

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the matter of:	:	
ELECTRONIC APPLICATION OF EAST	:	CASE NO.
KENTUCKY POWER COOPERATIVE, INC.	:	2024-00129
FOR A CERTIFICATES OF PUBLIC CONVENIENCE	:	
AND NECESSITY AND SITE COMPATIBILITY	:	
CERTIFICATES FOR THE CONSTRUCTION OF	:	
A 96 MW (NOMINAL) SOLAR FACILITY IN	:	
MARION COUNTY, KENTUCKY AND A 40 MW	:	
(NOMINAL) SOLAR FACILITY IN FAYETTE	:	
COUNTY, KENTUCKY AND APPROVAL OF	:	
CERTAIN ASSUMPTIONS OF EVIDENCES OF	:	
INDEBTEDNESS RELATED TO THE SOLAR	:	
FACILITIES AND OTHER RELIEF	:	

FAYETTE ALLIANCE’S INITIAL POST-HEARING BRIEF

Comes the Fayette Alliance, Inc., (“FA”), 169 N. Limestone Ave., Lexington, Kentucky 40507, by counsel and intervener in this action, and respectfully submits the following initial post-hearing brief:

East Kentucky Power Cooperative (“EKPC”) seeks at a certificate of public convenience and necessity (CPCN) and site compatibility certificate to construct a 96 MW solar facility in Marion County, Kentucky and a 40 MW solar facility (“Bluegrass Plains”) in Fayette County, Kentucky.

FA is a nonprofit organization incorporated under the laws of the Commonwealth of Kentucky in 2006, from the downtown, business, neighborhood, and agricultural communities of Fayette County to serve Lexington as its first and only land-use advocacy group. FA advocates to positively impact planning and zoning laws to promote smart, sustainable, and equitable growth in Lexington-Fayette County. By advocating for the protection of farmland, FA helps protect Fayette County’s signature and thriving agricultural industries and cultural assets. In

1958, the Lexington-Fayette County created the nation's first Urban Services Boundary ("USB"), a growth boundary that limits development into the rural area. The USB serves twin purposes – it preserves Fayette County's irreplaceable farmland and landscape, while directing development and investment inside our urban areas. FA intervened with PSC permission in this matter based upon EKPC's request to build a solar array on rural farmland in Fayette County.

In this matter EKPC seeks a CPCN and Site Compatibility Certificate for a solar facility a/k/a Bluegrass Plains on a 400-acre farm outside the USB within Fayette County in zone A-R (Agriculture Rural). Specifically, this 400-acre Fayette County farm has grown crops (e.g. historically corn and hay) as recently as last year. In Fayette County, the A-R zone is designated as such to specifically preserve prime soils for agricultural purposes and preserve Fayette County's agricultural economy overall, reserving principal permitted uses in the zone for production agriculture and discouraging all forms of urban development and industrial uses like solar. Any private solar developers would thus likely fail to obtain approval from the Lexington-Fayette County Urban County Government (LFUCG) for solar array development in the A-R zone of Fayette County.

Specifically, Savion, LLC (the initial private solar developer at Bluegrass Plains) would have also failed in any attempt to obtain permitting approval from LFUCG to build a solar array in the A-R zone of Fayette County – as it is an industrial non-permissible use. Instead, EKPC, having purchased the project rights from Savion, LLC, as a successor in interest to Savion, LLC, stands in the shoes of Savion, LLC from a PJM¹ study queue perspective. EKPC further submits that it avoids LFUCG planning and zoning regulations based upon PSC having exclusive jurisdiction under KRS Section 100.324. But for EKPC's involvement Savion, LLC's solar

¹ PJM is a regional transmission organization that coordinates the sale of wholesale electricity in 13 states and Washington, D.C.

