

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

IN RE: BANJO CREEK SOLAR, LLC

---

**MOTION TO CONTINUE/RESCHEDULE LOCAL PUBLIC HEARING AND  
OBJECTION TO VIRTUAL MEETING  
REQUEST FOR LEAVE TO INTERVENE**

---

Come now the Intervenors, the Residents of Banjo Creek (“Intervenors”), by counsel, and move the Siting Board to continue/reschedule the local public hearing set for this matter. Additionally, the Intervenors object to the Siting Board’s attempted “conversion” of the local public hearing to a “virtual” meeting.

**PROCEDURAL BACKGROUND**

On October 4, 2023—105 days ago—the Intervenors moved for the Siting Board to conduct a local public hearing in this case pursuant to KRS 278.712(1). On November 20, 2023, the Siting Board granted that request and set a meeting to be held in-person on January 16, 2023, at 5:00pm Central Standard Time at the Graves County Public Library, located at 601 North 17th Street, Mayfield, Kentucky 42066. The Siting Board required the applicant, Banjo Creek Solar, LLC (“Banjo Creek”), to give public notice the meeting and to file proof of that notice. Banjo Creek did so as evidenced by its filing on January 9, 2024, including notice that the meeting would be in-person at a physical location.

At 12:37pm Central Standard Time on January 16, 2024—less than five hours before the meeting—the Siting Board entered an order attempting to convert the local public hearing from an in-person meeting to a “virtual” meeting. The impetus behind converting to a virtual meeting is that the Graves County Public Library is closed because of the continuing effects of a snowstorm

and inclement weather occurring on January 13-16, 2024.

By way of this Motion and Objection, the Intervenors respectfully request for the Siting Board to continue/reschedule the local hearing to proceed in-person and object to any effort to conduct the local hearing virtually, either tonight or at a later date.

### **OBJECTION**

Should the Siting Board proceed virtually with tonight's local hearing, it will violate Kentucky law regarding the open meetings of public agencies. Notably, in requesting a local public hearing, the Intervenors did not request, nor did the Siting Board grant, a virtual meeting. It isn't clear that the Siting Board can even conduct such meetings virtually because KRS 278.712(1) clearly requires "local public hearing," and only permits meeting to be held in Franklin County "absent the minimum number of requests." The Intervenors requested and the Siting board granted an in-person local public hearing and set a specific date, time, and location for that hearing. All of the public notices for that meeting stated that the meeting would be held in-person.

While public agencies are permitted to conduct meetings through "video conferencing," *see* KRS 61.826,<sup>1</sup> notice of such meetings "shall comply with the requirements of KRS 61.820 or 61.823 as appropriate," KRS 61.826(2)(a). The statute found at KRS 61.820 only applies to the scheduling of an agency's "regular meeting," and, therefore, does not apply to the local public hearing at issue because it is not a "regular meeting." Because the local public hearing set for January 16, 2024, is not a "regular meeting," it is either a "special meeting" or "emergency meeting" as provided for by KRS 61.823.

Tonight's meeting cannot legally be described as an "emergency meeting" under KRS 278.712(5). As Kentucky's Attorney General has determined, "KRS 61.823(5) may be invoked by

---

<sup>1</sup> This general statute may conflict with specifics KRS 278.712, and, as a rule of statutory construction, the specific trumps the general.

public agencies only on the rarest of occasions, and then only when emergency conditions prevail.” 06-OMD-156, 2006 WL 2371464, at \*3. The Attorney General has described an “emergency,” as used in KRS 61.823(5), as a “serious, unexpected situation or occurrence that demands immediate action. Examples of an emergency under this definition would include, but not be limited to, occurrences such as a natural catastrophe or civil unrest.” 02-OMD-91, 2002 WL 34106473, at \*2. In order to invoke an emergency meeting, the circumstances must be “sufficiently serious, unexpected, and in need of immediate action to justify suspension of the normal rules of proceeding[.]” *Id.* To undersigned counsel’s knowledge, no decision from the Attorney General or a Kentucky court has held that a snowstorm that merely delays the holding of a proceeding qualifies as an “emergency” within the meaning of KRS 278.712(5). Tonight’s proceeding is simply not an “emergency.”

