

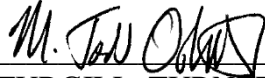
**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

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

RESPONSE TO DEFICIENCY LETTER

Dogwood Corners LLC (“Dogwood Corners”), by counsel, hereby provides its response to the Siting Board Staff’s letter issued September 6, 2023, in which it suggests that the application in this matter had a filing deficiency. Dogwood Corners respectfully disagrees that KRS 278.704 requires submission of an invalid ordinance. Dogwood Corners’ application does not propose to build a facility in a county with planning and zoning, nor has a Christian County planning and zoning commission established decommissioning or setback requirements as required by KRS 278.704(3) to provide primacy to local requirements. Nevertheless, without waiving any argument or conceding the validity of Christian County’s actions, Dogwood Corners is attaching a copy of the document to this Response.

Respectfully submitted,



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ATTORNEYS FOR DOGWOOD CORNERS, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document has been served via e-mail on September 6, 2023, upon the following:

Christian County Judge/Executive Jerry Gilliam

jgilliam@christiancountky.gov

Christian County Community Development Services Chairman Ben Bolinger through Executive Director Tom Britton

tbritton@comdev-services.com



Counsel for the Dogwood Corners LLC

**COMMONWEALTH OF KENTUCKY
CHRISTIAN COUNTY FISCAL COURT
ORDINANCE NO. 22-004**

**AN ORDINANCE RELATING TO THE ESTABLISHMENT OF MINIMUM SETBACK,
SCREENING, AND DECOMMISSIONING REQUIREMENTS FOR SOLAR ENERGY
SYSTEM INSTALLATIONS IN CHRISTIAN COUNTY, KENTUCKY**

WHEREAS, the Christian County Fiscal Court wishes to advance the use of solar energy by all of its citizens, businesses and industries; and

WHEREAS, properly designed land use standards can prepare communities for greater access to solar energy; and

WHEREAS, KRS 278.704 sets forth the minimum setback requirements of merchant electric generating facilities in the Commonwealth of Kentucky; and

WHEREAS, KRS 278.704(3), pursuant to Public Service Commission Staff Opinion 2019-006, authorizes the Fiscal Court to establish setback requirements from property boundaries, residential neighborhoods, schools, hospitals or nursing facilities by ordinance with said setbacks having primacy over the setback requirements set forth in subsection 2 and 5 of the same statute, and shall not be subject to waiver or modification via request for deviation by an applicant to the regulatory board which governs electric generating facilities; and

WHEREAS, the Christian County Fiscal Court desires to exercise its authority pursuant to this subsection; and

WHEREAS, it is the intention of the Christian County Fiscal Court that: these setback requirements shall only apply to solar energy systems (hereinafter "SES") that are governed by KRS 278.704; these setbacks shall not apply to any other type of merchant electric generating facility as defined in KRS 278.700(2), otherwise governed by KRS 278.704, that does not meet the definition of a solar energy system defined below; and, this ordinance shall not apply to any solar energy system that is otherwise exempt from the setback requirements of KRS 278.704;

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF CHRISTIAN, COMMONWEALTH OF KENTUCKY:

1. DEFINITIONS:

RESIDENCE. A home, abode or place where an individual is actually living at a specific point in time.

BUILDING. Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

MERCHANT ELECTRIC GENERATING FACILITY means, except for a qualifying facility as defined in KRS 278.700(7), an electricity generating facility or facilities that, together with all associated structures and facilities:

EXHIBIT A

- (a) Are capable of operating at an aggregate capacity of ten megawatts (10MW) or more; and
- (b) Sell the electricity they produce in the wholesale market, at rates and charges not regulated by the Public Service Commission.

SOLAR ENERGY SYSTEM (SES). A device, including its components and subsystems, that collects solar energy for electricity generation, consumption, or transmission, or for thermal applications. SESs are in turn divided into three types depending on how the system is incorporated into the existing land use:

- (1) **INTEGRATED SOLAR ENERGY SYSTEM (INTEGRATED SES).** An SES where the solar materials are incorporated into the building materials, such that the building and solar system are reasonably indistinguishable, or where the solar materials are used in place of traditional building components, such that the SES is structurally an integral part of the house, building, or other structure. An Integrated SES may be incorporated into, among other things, a building facade, skylight shingles, canopy, light, or parking meter.
- (2) **ROOFTOP SOLAR ENERGY SYSTEM (ROOFTOP SES).** An SES that is structurally mounted to the roof of a house, building, or other structure and does not qualify as an Integrated SES.
- (3) **GROUND MOUNTED SOLAR ENERGY SYSTEM. (GROUND MOUNTED SES).** An SES that is structurally mounted to the ground and does not qualify as an Integrated SES. Ground Mounted SESs are subcategorized as follows:
 - (a) *Small Scale Ground Mounted Energy System (Small Scale SES)* which is a Ground Mounted SES with a footprint of less than 2,500 square feet.
 - (b) *Intermediate Scale Ground Mounted Energy System (Intermediate Scale SES)* which is a Ground Mounted SES with a footprint of between 2,501 square feet and ten (10) acres.
 - (c) *Large Scale Ground Mounted Solar Energy System (Large Scale SES)* means a Ground Mounted SES with a footprint of more than ten (10) acres.

DECOMMISSIONING PLAN FOR GROUND MOUNTED SES. A plan prepared by a licensed engineer that establishes the party responsible for the decommissioning, the anticipated life of the project, the estimated cost for removal of the SES facility, the costs for restoring the land to its original condition, **and all** other plan information required by this section.

