

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

In the Matter of:

ELECTRONIC APPLICATION OF	)	
CLOVER CREEK SOLAR PROJECT LLC	)	
D/B/A NEW FRONTIERS SOLAR PARK	)	
FOR A CERTIFICATE OF CONSTRUCTION	)	
FOR AN APPROXIMATELY 100	)	
MEGAWATT MERCHANT ELECTRIC	)	Case No. 2024-00253
SOLAR GENERATING FACILITY AND	)	
NONREGULATED ELECTRIC	)	
TRANSMISSION LINE IN BRECKINRIDGE	)	
COUNTY, KENTUCKY PURSUANT TO	)	
KRS 278.700 AND 807 KAR 5:110	)	

**Applicant’s Motion for Reconsideration and Clarification**

Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park (the “Applicant” or “New Frontiers”) files this Motion for Reconsideration and Clarification of certain conditions in the Kentucky State Board on Electric Generation and Transmission Siting’s (“Siting Board”) May 2, 2025 Final Order (“Order”). Due to the construction schedule for this project, which anticipates commencing construction this summer, **Applicant requests a response to this Motion by June 22, 2025.** In support of its Motion, Applicant states as follows:

**I. Facts**

Applicant is seeking approval from the Siting Board for a certificate of construction for an approximately 100-megawatt (MW) merchant electric solar generating facility and nonregulated electric transmission line pursuant to KRS 278.704 and 278.714 (the “Project”) in Breckinridge County, Kentucky. Applicant filed its application on November 1, 2024. On May 2, 2025, the Siting Board approved the requested construction certificate for the Project in the Order. The Order contained certain conditions with which the Applicant must comply. *See* Order, Appx. A. While most of the conditions are acceptable, certain conditions need additional review by the Siting

Board and correction so that the Applicant can move forward to construction with confidence. These conditions are as follows.

## **II. Setbacks**

Mitigation Measure 20 of the Order's Appendix A discusses those setbacks which Applicant must comply with when constructing the Project. The mitigation measure conflicts with itself by requiring Applicant, in the first sentence, to "place panels, inverters, and substation equipment consistent with the distances to noise receptors to which it has committed in its maps and site plans." Then, in the following sentences, the mitigation measure mandates setbacks that are inconsistent with those to which the Applicant committed on its maps and site plans. Specifically, the mitigation measure mandates panels be setback from individual residences by 800 feet, when the nearest residence to a panel in Applicant's site plan is 464 feet.<sup>1</sup> Additionally, the mitigation measure requires panels be setback 800 feet from churches, when the site plan has the nearest panel located 501 feet from a church.<sup>2</sup>

Applicant's Motion for Deviation from the statutory setbacks sought setbacks from residential neighborhoods of 800 feet from any panel, 1,500 feet from any inverter, and 350 feet from any substation.<sup>3</sup> It appears that the first full paragraph of Order page 26 incorrectly transposed the 800 foot setback from the Motion for Deviation that should be applied to residential neighborhoods and instead applied this to standalone residences and churches. That paragraph begins, "The Siting Board finds that Clover Creek Solar shall not place solar panels or string inverters, if used, closer than 800 feet from any residence, church, or school, 100 feet from non-participating adjoining parcels and 50 feet from adjacent roadways." None of the Applicant's

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<sup>1</sup> Application Exhibit B; Site Assessment Report (Application Exhibit I); updated Sound Study attached to RFI 2-2; post-hearing RFI No. 8.

<sup>2</sup> Application Exhibit B; Site Assessment Report (Application Exhibit I); updated Sound Study attached to RFI 2-2.

