

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
UTILITIES COMPANY AND LOUISVILLE GAS)	
AND ELECTRIC COMPANY FOR A SITE)	CASE NO.
COMPATIBILITY CERTIFICATE FOR THE)	2023-00361
CONSTRUCTION OF A SOLAR FACILITY IN)	
MERCER COUNTY, KENTUCKY)	

MOTION FOR DEVIATION FROM SETBACK REQUIREMENTS

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively the “Companies”) by counsel hereby move the Public Service Commission (“Commission”) pursuant to KRS 278.216(4) to grant a deviation from the setback requirements of KRS 278.704(2). As set forth in the Companies’ response to PSC 2-3, absent the requested deviation, the land available at the site would be so limited that the economics of the proposed facility will be destroyed. The Mercer County Solar Facility, as designed and located, meets the goals of the applicable provisions of KRS Chapters 224 and 278 at distances closer than those provided by KRS 278.704(2) so setback deviations should be approved.

I. BACKGROUND

Pursuant to KRS 278.216, the Companies filed an Application for a Site Compatibility Certificate for the Construction of a Solar Facility in Mercer County, Kentucky (the “Application”) on November 13, 2023.¹ The Application seeks a site compatibility certificate for the Mercer County Solar Facility, (the “Project”) a 120 MW photovoltaic solar generating facility to be located

¹ The Commission granted the Companies a Certificate of Public Convenience and Necessity for the Project (“CPCN”) in Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-fired Generating Unit Retirements*, (Ky. PSC Nov. 6, 2023).

on approximately 900 acres of an 1865-acre tract of undeveloped land in Mercer County, Kentucky. The Project will consist of solar photovoltaic panel arrays on single axis tracker frames along with inverters and ancillary support equipment, including a transmission interconnection substation with power conversion enclosures and transformers and air conditioning units. The Project will supply energy to an existing KU 138 kV transmission line adjacent to the site.

In compliance with KRS 224.10-280 and KRS 278.216, the Companies filed a Site Assessment Report and Cumulative Environmental Assessment (“SAR/CEA”) with the Application.² The SAR/CEA includes all components required by KRS 278.708(3) and (4) and KRS 224.10-280(3). The SAR/CEA concluded that: (1) the Project is not expected to exceed the United States Environmental Protection Agency (the “USEPA”) guidelines on sound level limits during construction or operation; (2) the Project is not incompatible or incongruous with the surrounding landscape in terms of visual quality and contrast, and will not have a substantial adverse visual effect on the area; (3) the Project will not have a negative impact on local property values; (4) no significant impacts to roadway capacity are anticipated as a result of construction and operation of the Project; (5) operation of the Project will not have a negative impact on air or water quality or water withdrawal; and (6) the Project will not generate solid waste with the exception of the solar panels that have reached the end of their useful lives. The end-of-life solar panels are not a routinely generated waste and will be managed appropriately based on their status as either hazardous or non-hazardous waste.

Setback requirements for solar electric generating facilities are set forth in KRS 278.704(2), and require that any proposed structure to be used for solar generation is required to be at least 1,000 feet from the property boundary of any adjoining property owner and at least

² Application, Exhibit 1, Site Assessment Report (filed Nov. 13, 2023).

2,000 feet from any residential neighborhood, school, hospital or nursing home. Pursuant to KRS 278.216(4), the Commission may grant a deviation from these setback requirements on a finding that the proposed facility is designed and located to meet the goals of 278.216 and KRS 224.10-280, 278.010, 278.212, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the applicable setback requirements.

II. STATUTORY AUTHORITY FOR DEVIATION

KRS 278.216 provides the Commission the authority to grant the requested relief. In essence, the statute provides the Commission with the authority to require reasonable mitigation of impacts disclosed in the site assessment report (“SAR”) and grant deviations from setback requirements on a finding that the proposed facility is designed and located to meet the goals of seven specific statutes³ at a distance closer than those provide by the stated setback requirements. In delegating this express authority to the Commission, the General Assembly made clear that KRS 278.216 could not be construed to limit a utility’s exemption provided under KRS 100.324.⁴

The Mercer County Fiscal Court⁵ has adopted a zoning ordinance proposed by the Greater Harrodsburg/Mercer County Planning and Zoning Commission that establishes setback requirements for solar facilities. However, those setback requirements do not apply to this Project because KRS 100.324 states that public utilities, which are subject to the jurisdiction of the Commission, are not required to receive approval of a planning unit for the location of service facilities, and, as previously noted, KRS 278.216(5) states that nothing in the statute requiring a

³ The seven specific statutes are: 278.216 and KRS 224.10-280, 278.010, 278.212, 278.218, and 278.700 to 278.716. See KRS 278.216(4).