EXEMPT SOLAR ENERGY SYSTEM (EXEMPT SES). An SES that is a facility of a municipally owned electric system or public utility regulated by the Kentucky Public Service Commission or Federal Energy Regulatory Commission, which is exempt from planning and zoning requirements under KRS 100.324.

PHYSICAL CONSTRUCTION (SES FACILITY). The excavation or movement of earth, erection of forms or structures, or similar activities undertaken in the construction of an SES Facility. This term does not include any activity or construction undertaken prior to the

issuance of all required certificates, approvals and permits, if any, as required under KRS Chapter 278 and other applicable state statutes.

SES FOOTPRINT. An area calculated by drawing a perimeter around the outermost SES panels and any equipment necessary for the equipment to function, such as transformers and inverters. The footprint does not include perimeter fencing or visual buffers, nor transmission lines or portions thereof that are required to connect the SES to a utility or customer outside the SES perimeter.

SITING BOARD REGULATED SES. An SES that constitutes a "merchant electric generating facility" under KRS 278.700(2), the construction and siting of which is subject to review and approval of the Kentucky State Board on Electric Generation and Transmission Siting. A merchant electric siting facility is an electricity generating facility or facilities that, together with all associated structures and facilities are capable of operating at an aggregate capacity of ten megawatts (10 MW) or more and sell the electricity produced in the wholesale market, at rates and charges not regulated by the Kentucky Public Service Commission.

2. Christian County Fiscal Court hereby establishes the setback requirements for solar energy facilities, which are governed by KRS 278.704, as measured from the outer edge of the nearest solar panel, as follows:

Boundary line of any adjacent property (unless such setback has been reduced or waived, in writing, by the adjacent property owner or fiscal court has granted a deviation) 2000 feet

Any residence, building or structure or appurtenance thereto existing at the time of application for permits with the Kentucky Electric Generation and Transmission Siting Board 2000 feet

Schools 2000 feet

Churches 2000 feet

Hospitals 2000 feet

Nursing Facilities 2000 feet

Right-of-Ways for any publicly dedicated or maintained roadway or railway 2000 feet

Cemeteries 2000 feet

The fiscal court may grant a deviation in its discretion from the requirements of this subsection upon a finding that the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in this subsection.

3. Access to the site must be controlled by a fence of at least eight feet in height with a vegetative landscape buffer provided between the fencing and the property line. The fence shall be equipped with screening to help shield the facilities and equipment from view. Screening shall consist of:

Excluding Small Scale Ground Mounted Energy Systems, perimeter screening shall be provided. Screening shall:

- (a) Consist of an eight (8) foot tall fence and a double row of staggered evergreen trees (minimum five (5) feet in height at planting and maturing to a minimum of fifteen (15) feet in height);
- (b) Evergreen trees shall be planted exterior to the fence and shall be setback no less than fifteen (15) feet from any property line;
- (c) Screening shall achieve an opacity of 90% to a height of no less than eight (8) feet within three (3) years of planting;
- (d) Screening shall be installed within 180 days of the start of physical construction and shall be maintained until the decommissioning of the SES is completed; and
- (e) All unhealthy, dead, or noncompliant plantings shall be repaired or replaced within ninety (90) days of such occurrence.

4. The property owner shall be responsible for a decommissioning plan, prepared by a registered professional engineer at the expense of the property owner, and updated not less than once every five (5) years, containing the following:

(A) The anticipated life of the project and defined conditions upon which decommissioning will be initiated;

(B) The estimated decommissioning costs, including removal of the Solar Energy System and related foundations, pads, underground collector lines and roads, transmission lines, and the revegetation and restoration of the property, including soils, to its original condition and all calculations supporting the decommissioning estimate;

(C) The manner in which the project will be decommissioned, including provision and a timetable (such timetable not to exceed five years) for the removal of all structures and foundations, and for the revegetation and restoration of the property to its original condition;

(D) The manner of SES component disposal including the estimated recycled value of components;

(E) A copy of any contract containing specific agreements regarding decommissioning; and

(F) A surety instrument in an amount and form acceptable to Christian Fiscal Court sufficient to cover the costs of decommissioning the SES in accordance with the approved plan in the event the property owner defaults in its decommissioning obligations. The surety instrument shall be updated and revised in conjunction with a resubmitted decommissioning plan not less than once every five (5) years.

5. All other state and regulatory laws that are not specifically addressed by this ordinance remain in effect.

6. The provisions of this Ordinance shall apply to all unincorporated areas within Christian County, Kentucky, and to the siting, construction, installation, and decommissioning of any new SES system on or after the effective date of this Ordinance. An SES in operation, or which has begun physical construction prior to this Ordinance's effective date, shall be considered to have legal nonconforming status in accordance with KRS 100.253.

7. Severability If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

8. Any person found in violation of this Ordinance shall be guilty of a misdemeanor and shall be fined not less than One Hundred (\$100.00) Dollars and not more than Five Hundred (\$500.00) Dollars. Each day of violation shall constitute a separate offense.

9. This ordinance shall be in full force and effect from and after its adoption and approval as provided by law.

First reading of this ordinance approved on the _____ day of November 2022.

Second reading of this ordinance approved on the _____ day of November 2022.

Steve Tribble
CHRISTIAN COUNTY JUDGE/EXECUTIVE

ATTEST:

Michael A. Kem, Christian County Clerk