

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

In the Matter of:

ELECTRONIC APPLICATION OF CLOVER)
CREEK SOLAR PROJECT LLC D/B/A NEW)
FRONTIERS SOLAR PARK FOR A)
CERTIFICATE OF CONSTRUCTION FOR)
AN APPROXIMATELY 100 MEGAWATT)
MERCHANT ELECTRIC SOLAR GENERATING) Case No. 2022-00408
FACILITY AND NONREGULATED ELECTRIC)
TRANSMISSION LINE IN BRECKINRIDGE)
COUNTY, KENTUCKY PURSUANT TO)
KRS 278.700 AND 807 KAR 5:110.)

**CLOVER CREEK SOLAR PROJECT LLC D/B/A NEW FRONTIERS SOLAR PARK'S
MOTION FOR CLARIFICATION**

Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park (the “Applicant” or “New Frontiers”), by and through counsel, moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board” or “Board”) for clarification regarding the to-be-submitted application for a proposed 100 megawatt (“MW”) merchant solar electric generating facility in Breckinridge County, Kentucky, described in its Notice of Intent (the “NOI”) filed on November 29, 2022.

In summary, Breckenridge County does not have a comprehensive plan or a local planning commission, but the Breckenridge County Fiscal Court recently enacted an ordinance that provides setbacks for solar facilities (the “Solar Ordinance”). New Frontiers now seeks clarification on whether the setbacks in the Solar Ordinance should be identified as controlling for purposes of the Siting Board’s authority under KRS 278.704 or whether the Applicant should identify in its application that no setbacks were promulgated by a local planning and zoning authority. The Applicant in its NOI stated its intention to file a motion for deviation because, pursuant to KRS

278.704(3), the setbacks have not been established by a planning and zoning commission. However, New Frontiers recognizes the Breckinridge County Solar Ordinance includes setbacks requirements, with which it intends to comply. New Frontiers is not advocating a position or interpretation with regards to this question, but simply hopes to gain clarity from the Siting Board in order to submit an administratively complete application.

1. Statutory Background

The Siting Board, pursuant to KRS 278.704(2), has established default statutory setbacks for proposed merchant electric generating facilities, and an applicant, pursuant to KRS 278.704(4), may request that the Siting Board grant a deviation from those setbacks. Or, if the facility is proposed in an area where a local planning and zoning commission has established setbacks requirements, then those setbacks will apply to the project, and the local setbacks would not be subject to modification by the Siting Board. KRS 278.704(3).

KRS 278.706 describes what must be included in an administratively complete application for a certificate to construct a merchant electric generating facility. Specifically, KRS 278.706(2)(d) and (e) describe the setback-related information that must be included in an application. Pursuant to KRS 278.706(2)(d), an applicant must certify that the facility, among other things, will comply with any local and planning and zoning ordinances and disclose any setbacks established by the local planning and zoning commission. And if the facility is not proposed in area where a local planning and zoning commission has established setbacks, then pursuant to KRS 278.706(2)(e), the applicant would provide a statement regarding the applicability of the Siting Board's statutory setbacks and then determine whether to request a deviation from the statutory setbacks pursuant to KRS 278.704(4).

2. Breckinridge County Solar Ordinance

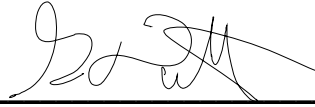
The Applicant intends to submit a complete application for a certificate to construct its facility in Breckinridge County. Breckinridge County has not established a local planning and zoning commission, and it has not adopted a comprehensive plan containing a statement of principles and objectives. However, the Breckinridge County Fiscal Court on June 27, 2022, approved the Solar Ordinance to regulate solar energy systems and solar panel installation, and grant itself authority over the siting and development of solar facilities within the county's unincorporated areas. The Solar Ordinance establishes, among other things, minimum setbacks that would apply to solar projects exceeding five acres in size. The proposed project described in the NOI is located within an unincorporated portion of Breckinridge County and would exceed five acres in size. Thus, the Solar Ordinance would presumably apply to the project site.

3. Conclusion

Therefore, for purposes of filing with the Siting Board an administratively complete application for a merchant solar electric generating facility within Breckinridge County, New Frontiers respectfully requests that the Board clarify whether, pursuant to KRS 278.706(2)(d), the Applicant should disclose the Solar Ordinance's minimum setbacks or proceed pursuant KRS 278.704(2) and disclose that it intends to file a motion for deviation pursuant to KRS 278.704(4).

Dated this 29th day of November 2022.

Respectfully submitted,



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