

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

In the Matter of:

ELECTRONIC APPLICATION OF)
HUMMINGBIRD ENERGY LLC FOR A)
CERTIFICATE OF CONSTRUCTION)
FOR AN APPROXIMATELY 200)
MEGAWATT MERCHANT ELECTRIC)
SOLAR GENERATING FACILITY AND)
NONREGULATED ELECTRIC)
TRANSMISSION LINE IN FLEMING)
COUNTY, KENTUCKY PURSUANT TO)
KRS 278.700 AND 807 KAR 5:110)

Case No. 2022-00272

RESPONSE OF HUMMINGBIRD ENERGY LLC TO NOTICE OF DEFICIENCY

The Applicant, Hummingbird Energy LLC (the “Applicant” or “Hummingbird Solar”), by and through counsel, hereby provides its response to the October 6, 2022 Notice of Filing Deficiency (“NOD”) issued by the Kentucky State Board of Electric Generation and Transmission Siting (the “Siting Board” or “Board”) in response to Hummingbird Solar’s application for a construction certificate for a merchant electric solar generating facility and nonregulated electric transmission line submitted by the Applicant on September 30, 2022 (the “Application”).

The Siting Board in its NOD alleged, among other things, that the Application was deficient pursuant to KRS 278.706(2)(c), stating:

“Evidence of public notice that shall include the location of the proposed site and a general description of the project, state that the proposed construction is subject to approval by the Board, and provide the telephone number and address of the Public Service Commission. Public Notice shall be given within thirty (30) days immediately preceding the application filing to landowners whose property

borders the proposed site; Based (sic) on the lists provided in application, 23 listed owners were left off the public notice.”

Further, the NOD alleged that the Application was deficient pursuant to KRS 278.706(2)(f), stating:

“Evidence that notice of the time, subject and location of the meeting was published in the newspaper of general circulation in the county, and that individual notice was mailed to all owners of property adjoining the proposed project at least two (2) weeks prior to the meeting; Based (sic) on the lists provided in application, 23 listed owners were left off the public notice.”

After reviewing the maps provided in the Application and rigorously reviewing property records for all parcels adjoining the project site, the Applicant agrees with the Board. Some of the adjoining owners were not included because the parcel they adjoin was added to the project after the notice list was generated. In other instances, the adjoining landowners were originally intended to be participating landowners, but their parcels were removed after the list was generated. Regardless, the Applicant acknowledges that 23 landowners were not properly provided notice.

The Applicant intends to cure these notice deficiencies by undertaking a new public notice process in compliance with KRS 278.706(2)(c) and (f), filing with the Siting Board a renewed Notice of Intent to file an application, and at the appropriate time, filing an amended application for a construction certificate for a merchant electric solar generating facility and nonregulated electric transmission line. The other two deficiencies identified in the NOD will be cured through a combination of an updated notice process and an amended application. In order to retain the existing case file number, the Applicant intends to rely on its August 12, 2022 Notice of Election regarding the use of the Board’s electronic filing procedures.

Therefore, the Applicant respectfully requests the Board retain the existing case file number for this case and retain and deposit the \$210,000 application fee previously submitted by the Applicant, the receipt of which was acknowledged by the Board on October 4, 2022, in

anticipation of the future filing of Applicant's new Notice of Intent to file the amended application.

Dated this 14th day of October 2022.

Respectfully submitted,



Gregory T. Dutton
FROST BROWN TODD LLC
400 W. Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400
(502) 581-1087 (fax)
Counsel for Hummingbird Energy LLC