

**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
MOTION REGARDING HEARING PROCEDURES**

COMES NOW Horus Kentucky 1 LLC (“Horus” or “Applicant”), by and through counsel, and moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”) for an Order limiting the cross-examination of witnesses proffered by the Applicant or the Intervenor to representatives of the Siting Board. In support of its Motion, the Applicant states as follows:

1. On May 11, 2021 Intervenor John Pitt and Steven Baldwin (“Intervenor”) sought intervention in this matter. *See Request for Intervention.*

2. Specifically, Intervenor sought intervention because:

These individuals would like to intervene in this matter and understand that the application process requires a statement of compliance with any local zoning regulations. In this matter, as it relates to this project, there is currently one appeal pending before the Simpson Circuit Court, Civil Action No. 21-CI-00064, as it related to the granting of a conditional use permit and several alleged violations of zoning ordinances. Further, there will be a second appeal filed very soon concerning a later granting of a conditional use permit on this project.

The project changes the character and nature of the agricultural use^[1] of the property and has affected, injured and aggrieved my clients as individuals with interest/ownership of property in direct proximity to the project....

3. As further noted in Intervenor’s Request to Intervene, the alleged injuries proffered by Intervenors “is being addressed with the Simpson Circuit Court”, as the lawsuit referenced within their Request to Intervene was dismissed and two of the three counts contained within Intervenor’s challenge to the second conditional use permit, Civil Action No. 21-CI-00135, were dismissed by the Circuit Court at the motion to dismiss stage.

4. On June 24, 2021, the Siting Board granted Intervenor’s Request to Intervene, stating that “[i]t appears to the Siting Board that [Intervenor’s] intervention is likely to present issues and develop facts that will assist the Siting Board in fully considering the matter without unduly complicating or disrupting the proceedings.”.

5. On November 8, 2021, Intervenors filed a witness list, evidencing an intent to present witnesses at the upcoming November 15, 2021 evidentiary hearing.

6. On November 12, 2021, Intervenors submitted a “Notice of Filing”, evidencing their submission of certain filings within Civil Action No. 21-CI-00064 and Civil Action 21-CI-00135 to the Siting Board.

7. While Intervenors’ expected testimony appears to be more appropriate for the public comment period of the evidentiary hearing, in the event the Siting Board permits Intervenors to present direct evidence related to their dismissed/pending claims in the civil actions, the Applicant believes that Intervenor’s recent submissions evidence an intent on behalf of the Intervenors to attempt to re-litigate issues they admit have been/are “being addressed with the

¹ Intervenor’s challenge to the second conditional use permit on the basis of a supposed “agricultural supremacy clause” was dismissed at the motion to dismiss stage.

Simpson Circuit Court” rather than to “present issues and develop facts that will assist the Siting Board in fully considering the matter”.

8. Further, the Applicant believes Intervenors are seeking to use the November 15, 2021 evidentiary hearing as a means for conducting discovery for the remaining civil claim rather than to “assist the Siting Board in fully considering the matter” pending before it.

9. In an effort to ensure collateral issues do not “unduly complicating or disrupting the proceedings”, the Applicant respectfully requests that neither the Applicant or Intervenors be permitted to cross examine the witnesses to be called by either party, and instead allow the Siting Board to direct all cross examinations so that the Siting Board may consider the issues without undue disruption or impact on the Siting Board’s consideration of the application or the pending litigation.

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