

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

IN THE MATTER OF:

THE ELECTRONIC APPLICATION OF	)	
SEBREE SOLAR II, LLC FOR A CERTIFICATE	)	
TO CONSTRUCT AN APPROXIMATELY 150	)	
MEGAWATT MERCHANT SOLAR ELECTRIC	)	CASE NO. 2022-00131
GENERATING FACILITY IN HENDERSON	)	
COUNTY, KENTUCKY PURSUANT TO	)	
KRS 278.700, ET SEQ. AND 807 KAR 5:110	)	

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**MOTION FOR DEVIATION**

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Comes now Sebree Solar II, LLC, by counsel, and requests the Kentucky State Board on Electric Generation and Transmission Siting (“Board”) to grant a deviation from the requirements of public meeting notice to adjacent property owners pursuant to KRS 278.706(2)(f) to the extent that certain property owners were not known at the time of the public meeting held on July 27, 2022 or at the in-person office hours event held on September 14, 2022.

In support of this motion, Sebree Solar II, respectfully states as follows:

1. Sebree II conducted an in-person public meeting that was held at Atkinson Park, Henderson, Kentucky from 5:00 p.m. to 8:00 p.m. on July 27, 2022. This was noticed according to KRS 278.706(2)(f) requirements via letters to property owners with property known to be involved in the Project, and was also advertised in the *Henderson Gleaner*, the *Providence Journal Enterprise*, and the *Sebree Banner* on July 13, 2022, and July 20, 2022..
2. Additionally, in support of the request from the Mayor of Robards, Kentucky, Sebree II conducted an in-person office hours event at the City Hall in Robards, Kentucky from

10:00 a.m. to 7:00 p.m. on September 14, 2022. This was noticed according to KRS 278.706(2)(f) requirements and was also advertised on the City of Robards electronic noticing board, the City of Robards Facebook page, and the Project's Facebook page.

3. Following the publicly held events, the Project gained increased interest from local landowners that voluntarily desired to join the Project.

4. Based on this interest, Sebree II elected to include six additional parcels in the Construction Certificate application.

5. Sebree II attests the adjacent property owners to these newly leased parcels were not individually notified of the public meeting events in accordance with KRS 278.706(2)(f), as the property at issue was not leased until after the public meetings were held. Therefore, the adjacent property owners to the newly leased parcels were not known to Sebree II until after the public meetings were held. However, Sebree II attests that all owners of property adjoining the project have been notified via certified mail of the Public Notice of Intent to File Application in accordance with KRS 278.706(2)(c), as documented in Exhibit 6 of the Application filed in this matter on April 18, 2023. Additionally, Sebree II mailed hand-written cards to the adjacent property owners of the newly leased parcels to provide them with the contact information of the Sebree II project manager so that those landowners had an opportunity to discuss or answer questions directly about the project.

6. KRS 278.706(2) outlines the necessary information which must be included in an application for a certificate of construction of a merchant generating facility. KRS 278.706(2)(f)(1) details the requirements for a local public meeting that is to be held at least 90 days before the filing of an application for a certificate of construction. KRS 278.706(2)(f)(2) provides the information that must be contained in the notice for the public meeting. KRS

278.706(2)(f)(3) requires the applicant to provide any direct mailings about the project and the informational meeting. Commission regulation 807 KAR 5:110, Section 8 allows an individual to request a local public information meeting in writing no later than 30 days after the application for a certificate of construction has been filed. Commission regulation 807 KAR 5:110, Section 9(2) requires the applicant provide proof to the Siting Board that the public has been provided notice of local public information meeting that is being held pursuant to a request by an individual in a newspaper of general circulation in the county where the merchant generating facility is proposed to be located.

7. Additionally, while this public meeting was provided in compliance of KRS 278.706(2)(c), this issue is contemplated under KRS 278.704(8) that only those owners known to be included in the project should be given notice of a public meeting held pursuant to KRS 278.704(6) and KRS 278.704(8). Here, the adjacent property owners were not known at the time of the public meeting and therefore could not be given actual notice of the public meeting.

- a. KRS 278.704(8) states: Notice of the time, subject, and location of the meeting under subsection (6) of this section shall be posted in both a local newspaper, if any, and a newspaper of general circulation in the county. Notice shall also be placed on the Web sites of the unregulated entity, and any local governmental unit. Owners of real estate *known* to be included in the project and any person whose property adjoins at any point any property to be included in the project shall be notified personally by mail. All notices must be mailed or posted at least two (2) weeks prior to the meeting. (emphasis added)

8. While Sebree Solar II does not believe that a deviation is required because the property at issue had not been leased at the time of the public meeting, Sebree Solar II submits the facts to the Commission out of an abundance of caution and respectfully requests that if the Commission finds that a motion for deviation is required, that the Commission grants a deviation from the requirement in KRS 278.706(2)(f) to show evidence that that individual notice was mailed to all owners of property adjoining the proposed project at least two (2) weeks prior to the

meeting because the property at issue and its owners were not known to Sebree Solar II and could not be mailed notice. In addition, Sebree Solar II added the notice of the public events to the city's Facebook page, the city's electronic noticing board and on Sebree Solar II's project Facebook page to ensure that the residents had notice of the public events.

Done this 18<sup>th</sup> day of April 2023.

Respectfully submitted,



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