project in Fayette County would be halted. Regarding the PJM queue perspective, EKPC indicates that since Savion, LLC has previously requested placement in the interconnection study queue with PJM, EKPC takes over Savion LLC's position in the line and can move forward with this solar array more quickly as opposed to having to seek a new PJM interconnection study request and find itself at the back of the PJM queue. EKPC generates and provides power to its 16 owner-member cooperatives serving 89 Kentucky counties. However, EKPC acknowledged that it only serves 6,277 end users in Fayette County.² EKPC further opines that the solar array in Fayette County meets a clear demonstrated need while not being wasteful or duplicative.³

LEGAL STANDARD

Per KRS 278.020(1), any person or corporation providing a utility service to the public shall initially obtain a certificate of necessity from the Commission before commencing construction upon “any plant, equipment, property or facility....” [t]o be entitled to such a certificate of necessity, the applicant must demonstrate a need for the proposed facility and the absence of wasteful duplication. *Kentucky Utilities Co. v. Public Service Commission*, 252 S.W.2d 885 (Ky.1952). A “need” may be demonstrated by “showing of a substantial inadequacy of existing service” and “wasteful duplication” may be demonstrated by showing “an excess capacity over need,” “excessive investment in relation to productivity,” or “unnecessary multiplicity of physical properties.” *Citizens for Alternative Water Solutions v. Ky. PSC*, 358 S.W.3d 488 at 490 (Ky.App.2011) citing *Kentucky Utilities Co. v. Public Service Commission*, 252 S.W.2d at 890.

² EKPC response to FA First Request No. 15 dated May 31, 2024.

I. THERE IS NO NEED FOR THE SOLAR ARRAY IN FAYETTE COUNTY

EKPC alleges that the solar array in Fayette County meets a clear demonstrated need while not being wasteful or duplicative.⁴ A “need” may be demonstrated by “showing of a substantial inadequacy of existing service”.⁵ While EKPC will point to their 2022 IRP which suggests inclusion of, “up to 1,000 MW of solar energy within the next fifteen years”⁶ in new solar generating assets, the facts surrounding the current “need” for the proposed solar array in Fayette County are murky at best.

EKPC has greater demand for energy in winter versus summer.⁷ To demonstrate a “need” and qualify for approval of this CPCN, EKPC would need to show a substantial inadequacy of existing service.⁸ Additionally, EKPC’s seasonal capacity and reserve margins show that EKPC’s existing generation assets (without the proposed solar project in Fayette or Marion County) will provide sufficient capacity with excess capacity in the summertime through 2038.⁹ In fact, the summer reserve margins range between 497 MW (2024) to 198 MW (2038).¹⁰ Meanwhile, EKPC alleges a deficiency in their winter reserve margins beginning in 2028.¹¹ In other words, EKPC may need more reliable and resilient energy capacity in the wintertime – not the summertime. EKPC concedes, however, that these solar facilities will only provide capacity contribution to demand peaks in the summer months with zero planned capacity contribution to

³ EKPC response to FA Second Request No. 5 dated July 5, 2024.

⁴ EKPC response to FA Second Request No. 5 dated July 5, 2024.

⁵ *Citizens for Alternative Water Solutions v. Ky. PSC*, 358 S.W.3d 488 at 490 (Ky.App.2011) citing *Kentucky Utilities Co. v. Public Service Commission*, 252 S.W.2d at 890.

⁶ EKPC response to LFUCG First Request No. 72 dated May 31, 2024.

⁷ EKPC response to PSC Staff Second Request No. 1 dated July 31, 2024.

⁸ *Citizens for Alternative Water Solutions v. Ky. PSC*, 358 S.W.3d 488 at 490 (Ky.App.2011) citing *Kentucky Utilities Co. v. Public Service Commission*, 252 S.W.2d at 890.

⁹ EKPC Response to PSC Staff Request No. 1 dated July 3, 2024.