⁴ KRS 278.216(5).

⁵ It is critical to note that the Mercer County Fiscal Court expressly supports the Project and “recognizes the importance of renewable energy” along with “reasonable perimeter screening.” Case No. 2022-00402, Stipulation and Recommendation, p. 3 (filed Aug. 15, 2023).

site compatibility certificate from the Commission shall be construed to limit KRS 100.324's exemption.

The setback requirements applicable to the Project thus are those set forth in KRS 278.704(2), and the Commission may grant a deviation from those requirements pursuant to KRS 278.216(4).⁶ Given the extraordinarily large setback requirements in KRS 278.704(2), the General Assembly wisely empowered the Commission wide latitude to grant deviations. Indeed, the acreage that would be required to meet the stated setback requirements would be so significant that the cost of the acreage would be a practical prohibition against the development of any significant solar facility such as the one proposed in this case.⁷

III. PROPERTIES WITHIN 2,000 FEET OF THE PROJECT BOUNDARY

There are no schools, hospitals, or nursing homes within 2,000 feet of the Project property boundary. As for residential neighborhoods, KRS 278.700(6) defines "residential neighborhood" as "a populated area of five (5) or more acres containing at least one (1) residential structure per acre." There is one residential neighborhood, Cottonwood Subdivision, within 2,000 feet of the Project's property boundary. The Cottonwood Subdivision consists of 48 platted residential parcels. Forty-five (45) of the parcels have residential structures built on them. The closest residential property (2183 Louisville Road) in the Cottonwood Subdivision is located approximately 1,250 feet from the Project's property line. The residential structure on this property is approximately 1,375 feet from the closest component of the solar facility.

⁶ The Companies note that East Kentucky Power Cooperative ("EKPC") filed an Application in Case No. 2024-00129 on April 26, 2024 in which it sought a Certificate of Public Convenience and Necessity and a Site Compatibility Certificate for solar facilities. In its Application (see p. 7), EKPC seeks the same type of setback deviation the Companies seek in this motion.

⁷ See the response to PSC 2-3.

There are also eight commercial properties within 2,000 feet of the Project property boundary. They consist of an agricultural feed supply store, storage facility, telecommunications tower, and event venue facility.

IV. PROPERTIES WITHIN 1,000 FEET FROM THE PROJECT BOUNDARY

There are 27 properties within 1,000 feet of the Project's property boundary and shown on Exhibit A and noted in the table on Exhibit A.

V. REQUEST FOR DEVIATION

The Project has been designed and located to meet the goals of the applicable provisions of KRS Chapters 224 and 278 at distances closer than those provided by KRS 278.704(2), and therefore a deviation is appropriate. The SAR/CEA demonstrates that the Project will not have an impact on the value of surrounding properties; will not have a substantial adverse visual effect on the area, will have no significant impacts to roadway capacity, and will not have a negative impact on air or water quality, or increase water withdrawal. All of this shows that the Project is designed and located to meet the goals of the applicable provisions of KRS Chapters 224 and 278. Further, the Companies propose to: (1) place all solar facilities at least 150 feet from any residence, church, school, or public-facing commercial building; (2) place all solar facilities at least 50 feet from non-participating adjoining parcels; and (3) place all solar facilities at least 50 feet from adjacent roadways.

The Companies' request for a deviation is supported by prior decisions of the Kentucky State Board on Electric Generation and Transmission Siting ("KSB"), which has considered and permitted deviations from statutory setback requirements, subject to certain mitigation measures

in relation to the siting of many merchant solar energy projects.⁸ The decisions of the KSB in granting deviations from the setback requirements found in KRS 278.704(2) support the conclusion that solar facilities can be, and often are, designed and located in such a way as to reduce any negative impact on neighboring land uses at distances less than those prescribed by statute.

