

**COMMONWEALTH OF KENTUCKY
KENTUCKY STATE BOARD ON ELETRIC GENERATION
AND TRANSMISSION SITING
CASE NO. 2023-00263**

IN RE: BANJO CREEK SOLAR, LLC

**INTERVENOR’S RESPONSE AND OBJECTION TO
BANJO CREEK SOLAR’S MOTION TO STRIKE**

Come now the Intervenors, the Residents of Banjo Creek (“Intervenors”), by counsel, and state as follows for their Response and Objection to the Motion to Strike filed by Banjo Creek Solar, LLC (“Banjo Creek”).

Banjo Creek asks this Board to strike the Intervenors’ Response and Objection to its Post-Hearing Brief. That request must be denied.

By Order of January 25, 2024, this Board ordered Banjo Creek to file a brief on its “post-hearing position on or before January 30, 2024.” There were no directives to the Intervenors in that Order. Banjo Creek filed its Post-Hearing Brief on January 30, 2024, and then, three days later, and within the same week, the Intervenors filed their Response and Objection. This was timely and within the timeframe set by the Board. The Board determined that the case would stand submitted on February 3, 2024, and the Intervenors’ Response and Objection was filed before that time.

In its Motion to Strike, Banjo Creek claims that the Intervenors’ Response and Objection has violated Banjo Creek’s due process rights. Notably, however, Banjo Creek has not articulated any actual basis for such a claim, or any actual prejudice supposedly suffered. This is because the Intervenors’ Response and Objection merely responds to points raised by the Board and in Banjo Creek’s Post-Hearing Brief. There can hardly been a due process violation when the items raised

in the Intervenor's Response and Objection merely respond to Banjo Creek's prior arguments. Additionally, if there were a due process violation (there wasn't), Banjo Creek has had ample opportunity to respond to any arguments or evidence raised by the Intervenor but hasn't actually disputed any of the point raised. It merely claims a procedural defect but has not disputed the substance.

Banjo Creek's argument that the Intervenor violated 807 KAR 5:110 § 7 is equally without merit. The Board can modify those deadlines, which it did by its Order of January 25, 2024, and the Intervenor's Response and Objection was filed before the case stood submitted for decision.

CONCLUSION

For all of the foregoing reasons, the Intervenor respectfully request for the Siting Board to deny Banjo Creek's Motion to Strike.

This the 5th day of March, 2024.

Respectfully submitted,

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