¹⁰ *Id.*

¹¹ *Id.*

demand peaks in the winter months.¹² So while EKPC may need more generating assets to address their winter peaking needs, consistent with their 2022 IRP and responses to requests for information in this proceeding, they have no demonstrable need for the solar array in Fayette County as there is no, “substantial inadequacy of service” in the summertime at least through 2038.¹³ Said another way, if the PSC grants EKPC’s proposal for Fayette County, EKPC merely adds unnecessary generating assets to their portfolio which contributes little to nothing to when EKPC may need more capacity – the wintertime. Moreover, EKPC admits that, “the energy produced by the proposed (solar) resources will primarily offset energy that is normally purchased from the PJM wholesale energy market (“PJM”) and provide a known price cap, or hedge, against those market prices.”¹⁴ The energy produced from these proposed solar arrays is not needed, does not address an inadequacy in service and does not materially address any of EKPC future reserve margin deficiencies in the wintertime. Specifically with regard to “need” for this project, EKPC touted meeting sustainability goals¹⁵ however sustainability goals while laudable do not equate to “inadequacy of existing service”.

II. THE PJM STUDY QUEUE IS IRRELEVANT TO THIS ANALYSIS

EKPC witness Julia Tucker indicated that EKPC looked for unfinished existing solar PPA projects that had already sought a position in the PJM study queue to advance EKPC’s proposed solar project.¹⁶ She acknowledged that if EKPC were to independently obtain a PJM study queue position for a self-build project, it would be 2026 or 2027 at the earliest before PJM would evaluate the project.¹⁷ In further discussion with EKPC witness Patrick Bischoff it

¹² EKPC Response to PSC Staff’s Second Request No. 1 dated July 31, 2024.

¹³ EKPC Response to PSC Staff Request No. 1 dated July 3, 2024.

¹⁴ (emphasis added) EKPC Response to LFUCG Initial Request No. 30 dated May 31, 2024.

¹⁵ VR, 10/29/24, EKPC Hearing, Witness Tucker, 10:56 a.m., 1:34

¹⁶ VR, 10/29/24, EKPC Hearing, Witness Tucker, 11:00 a.m., 1:38

¹⁷ *Id.*

became apparent that EKPC also looks to take advantage of the Inflation Reduction Act (IRA) benefits however there is no necessity to take advantage of the IRA benefits immediately.¹⁸ In fact even a four-year delay of a project (even beyond what Witness Tucker alluded *supra*) would allow EKPC the ability to obtain the IRA tax credits discussed by Witness Bischoff.¹⁹

In other words, EKPC seeks to obtain IRA tax credits as soon as practical but the Commission should not be swayed by the perception that EKPC has some immediate timing requirement to pursue the IRA benefits associated with the Bluegrass Plains project or that EKPC would lose the ability to pursue a self-build solar project outside of Fayette County if the Commission denied EKPC's request in Fayette County. Moreover, the legal standard associated with this CPCN request (e.g. need and substantial inadequacy of service) has nothing to do with EKPC's desire to obtain IRA benefits sooner rather than later. The IRA benefits remain available for approximately a decade, with credits beginning to phase out for projects that start construction after 2033.²⁰ Stated differently, the earliest the credits would begin to phase out is 2034.²¹ Outside of EKPC's practical desires to pursue IRA benefits as soon as practical the perception that EKPC would find itself at the back of queue if the PSC denies the request for the solar array in Fayette County is irrelevant as ample time and money remain available under the IRA.

¹⁸ VR, 10/29/24, EKPC Hearing, Witness Bischoff, 1:53 p.m.-1:58 p.m., 3:22-3:27 “Question – The IRA doesn't go away until 2033-34.” “If there is delay of 4 years, aren't you going to qualify for the same tax credits.” Answer, Witness Bischoff, “It is possible.”