VI. COMPLIANCE ANALYSIS WITH STATUTORY GOALS

Pursuant to KRS 278.216(4), the Commission may grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of 278.216 and KRS 224.10-280, 278.010, 278.212, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the applicable setback requirements. The goals of each the applicable provisions are set forth below along with explanations of how the Project meets them in step-by-step fashion.

1. KRS 278.216 requires any utility seeking to build a facility for the generation of electricity in excess of 10MW to obtain a site compatibility certification from the Commission before beginning construction. An application for a site compatibility certificate shall include the submission of a SAR as prescribed by KRS 278.708(36) and (4). The goal of the statute requiring a SAR is to ensure that before electric generating facilities are built that the impact on surrounding properties has been

⁸ See Case No. 2020-00040, *Turkey Creek*, Order, (KSB, Sep. 23, 2020) and Order (KSB July, 22,2021; Case No. 2020-00043, *Glover Creek*, Order, (KSB, Oct. 1, 2021); Case No. 2020-00190, *Horseshoe Bend*, Order, (KSB, June 11, 2021); Case No. 2020-00206, *AEUG Fleming*, Order, (KSB, May 24, 2021); Case No. 2020-00208, *Northern Bobwhite*, Order (KSB, June 18, 2021) and Order (KSB, Sep. 27, 2021); Case No. 2020-00280, *Ashwood Solar I, LLC*, Order, (KSB, June 21, 2021); Case No. 2020-00272, *Flat Run Solar, LLC*, Order, (KSB, Oct. 7, 2021); Case No. 2021-00029, *Martin County Solar Project, LLC*, Order, (KSB, Nov. 15, 2021); Case No. 2020-00226, *Mt. Oliver Creek Solar, LLC*, Order, (KSB, Nov. 3, 2021); Case No. 2020-00370, *Fleming Solar, LLC*, Order, (KSB, Nov. 24, 2021); Case No. 2020-00244, *Caldwell Solar, LLC*, Order, (KSB, Apr.8, 2022); Case No. 2022-00115, *Thoroughbred Solar LLC*, Order (KSB, April 10, 2023); Case No. 2022-00272, *Hummingbird Energy, LLC*, Order, (KSB, Dec. 13, 2023); Case No. 2022-00274, *Bright Mountain Solar, LLC*, Order, (KSB, March 13, 2024);

- evaluated and appropriate mitigating measures for any negative impacts have been identified. The Companies filed their SAR/CEA with its Application (Application, Exhibit 1). The goals of KRS 278.216 have been met by the filing of the SAR/CEA.
2. KRS 224.10-280 requires submission of a Cumulative Environmental Assessment (“CEA”) to the Kentucky Energy and Environment Cabinet (“the Cabinet”) before beginning construction of an electric generating facility. The CEA must contain a description with appropriate analytical support of air pollutants, water pollutants, wastes, and water withdrawal associated with the proposed facility. The Companies included a copy of its CEA as part of its SAR (Application, Exhibit 1) and also submitted it to the Cabinet on November 13, 2023. The SAR/CEA includes a discussion of potential impacts and mitigation plans for any air pollutants, water pollutants, wastes, and water withdrawal associated with the construction and operation of the Project. By submitting a CEA to the Cabinet, the goals of KRS 224.10-280 have been met. The elements of the CEA are briefly discussed below.
 3. Air Resource Assessment – The SAR/CEA concludes that there are no potential impacts to air quality from operation of the Project. No air registrations or permitting are anticipated to be required because there are no sources of emissions expected as part of the facility operation. However, the SAR/CEA concludes that, during construction of the Project, there are likely to be minimal impacts to ambient air quality due to fugitive dust. The SAR/CEA provides mitigation measures to reduce the impact of fugitive dust such as minimizing the area of exposed soil; application of water, mulch, and seeding; structural barriers and windbreaks; and the application of dust suppression chemicals.

