

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

In the Matter of:

ELECTRONIC APPLICATION OF )  
TELESTO ENERGY PROJECT LLC FOR )  
CERTIFICATE OF CONSTRUCTION )  
FOR AN APPROXIMATELY 110 )  
MEGAWATT MERCHANT ELECTRIC )  
SOLAR GENERATING FACILITY IN )  
HARDIN COUNTY, KENTUCKY )  
PURSUANT TO KRS 278.700 ET SEQ. )  
AND 807 KAR 5:110 )

Case No. 2022-00096

**TELESTO ENERGY PROJECT LLC’S WITHDRAWAL OF MOTION FOR  
DEVIATION FROM SETBACK REQUIREMENTS AND NOTICE OF UPCOMING  
ZONING FILING**

Comes now Telesto Energy Project LLC (the “Applicant” or “Telesto”), by and through counsel, and hereby withdraws from the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board” or the “Board”) its August 8, 2022, motion for a deviation from the setback requirements in KRS 278.704(2), for its proposed project in Hardin County (the “Project”), and in the interest of transparency, provides notice of its intentions regarding local zoning.

**I. WITHDRAWAL OF MOTION FOR DEVIATION**

The Project is currently within a jurisdiction with local planning and zoning. Thus, the locally established setback requirements have primacy over the setbacks requirements found in KRS 278.704(2) and are not subject to modification or waiver by the Board through a request for deviation. See KRS 278.704(3), (3)(a), and (3)(b).

Hardin County’s Development Guidance System Zoning Ordinance (the “Hardin County Ordinance”), which includes zones with applicable setback requirements, has primacy over the setback requirements in KRS 278.704(3)(a). Specifically, Section 3-13 of the Ordinance established the Heavy Industrial (I-2) zoning classification and provides setbacks requirements applicable to that zone. As an alternative to potential post-Siting Board approval annexation described below in Section II, Telesto will file a zoning application with the Hardin County Planning and Development Commission (the “Commission”) to rezone the applicable properties to I-2. Thus, the I-2 setbacks will apply to the Project absent any agreement with the Commission for alternative setbacks. Because the locally established setback requirements would apply to the Project, the Siting Board’s setback requirements in KRS 278.704(2) do not apply and a request for deviation pursuant to KRS 278.704(4) is unnecessary. As such, the Applicant hereby withdraws its motion for deviation for the Project.

## **II. POTENTIAL ANNEXATION OF PROJECT PROPERTIES**

Telesto hereby gives notice to the Siting Board that the Applicant may (through the Project’s property owners) request that the City of Elizabethtown annex the land to be improved by the Project pursuant to KRS 81A.412. Notwithstanding the date of any such annexation request, it is the Applicant’s understanding the proposed annexation would not be voted on by the Elizabethtown City Council until after the Siting Board’s December 22, 2022, statutory deadline to approve or deny the application for a construction certificate.

If the Project properties are annexed by Elizabethtown, it is anticipated that the properties would be zoned Regional Industrial (I-2) per Section 2.8.13 of the City of Elizabethtown’s Zoning Ordinance.<sup>1</sup> A solar facility would be a permitted use within I-2, as “public or private utility

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<sup>1</sup> The City of Elizabethtown Zoning Ordinance is available at: <https://drive.google.com/file/d/1u11AhyYWtD15BeemigoMY4ibgHbd8xb7/view>.

facilities” are a listed permissive use within property zoned I-2. Property within Elizabethtown zoned as I-2 must incorporate the following setbacks: 150 feet front yard setback when abutting residential property or 50 feet when abutting all other property; 100 feet side yard setback when abutting property zoned as residential and 20 feet when abutting all other zones; and 100 feet rear yard setback when abutting property zoned as residential and 25 feet when abutting all other zones. The minimum buffer required for I-2 is 50 feet width with three large trees or two medium and two small trees plus six feet screening per 60 feet of linear boundary.

### **III. CONCLUSION**

For the reasons set forth above, a motion for a deviation from the setback requirements of KRS 278.704(2) is not needed in this case. The Applicant is providing the Siting Board with notice of the potential annexation in the interest of transparency. If the properties are annexed, the Elizabethtown Zoning Ordinance’s I-2 setbacks would apply to the Project. However, the Project site is currently within Hardin County, a jurisdiction with planning and zoning, and if the post-approval annexation never occurs, the Hardin County Ordinance will remain applicable to the Project. Hence, the Siting Board should decide this case based upon the applicability of the Hardin County Ordinance’s I-2 setback requirements on the Project. Therefore, Applicant hereby withdraws its motion for deviation from the setback requirements of KRS 278.704(2).

So noticed this 10th day of October 2022.

Respectfully submitted,



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