¹⁹ *Id.*

²⁰ <https://www.mossadams.com/articles/2022/08/inflation-reduction-act-clean-energy-credits>

²¹ *Id.*

III. THE PROPOSED BLUEGRASS PLAINS PROJECT PROVIDES ESSENTIALLY NO BENEFIT TO FAYETTE COUNTY

EKPC serves over 1 million Kentuckians through their 16 member-owner cooperatives in 89 counties.²² However, Fayette County is almost entirely served by Kentucky Utilities – not EKPC. In fact, EKPC through Bluegrass Energy and Clark Rural Electric only serve 6,277 end users in Fayette County.²³ As of 2020, Fayette County had a population of 322,570.²⁴ EKPC touted that inclusion of the proposed Bluegrass Plains project in Fayette County will make Fayette County more attractive to companies with sustainability goals, which should aid LFUCG in its economic development goals.²⁵ However, EKPC basically provides little to no electricity in Fayette County from its 16 member-owner cooperatives which means almost none of this solar power would be used in Fayette County. Also, EKPC acknowledged that it is likely that Fayette County would receive no real revenue from Bluegrass Plains.²⁶

FA commends use of renewable energy sources but not at the expense of agricultural land/farms outside the USB in Fayette County. Contrary to EKPC’s suggestion that this proposed solar array will, “aid LFUCG in its economic goals”²⁷ Fayette County’s agriculture cluster accounts for \$2.3 billion in annual, local activity.²⁸ Additionally, 1 out of every 12 jobs in Fayette County is directly or indirectly attributable to agriculture, resulting in \$8.5 million annually to the local tax base.²⁹ UK found that with just a 10% reduction in production agriculture, there would be an additional annual decrease of \$26.5 million in business output and

²² <https://www.ekpc.coop/ekpc-power-behind-your-local-electric-cooperative>

²³ EKPC response to FA First Request No. 15 dated May 31, 2024.

²⁴ 2020 US Census

²⁵ EKPC response to LFUCG First Request No. 4 dated May 31, 2024.

²⁶ EKPC response to LFUCG First Request No. 55 dated May 31, 2024.

²⁷ *Id.*

²⁸ Davis, Alison and Simona Balazs, “The Influence of the Agricultural Cluster on the Fayette County Economy,” CEDIK, UK College of Agriculture, Food, and Environment, May 2017.

²⁹ *Id.*

another \$3.5 million reduction in annual business spending overall.³⁰ Fayette County farms are still the number one requested site by visitors pursuant to local tourism organization VisitLex, and Fayette County's rural landscape is the primary draw for the continued growth of tourism in our region.³¹ Ending agriculture on a 400-acre farm in rural Fayette County does not aid LFUCG in its economic goals.

EKPC's proposed solar array at Bluegrass Plains has direct and long-term implications for the Rural Service Area (zone A-R) in Fayette County which are inconsistent with Fayette County's Comprehensive and Rural Land Management Plan. The best and highest use for land in Fayette County's Agricultural zones is for production agriculture and agribusiness, which support Fayette County's local economy and cultural identity. Allowing industrial-scale solar facilities such as Bluegrass Plains creates a substantial risk of injury to agricultural businesses in Fayette County and in surrounding counties, a substantial risk that these developments could become nuisances for existing and future agricultural uses and threatens future investment for uses that are the primary reasons the zoning restrictions exist in Fayette County at all.

Additionally, the vast majority of public comments in this matter were not in support of EKPC's request for the proposed solar array in Fayette County. Specifically, the Commission heard well-reasoned live public comments from Mayor Linda Gorton, State Rep. Adreille Camuel, Ms. Margaret Graves (Bluegrass Land Conservancy), Mr. Robert James (Fayette County Farm Bureau) and Mr. Chauncey Morris (Kentucky Thoroughbred Association). All of these individuals and their corresponding agencies were not in support of the proposed solar array in Fayette County.

³⁰ Davis, Alison and Simona Balazs, "The Influence of the Agricultural Cluster on the Fayette County Economy," CEDIK, UK College of Agriculture, Food, and Environment, May 2017.