4. Water Resource Assessment – The SAR/CEA concludes that once constructed and commercialized there will be no wastewater discharges associated with the Project. However, installation of the facility components will decrease the overall surface permeability of the area within the drainage basin containing the Project. This will result in a slight increase in peak discharge rates during storm events. The SAR/CEA concludes that the Project design and existing drainage pathways should be adequate to accommodate the slight increase in flows even for significant storm events. The SAR-CEA provides mitigation measures such as developing and implementing a soil erosion control plan; providing secondary containment of all chemicals and fuel onsite; in the unlikely event of a fuel or oil spill during construction, the contaminated soils will be fully remediated.
5. The SAR/CEA identified the Salt River as the most prominent water feature in the area of the Project. It is within 520 feet of the Project at the closest point. There is also a small pond located on the southeastern border of the Project site. The SAR/CEA identified 14 active wells and 15 nearby springs within a two-mile radius of the Project site. The Companies will ensure that the Project complies with the Kentucky Division of Water Construction Storm Water Discharge General Permit if one is needed.
6. Water Withdrawal Impacts – The SAR/CEA concludes that no water withdrawal or significant water use is required for the construction and operation of the Project. Water may be used for dust suppression during construction and will be hauled to the site on tanker trucks eliminating the need for use of groundwater resources.
7. Solid and Hazardous Waste Assessment – According to the SAR/CEA, during construction potential waste includes earth and land clearing debris; metal scraps;

electrical wiring and cable; surplus consumable materials such as paint, grease, lubricants, and cleaning compounds; packaging materials; and office waste. The SAR/CEA concludes that potential impacts to soil, groundwater and surface water resulting from the project construction are unlikely. No significant generation of solid waste is anticipated during operation of the Project. The only solid waste associated with the operation of the Project will be solar panels that have reached the end of their useful lives. The end-of-life solar panels are not a routinely generated waste and will be managed appropriately based on their status as either hazardous or non-hazardous waste.

8. KRS 278.010 sets forth the definitions to be used for KRS 278.010 to 278.45, KRS 278.541 to 278.544, KRS 278.546 to 278.5462, and KRS 278.990. The Companies are utilities as defined in KRS 278.010(3)(a) because they own, control, operate and manage facilities used for or in connection with the generation, production, transmission, and distribution of electricity to or for the public. The Companies are also retail electric suppliers as defined in KRS 278.010(4) because they are non-municipal corporations engaged in the furnishing of retail electric service. The Companies have satisfied the goals of KRS 278.010 by operating their corporations and submitting their Application in terms consistent with the statutory definitions.
9. KRS 278.212 requires the filing of plans and specification for electrical interconnection with merchant electric generating facilities and imposes the obligation upon a merchant electric generating developer for any costs or expenses associated with upgrading the existing electricity transmission grid as a result of the additional load caused by the merchant electric generating facility. The Project is not a merchant electric generating

facility within the statutory definition found in KRS 278.700(2) because the electricity generated by the Project will be used by the Companies (public utilities subject to the Commission's jurisdiction) to serve the Companies' customers and will not be sold into the wholesale market at rates not regulated by the Commission. The Project will supply energy to an existing 138 kV transmission line owned by the Companies. Because no merchant generating facility is involved with this Project and because the Companies are utilizing an existing transmission line, the goals of KRS 278.212 are met by the design and location of the Project.

10. KRS 278.214 governs the curtailment of service and establishes the progression of entities whose service may be interrupted or curtailed pursuant to an emergency or other event. The Companies commit to following all appropriate and legally binding operating procedures. The Project is thus designed and located to meet the goals of KRS 278.214.

11. KRS 278.218 governs certain transfers of utility assets having an original book value of \$1,000,000 or more. The goal of KRS 278.218 is to ensure that utilities obtain reasonable consideration when transferring valuable assets, and do not burden ratepayers by selling assets at a loss. In Case No. 2022-00402, the proceeding in which the Commission granted a CPCN for the Project, the Commission also approved the change in ownership of certain assets and a stipulation regarding the sale of Mercer County property owned by the Companies.⁹ This transfer is related to the Project in that the asset transfer is contingent upon the Companies receiving a site compatibility certificate for the Project. The goals of KRS 278.218 are met in relation to this Project.

⁹ See: Case No. 2022-00402, Order at 171, 176, 178, 180 (Ky. PSC Nov. 6, 2023); Mercer County Post-Hearing Brief (filed Sep. 19, 2023); Stipulation and Recommendation (filed Aug. 15, 2023).