Since tonight’s meeting is not a “regular meeting” nor an “emergency meeting,” the only other option—and its proper categorization—is for it to be a “special meeting.” But, a special meeting may only proceed on 24-hours’ notice. *See* KRS 61.823(4)(a)-(c). Obviously, in this case, the Siting Board has not given 24-hours’ notice of its attempted conversion of the in-person local hearing to a “virtual” hearing. Finally, undersigned counsel is not aware of any statutory or regulatory mechanism for converting an in-person special meeting into a virtual special meeting. It isn’t found within the Siting Board’s regulations. *See* 807 KAR 5:110 §§ 8-9. Moreover, the “video teleconferencing” statute only makes provision for changing a “regular meeting” to a “video conference.” This practice has been approved by the Attorney General, but only in the context of a “regular meeting,” not a “special meeting.” *See* 21-OMD-086, 2021 WL 2123684, at \*5 (approving a school board’s “public notice that its regular meeting scheduled for the next day would be held by video conference because of inclement weather” as permitted by KRS

61.826(5)). In short, the Siting Board has not followed the proper notice provisions required by Kentucky law for holding this special meeting virtually instead of in-person.

Holding this meeting virtually rather than in-person—especially with less than 5-hours’ notice—will violate the Intervenor’s procedural due process rights before the Siting Board. The Siting Board has granted them rights as intervening parties and had granted them a local public hearing. Undersigned counsel represents 11 individuals living immediately adjacent to or in close proximity to this proposed solar complex. Most, if not all of those individuals, wish to be heard by the Siting Board. Moreover, undersigned counsel is aware that others, in addition to the Intervenor’s, wish to attend the in-person public meeting. The Siting Board is required to take these comments, summarize them, and file them in the record. *See* 807 KAR 5:110 § 8(5). How can the Siting Board do so if those wishing to speak can’t or aren’t allowed to do so?

Undersigned counsel is primarily a civil defense attorney and also represents multiple public bodies in McCracken County, Kentucky. Personal experience has shown that while virtual options permit work to get done, they offer no substitute for the public to understand a proceeding and present their concerns. Only in-person proceedings have such a meaningful impact. Additionally, to the extent that undersigned counsel would have presented documents, demonstratives, or other items to the Siting Board at the in-person public hearing, he cannot do so or have such items properly prepared on such short notice.

Finally, in the afternoon of January 16, 2024, some of the Intervenor’s spoke with Graves County Judge/Executive Jesse Perry, and at that time Judge/Executive Perry assured them that no meeting would take place tonight and that it wouldn’t be virtually. This was after the Siting Board had already entered its Order attempting to convert this to a “virtual” meeting. Judge/Executive Perry is a member of the decision-making body on the application under consideration, and it is

troubling that he is unaware (or has not been informed) of the proceedings or changes to them.

### **MOTION TO CONTINUE**

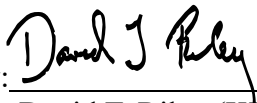
In order to avoid a violation of Kentucky's open meetings law and to give the Intervenors and other citizens of Graves County a meaningful opportunity to be heard, the Intervenors respectfully request for the Siting Board to merely rescheduling the local public hearing for a later date when the weather has cleared. The short-term forecast shows plenty of good weather with temperatures in the 50s during the week of January 22nd. Rescheduling to that week will preserve the Intervenors right to heard and will avoid casting an unnecessary pall on these proceedings.

WHEREFORE, the Residents of Banjo Creek object to the Board conducting any local public hearing over a virtual platform and pray that the Board grant their motion to move the in-person, local public hearing to a later date.

This the 16th day of January, 2024.

Respectfully submitted,

GRUMLEY, RILEY & STEWART, P.S.C.

By:   
David T. Riley (KBA #94084)  
1634 Broadway  
Paducah, Kentucky 42001  
(270) 443-0040  
driley@kentuckylawyers.com  
*Counsel for Residents of Banjo Creek*

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that on the 16th day of January, 2024, a true and correct copy of the foregoing was served filed with the Public Service Commission using its online, electronic filing system, which will distribute a copy of the same to the following:

Clark Waldrop - [clarkewaldrop@gmail.com](mailto:clarkewaldrop@gmail.com)

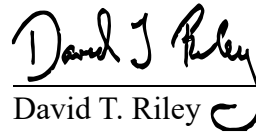
Banjo Creek Solar LLC Jonathan Flemings - [jf@greengoenergy.com](mailto:jf@greengoenergy.com)

Sturgill, Turner, Barker & Moloney, PLLC James W Gardner - [jgardner@sturgillturner.com](mailto:jgardner@sturgillturner.com)

Jesse Perry - [JPerry@GravesCountyKy.Gov](mailto:JPerry@GravesCountyKy.Gov)

Sturgill, Turner, Barker & Moloney Rebecca C. Price - [rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)

Sturgill, Turner, Barker & Moloney, PLLC M. Todd Osterloh - [tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)

  
\_\_\_\_\_  
David T. Riley