³¹ Visit Lex, <https://www.visitlex.com/media/press-releases/post/fayette-county-reaches-record-breaking-16-billion-in-economic-impact-from-travel-in-2023/>

IV. THE PROPOSED BLUEGRASS PLAINS PROJECT FAILS TO COMPLY WITH STATUTORY REQUIREMENTS FOR KENTUCKY SCENIC BYWAYS

Bluegrass Land Conservancy identified this Kentucky Scenic Byway concern in their public comments dated August 8, 2024. Chair Hatton also addressed this concern to EKPC Witness Josh Young during the hearing.³² EKPC acknowledged that portions of the proposed solar array will be visible from Winchester Road regardless of the vegetative buffer.³³ This Fayette County farm is on the Winchester Road Corridor which is a Kentucky Scenic Byway.³⁴ The Winchester Road Corridor runs from the Lexington Urban Service Area Boundary, along US Highway 60, to the Clark County Line for a distance of 4.8 miles.³⁵ A scenic byway is considered to have roadsides or viewsheds with scenic, natural, cultural, historical, archaeological, and/or recreational value worthy of preservation, restoration, protection, and enhancement.³⁶

Kentucky Scenic Byways are statutorily addressed within KRS 177.571 through KRS 177.576. The General Assembly created scenic byway legislation to preserve scenic qualities of highways and byways.³⁷ The General Assembly defined “scenic byway” as a highway...that has roadsides or view sheds of aesthetic, cultural, historical or archaeological value worthy of **preservation**, restoration, **protection** or enhancement.³⁸ Further, the General Assembly defined “scenic quality” as, “the heightened visual experience derived from the view of the natural and manmade elements of the scenic byway or scenic highway...**All elements of the landscape, including** landform, water, vegetation, and **manmade development, must contribute in**

³² VR, 10/29/24, EKPC Hearing, Witness Young, 3:07 p.m., 4:15

³³ *Id.*

³⁴ <https://transportation.ky.gov/LocalPrograms/Documents/Kentucky%20State%20and%20National%20Scenic%20Byways%20and%20Highways.pdf>

³⁵ *Id.*

³⁶ <https://transportation.ky.gov/LocalPrograms/Pages/Scenic-Byways.aspx>

³⁷ See KRS 177.571

³⁸ (emphasis added) KRS 177.572(9)

harmony to the quality of the scenic byway's or scenic highway's visual environment and share in its intrinsic qualities.”³⁹

This proposed solar array on 400 acres of Fayette County farmland can be seen from the Winchester Road scenic byway and fails to comply with the Kentucky Scenic Byway statutes. Said differently, all elements of the landscape on a scenic byway, including...manmade development such as this proposed solar array, must contribute in harmony to the quality of the scenic byway and share in its intrinsic qualities. Suggesting a large manmade industrial solar array, which will be an eyesore, contributes in harmony to the quality of the Winchester Road Scenic Byway strains credulity. Such a suggestion must fail consistent with requirements of KRS 177.572(11) and the General Assembly's use of the term “must” is mandatory as opposed to permissive.⁴⁰ As the solar array request in Fayette County does not comply with Kentucky Scenic Byway statutes it should be denied.

With respect to the proposed Marion County project (Northern Bobwhite), located off of Radio Station Road located near Lebanon, Marion and Washington counties, the Northern Bobwhite project does not appear to be on a Kentucky Scenic Byway or Highway.⁴¹

Regarding Bluegrass Plains, to the extent EKPC submits that it has complied with KRS 278.708(3)(b)(an evaluation of the proposed facility with scenic surroundings for solar arrays) and therefore also complies with statutory requirements for Kentucky's Scenic Byways *supra*, such a suggestion is mistaken. In both site assessment reports for Northern Bobwhite and

³⁹ (emphasis added) KRS 177.572(11)

⁴⁰ This Court must accord the words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion. *Bailey v. Reeves*, Ky., 662 S.W.2d 832 (1984); *Dept. of Revenue v. Greyhound Corp.*, Ky., 321 S.W.2d 60 (1959). In this matter we have clear language to interpret and are thus bound to follow it. Shall is mandatory language, while should is permissive language, that while encouraging a certain course of action, does not require that a particular course be followed. See *Hardin County Fiscal Court v. Hardin County Board of Health*, Ky.App., 899 S.W.2d 859 (1995).