12. KRS 278.700 – KRS 278.716 govern the activities of the KSB. The goals of these provisions are to ensure that merchant generating facilities are located in such a way as to avoid intrusion upon surrounding land uses, including hospitals, nursing homes, residential areas, and schools. The statutes require consideration of the environmental and economic impacts of proposed facilities. Some of these statutory provisions apply only to merchant electric generating facilities, and not to facilities owned and operated by utilities such as the Companies. However, the Project has been designed and located to meet the goals of those statutory provisions that are applicable to solar facilities that are constructed and operated by a public utility. The statutory provisions that apply to the project are the definitions contained in KRS 278.700, specifically the definition of “residential neighborhood” found in KRS 278.700(6), and KRS 278.704(2) (by operation of KRS 278.216), and KRS 278.708.

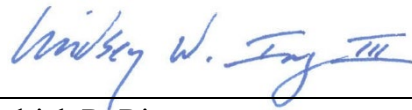
13. The Companies submitted a SAR as required by KRS 278.708. The SAR/CEA submitted by the Companies contained all required elements including mitigating measures to be implemented by the Companies to minimize or avoid adverse effects identified in the SAR/CEA. The SAR/CEA concluded that the construction and operation of the Project will not have an impact on the value of surrounding properties; will not have a substantial adverse visual effect on the area, will have no significant impacts to roadway capacity, and will not have a negative impact on air or water quality, or increase water withdrawal.

In sum, the goals of KRS 278.700 – KRS 278.716 have been met by the Companies submitting the SAR/CEA as required and by the conclusions reached in the SAR/CEA.

WHEREFORE, the Companies respectfully request the Commission to issue an Order granting this Motion and establishing a setback requirement that will allow the Companies to construct the Project with the following deviations: (1) place all solar facilities at least 150 feet from any residence, church, school, or public-facing commercial building; (2) place all solar facilities at least 50 feet from non-participating adjoining parcels; and (3) place all solar facilities at least 50 feet from adjacent roadways.

Dated: May 10, 2024

Respectfully submitted,



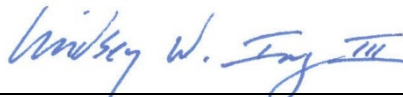
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CERTIFICATE OF COMPLIANCE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on May 10, 2024; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

