

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

In the Matter of:

**In the Matter of the Application of Dogwood Corners)
LLC for a Certificate of Construction for an)
Approximately 125 Megawatt Merchant Electric Solar) Case No. 2023-00246
Generating Facility in Christian County, Kentucky)
Pursuant to KRS 278.700 and 807 KAR 5:10)**

OBJECTION TO COUNTY’S WITNESS LIST

Dogwood Corners LLC (“Dogwood Corners”), by counsel, objects to Intervenor Christian County’s Witness List filed on February 1, 2024. In support of its objection, Dogwood Corners states as follows:

As an initial matter, the County’s Witness List is untimely. Section 6 of 807 KAR 5:110 requires a witness list to be filed “no later than five days prior to the hearing date.” KRS 446.030(1) states, in part, “When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.” Thus, the County should have filed its witness list on or before January 31, 2024.

Moreover, the County seeks to introduce testimony that is not appropriate or not presented by a qualified witness. The County has attempted to designate Judge/Executive Gilliam to provide testimony on local ordinances and whether Dogwood Corners’ project would comply with those purported ordinances. The County is attempting to present testimony on conclusions of law. Kentucky’s highest court has stated, “courts never allow a witness to give his conclusions on

questions of law.”¹ The KENTUCKY EVIDENCE LAW HANDBOOK describes this as a “widely if not universally accepted position.”² “In other words, law is supplied by the judge and not proved through the testimony of witnesses.”³

Because witnesses should not be permitted to provide testimony on conclusions of law, the County should not be permitted to present Judge/Executive Gilliam as a witness at this hearing. Excluding this testimony will not deny the parties an opportunity to provide the Siting Board with their legal position. In fact, the parties have already presented their position on the applicability of the purported ordinances through legal argument. Dogwood Corners discussed this issue in its Response to the Consultant’s Report filed on January 19, 2024, and the County responded on January 24, 2024.

The County has also designated Fiscal Court magistrate John Bruce to testify on his opinion “regarding the impact of the proposed facility on the surrounding area and its lack of compatibility with same.” The County has not attempted to credential Squire Bruce as an expert, as required by Section 6(2) of 807 KAR 5:110. In addition, it appears that Squire Bruce will attempt to provide a conclusion of law related to interpretation of KRS 278.710(1)(a) that, as discussed above, is impermissible.

For these reasons, Dogwood Corners respectfully objects to the County’s witnesses and moves the Siting Board for an order excluding them as witnesses.

¹ *Gibson v. Crawford*, 83 S.W.2d 1, 7 (Ky. 1935).

² Lawson, KENTUCKY EVIDENCE LAW HANDBOOK § 6.05[6][b] (2023).

³ *Id.*

Respectfully submitted,



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