⁴¹<https://transportation.ky.gov/LocalPrograms/Documents/Kentucky%20State%20and%20National%20Scenic%20Byways%20and%20Highways.pdf>

Bluegrass Plains, both engineering firms included reference to KRS 278.708(3)(b)([a]n evaluation of the compatibility of the facility with scenic surroundings) *supra*.⁴² Both engineering firms equate the visual impact of large scale industrial solar arrays as “comparable to larger greenhouses” and “lower than that of single-story residential dwellings” and thus acceptable for purposes of KRS 278.708(3)(b).⁴³

Regarding Bluegrass Plains in Fayette County, large greenhouses are not permitted by zoning regulations (without conditional use approval) in the location of the proposed solar array.⁴⁴ Zone A-R was established to preserve the rural character of the agricultural service area by promoting agriculture and related uses, and by discouraging all forms of urban development except for a limited amount of conditional uses.⁴⁵ When asked by FA how large greenhouses comply with scenic surroundings given Fayette County’s agriculture zoning regulations, EKPC objected and said the request is outside the criteria of this application.⁴⁶ Regardless, pertaining to Bluegrass Plains, Tetra Tech suggested that an impermissible analogous structure (large greenhouses) in Fayette County’s agricultural-rural zone somehow allowed compliance with KRS 278.708(3)(b). Said differently, if large greenhouses are not typically allowed because they do not comply with the scenic surroundings of Zone A-R, large scale industrial solar would also not comply with the scenic surroundings. In fact, the planning commission in Fayette County has recommended no industrial solar on Fayette County farmland.⁴⁷

⁴² [https://psc.ky.gov/pscecf/2024-00129/allyson%40hloky.com/04262024083034/Attachment_PB-3 - Bluegrass Plains SAR.pdf](https://psc.ky.gov/pscecf/2024-00129/allyson%40hloky.com/04262024083034/Attachment_PB-3_-_Bluegrass_Plains_SAR.pdf) (p. 7 of 193); [https://psc.ky.gov/pscecf/2024-00129/allyson%40hloky.com/04262024083034/Attachment_PB-2 - Nothorn Bobwhite SAR Part 1.pdf](https://psc.ky.gov/pscecf/2024-00129/allyson%40hloky.com/04262024083034/Attachment_PB-2_-_Nothorn_Bobwhite_SAR_Part_1.pdf) (p.8 of 129)

⁴³ *Id.*

⁴⁴ https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-14089#JD_8-1

⁴⁵ *Id.*

⁴⁶ EKPC Response to FA Supplemental Data Requests No. 2-4 dated July 5, 2024.

⁴⁷ <https://www.kentucky.com/news/local/counties/fayette-county/article293034494.html>

Additionally, with respect to Bluegrass Plains in Fayette County, it does not appear that Tetra Tech or EKPC addressed necessary compliance with Kentucky Scenic Byway statutes at all. Tetra Tech merely made an analogous reference to an impermissible structure (large greenhouses) in Fayette County in an attempt to comply with KRS 278.708(3)(b) which is not compliant with the scenic surroundings of zone A-R in Fayette County and did not address the Kentucky Scenic Byway statutes. Additionally, the language in Kentucky's Scenic Byway statute is very specific, KRS 177.572(11)(all elements of the landscape on a scenic byway, including...manmade development, must contribute in harmony to the quality of the scenic byway and share in its intrinsic qualities) as compared to KRS 278.708(3)(b)(an evaluation of the proposed facility with scenic surroundings for solar arrays). It is a well-settled rule of statutory construction to allow a more specific provision (such as KRS 177.572(11)) to take precedence over a more general provision (KRS 278.708(3)(b)).⁴⁸ Inasmuch, EKPC's proposed Bluegrass Plains project in Fayette County fails to comply with Kentucky's Scenic Byway statutes and also fails to comply with KRS 278.708(3)(b) – it should not be permitted under this CPCN. Conversely, the Northern Bobwhite proposal does not appear to have the same scenic byway statute entanglements and may not have the same prohibitions involving scenic surroundings (e.g. Fayette County Zoning Ordinance Sec. 8-1).