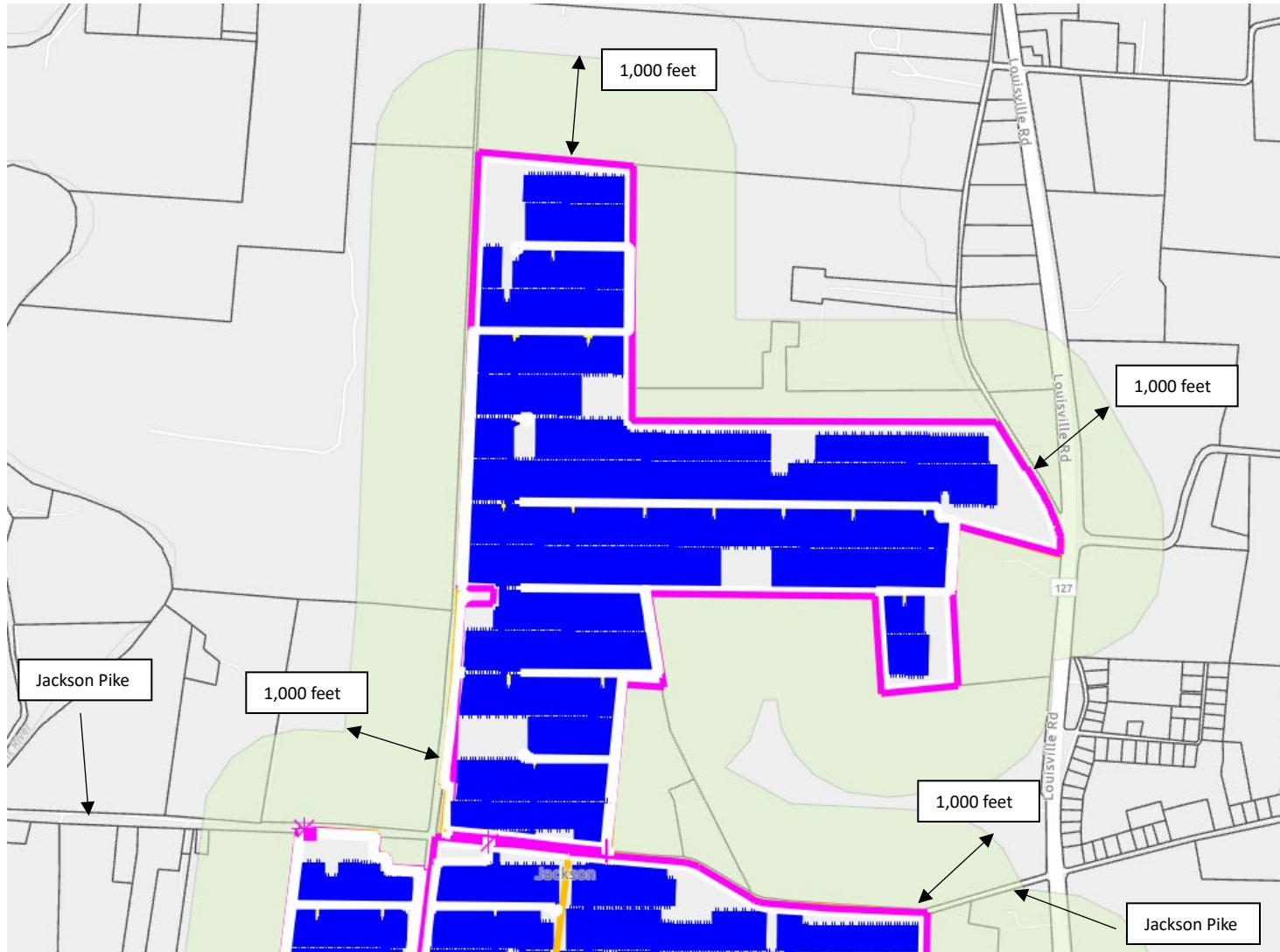


*Counsel for Kentucky Utilities Company and
Louisville Gas and Electric Company*

Exhibit A

Properties within 1,000 feet of the Mercer County Solar Facility property boundary line are noted within the light green shaded area.

