assessment Report and Incorporated Verification.

4. On November 15, 2021, the Siting Board heard testimony from Horus representatives and witnesses, as well as from Intervenors themselves, at the evidentiary hearing regarding the project.

5. Following the hearing, Intervenors submitted their memorandum, which contained certain assertions of which the Applicant wishes to briefly refute.

6. On page 2 of Intervenor's Memorandum, Intervenors state that "[a]s 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". Intervenors further state on Page 4 that Mr. Houston confirmed that no development plan was filed with the conditional use permit applications, implying this was improper, reiterating this point on Page 8 of Intervenor's Memorandum.

- a. To the extent Intervenor's statements are meant to imply that the Applicant is in noncompliance with the local zoning ordinances applicable to the project, the Applicant states for the record that it currently holds two valid, Conditional Use Permits that can be utilized once a development plan is approved as outlined in section 9.8 of the Franklin-Simpson County Zoning Regulations. The appeal challenging the first conditional use permit was summarily dismissed by the Circuit Court and has been appealed by the Intervenors. Two of the three counts challenging the second conditional use permit were dismissed by the circuit court, with one count currently pending based on Intervenors' pleading of an injury related to an alleged decrease in property values.

7. On pages 2-3 of Intervenor's Memorandum, Intervenors conclude that Horus "has provided no specific plan for" installing vegetative buffers, reiterating this concern on Page 7.

- a. As outlined previously, Section 9.8 of the Franklin-Simpson County Zoning Regulations specifically requires a development plan address vegetative screening, and Horus will cooperate fully with local officials concerning the scope of the vegetative buffer for this project.

8. On page 3 of Intervenor's Memorandum, Intervenors address the setback requirements of the County.

- a. As outlined previously, Horus intends to fully comply with all applicable Franklin-Simpson County Zoning Regulations, including the setback requirements.

9. On Page 3 of Intervenor’s Memorandum, Intervenor’s acknowledge that the Consultant’s Report concludes that the project, in Intervenor’s words, “will not negatively impact the values”, but interject that uncertainty exists. On Page 7 of Intervenor’s Memorandum, Intervenor’s further state that “[t]here 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”, stating their own testimony necessitates denial of the Siting Certificate.

- a. Horus would refer the Siting Board both to the conclusions made within the Consultant’s Report as well as the appraisal reports cited within its previously filed application materials. Specifically, Horus would point the Siting Board to certain conclusions made on Page V-18 of the Consultant’s Report, including the statement that “HE concludes that property values in the Project area and in Simpson County are unlikely to be affected by the siting of the Horus Kentucky 1 facility.” Further, other than unverified statements by Intervenor’s themselves, the Siting Board was not presented with any evidence suggesting the values of surrounding properties would decrease as a result of the project. Further, and even if Intervenor’s intended to subdivide and develop the surrounding property, there is no indication this use would be permitted under the Franklin-Simpson County Zoning Regulations or that their ability to do so would be impacted by the Project. In fact, the Consultant’s Report states that “The Simpson County Property Valuation Administrator believes that property values will be unaffected by the presence of the solar facility. She also indicated that given the current high demand for homes and properties in the County, it is unlikely that the solar facility would have an adverse effect on sales prices or sales activity.” *Id.*

10. On Page 3 of Intervenor’s Memorandum, Intervenor’s argue that the Consultant’s Report “confirms” that “roadways are not large enough for construction equipment to access the property and will annoy local residents”. This concern is reiterated on Page 5 of Intervenor’s Memorandum when Intervenor’s summarize the testimony of John Pitt. Further, On page 7 of Intervenor’s Memorandum, Intervenor’s state that the proposed site “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 a proverbial sore thumb.”

- a. Horus would point the Siting Board to its previous filings and studies regarding traffic and noise, as well as its acknowledged commitment to reduce dust and restore any impacted roadways, if any, to pre-construction conditions as acknowledged within Consultant's Report, as well as the Applicant's representative Braden Houston's testimony during the Evidentiary Hearing regarding the Applicant's commitment to reduce noise, if applicable, during the construction phrase. Further, the conclusion found within the Consultant's Report, is that "given the few employees and deliveries required for Project operations, traffic impacts during the operational phase will be minimal". *See Consultant's Report* at II-5.

WHEREFORE, applicant Horus Kentucky 1 LLC, respectfully requests that the Siting Board consider this Response to Intervenor's Memorandum in considering its application for a certificate for construction in conjunction with all previous and future filings in this matter.

Respectfully Submitted,

/s/ Randall L. Saunders
Randall L. Saunders, Esq. (KY Bar No. 90911)
**NELSON MULLINS RILEY &
SCARBOROUGH LLP**
949 Third Avenue, Suite 200
Huntington, WV 25701
Telephone: 304.526.3500

Counsel for Horus Kentucky 1 LLC