CONCLUSION

The PSC should deny EKPC's request for a CPCN at the Bluegrass Plains location based upon the following:

- EKPC has failed to demonstrate a “need” and a “substantial inadequacy of service” as it pertains to these solar arrays;

⁴⁸ *Boone v. Ballinger*, 228 S.W.3d 1 at 14 (Ky.App.2007) citing *Commonwealth v. Phon*, 17 S.W.3d 106 (Ky. 2000).

- Specifically, EKPC has significant summertime reserve capacity and concedes that these proposed solar arrays only materially provide planned capacity contribution during the summertime (when EKPC does **not** have a reserve capacity deficit);
- These solar arrays do not materially contribute to wintertime capacity (when EKPC may actually need additional reserve capacity);
- The PSC should not be swayed by the PJM study queue concern (the back of the line argument) - the IRA benefits remain available for approximately a decade, with credits beginning to phase out for projects that start construction after 2033 – said differently, EKPC has plenty of time to self-build a different solar project and obtain IRA benefits if the PSC denies their solar array request in Fayette County;
- Fayette County comments in this matter largely do not support the Bluegrass Plains project, this project provides essentially no electricity, money or benefit to Fayette County;
- Moreover, Fayette County’s zoning regulations do not support this Bluegrass Plains project with industrial solar being inconsistent with the A-R zoning in Fayette County;
- Fayette Alliance believes that the highest and best use for farms in it’s A-R zone to be production agriculture and agribusiness;
- The Bluegrass Plains project fails to comply with Kentucky Scenic Byway statutes (Winchester Road Corridor is a Kentucky Scenic Byway);
- Specifically, KRS 177.572(11) has specific mandatory language which directs that, “all elements of the landscape on a scenic byway, including...manmade development such as this proposed solar array, **must** contribute in harmony to the quality of the scenic byway and share in its intrinsic qualities.”

- Pertaining to Bluegrass Plains, attempted compliance of Tetra Tech to KRS 278.708(3)(b)([a]n evaluation of the compatibility of the facility with scenic surroundings – in the SAR) cited to impermissible structures (large greenhouses) as equivalent to industrial solar arrays in Fayette County – said large greenhouses are also not permitted without conditional use permission in Fayette County by ordinance – accordingly if large greenhouses do not comply with the scenic surroundings neither do industrial solar arrays;
- The Bluegrass Plains project is not compliant with Kentucky Scenic Byway statutes or KRS 278.708(3)(b); and
- Lastly, the Northern Bobwhite proposal does not appear to have the same scenic byway statute entanglements and may not have the same prohibitions involving scenic surroundings (e.g. Fayette County Zoning Ordinance Sec. 8-1).

Respectfully submitted,

/s/Matt Malone

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CERTIFICATE OF SERVICE

I hereby certify that FA's November 27, 2024 electronic filing is a true and accurate copy of FA's pleading and Read 1st Document to be filed in paper medium; that the electronic filing has been transmitted to the Commission on November 27, 2024; that an original and one copy of the filing will not be mailed to the Commission given the pandemic orders; that there are currently no parties excused from participation by electronic service; and that, on November 27, 2024, electronic mail notification of the electronic filing is provided to all parties of record.

/s/Matt Malone

ATTORNEY FOR FAYETTE ALLIANCE, INC.