Solar Facility located North of Jackson Pike



Solar Facility located South of Jackson Pike

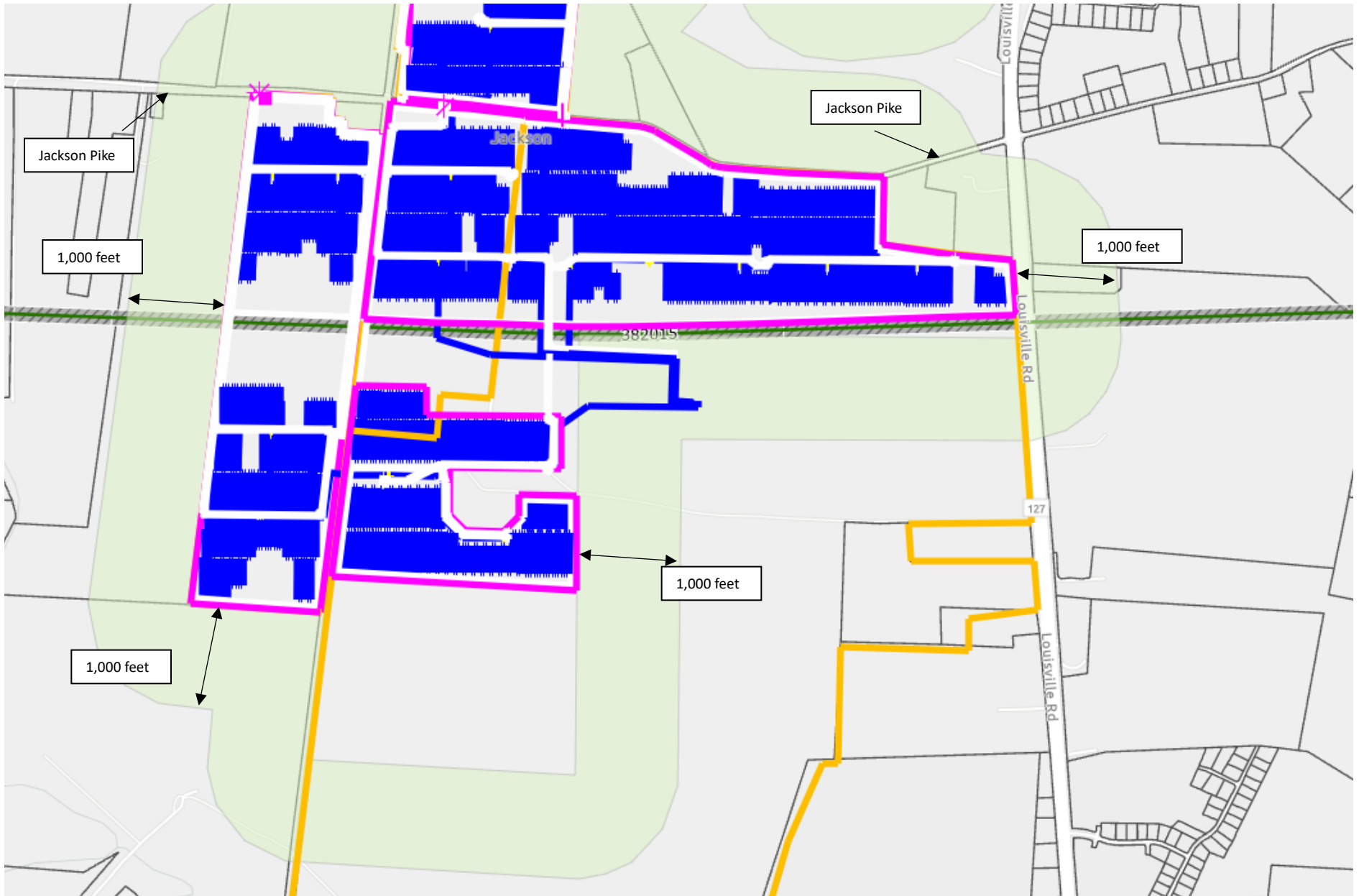


Table of the 27 parcels located within 1,000 feet of the Solar Facility

Parcel #	Address	City/ST/Zip Code
045.00-00030.00	600 Jackson Pk	Harrodsburg, KY 40330
045.00-00033.00	672 Jackson Pk	Harrodsburg, KY 40330
045.00-00033.01	732 Jackson Pk	Harrodsburg, KY 40330
045.00-00040.00	1383 Bohon Rd	Harrodsburg, KY 40330
045.00-00029.00	0 Jackson Pk	Harrodsburg, KY 40330
045.00-00020.00	1943 Louisville Rd	Harrodsburg, KY 40330
045.00-00021.00	2075 Louisville Rd	Harrodsburg, KY 40330
045.00-00022.00	2140 Louisville Rd	Harrodsburg, KY 40330
045.00-00026.00	130 Jackson Pk	Harrodsburg, KY 40330
044.00-00001.00	2226 Louisville Rd	Harrodsburg, KY 40330
045.00-00028.01	303 Jackson Pk	Harrodsburg, KY 40330
045.00-00027.00	397 Jackson Pk	Harrodsburg, KY 40330
044.00-00002.00	2406 Louisville Rd	Harrodsburg, KY 40330
045.00-00024.01	2327 Louisville Rd	Harrodsburg, KY 40330
045.00-02001.00	249 Cottonwood St	Harrodsburg, KY 40330
054.00-00025.01	Louisville Rd/Mundys Landing Rd	Harrodsburg, KY 40330
054.00-00011.07	231 Mundys Landing Rd	Harrodsburg, KY 40330
044.00-00005.01	Louisville Rd/Mundys Landing Rd	Harrodsburg, KY 40330
044.00-00006.00	201 Hudson Rd	Harrodsburg, KY 40330
044.00-00007.01	202 Hudson Rd	Harrodsburg, KY 40330
044.00-00007.02	Hudson Rd	Harrodsburg, KY 40330
044.00-00011.02	1 Hudson Rd Tr	Harrodsburg, KY 40330
044.00-00034.00	532 Talmage-Mayo Rd	Harrodsburg, KY 40330
044.00-00038.00	0 Talmage-Mayo Rd	Harrodsburg, KY 40330
045.00-00031.00	Jackson Pk	Harrodsburg, KY 40330
045.00-00031.01	645 Jackson Pk	Harrodsburg, KY 40330
035.00-00002.00	Jackson Pk	Harrodsburg, KY 40330