<sup>3</sup> See Order, page 23.

filings supported or requested a setback of 800 feet for panels from standalone residences and churches. Further, the consultant report did not recommend this setback. After a thorough review, Applicant cannot find any evidence in the record to support an 800-foot setback for panels from standalone residences and churches. The only mention of an 800-foot setback for panels in the record comes from Applicant's Motion for Deviation, but this was only requested for residential neighborhoods. The record clearly demonstrates that certain standalone residences and churches would fall closer to Project infrastructure.<sup>4</sup>

### **III. Conflicting Language in Mitigation Measure 20 Requires Resolution in Favor of those Setbacks Presented in the Record by New Frontiers.**

The conflict between Mitigation Measure 20, page 26 of the Order, and the evidence in the record can be easily addressed. Mitigation Measure 20 requires that Applicant place panels, inverters, and substation equipment consistent with the distances to noise receptors to which it committed in its maps and site plans. Studies and maps were provided in the Application, the Site Assessment Report, and in multiple rounds of data requests following, and these were discussed at the evidentiary hearing in this matter as well. Either adding language that the site plan controls in a conflict or correcting the setbacks for residences and houses would address the error. If the path chosen to address the error is to correct the specific setbacks for standalone houses and churches in the Order, these setbacks should be revised to reflect that standalone residences be setback at a minimum of 464 feet from panels and churches no closer than 501 feet from panels.<sup>5</sup>

From the start, Applicant presented to the Siting Board that although local planning and zoning should not or could not apply, the Project as designed met or exceeded those setbacks in

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<sup>4</sup> Application Exhibit B; Site Assessment Report (Application Exhibit I); updated Sound Study attached to RFI 2-2; post-hearing RFI No. 8.

<sup>5</sup> Application Exhibit B; Site Assessment Report (Application Exhibit I); updated Sound Study attached to RFI 2-2; post-hearing RFI No. 8.

Breckinridge Fiscal Court Ordinance 2022-0321 (the “Ordinance”). The Ordinance contained these minimum setbacks for Project components: 50 feet from the Project’s perimeter boundary; and 300 feet from any residential structure, nursing home, church, or school.<sup>6</sup> Because the Ordinance did not apply to the Project for a multitude of reasons discussed at length throughout the course of the Siting Board matter, the Applicant filed for a deviation from the state statutory setbacks.

The only statutory setbacks are contained in KRS 278.704(2); this requires that any structures or facilities used for generating electricity are 2,000 feet from any residential neighborhood, school, hospital or nursing home facility. There is no state statutory setback mandating specific setbacks from individual residences or churches. The only deviation from the statutory setbacks is available through the exception in KRS 278.704(4). Specifically, Applicant sought the following deviation from residential neighborhoods: 800 feet from panels, 1,500 feet from any inverters, and 350 feet from the substation. In the Order, the Siting Board granted this Motion.

However, the Siting Board disregarded the location of other structures - in particular, standalone residences and churches - in the remainder of Mitigation Measure 20. For example, the Order requires setbacks from panels to churches and residences of 800 feet—but disregards a church (SR-042) located 501 feet from a panel and a standalone residence (SR-007) located 464 feet from a panel. *See* RFI 2-2, Updated Sound Study; *see also* Application Exhibit B.

Mitigation Measure 20 and Order page 26 must be revised to address the conflicting language and remove the 800-foot setback requirements applicable to standalone residences and churches. Due to the conflicting language in the Order and Mitigation Measure 20, the Applicant

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<sup>6</sup> The Ordinance goes on to state that, “Interconnection facilities may be located within the setback lines and interior property line setbacks are not required for contiguous participating Project properties.”

cannot place panels and other Project infrastructure as demonstrated in its maps and site layout, as required in the first sentence of Mitigation Measure 20, and at the same time comply with the panel setbacks listed for standalone residences and churches in the paragraph and Order page 26. To correct this conflict, Applicant is requesting that the Siting Board revise the Order to reflect that standalone residences be setback 464 feet from panels and churches 501 feet from panels.

#### **IV. Prejudice**

The record lacks any supporting evidence for 800-foot setbacks from individual residences and churches. To the contrary, the Applicant provided numerous justifications for the setbacks around residences and churches. Furthermore, the Siting Board in its Order at Mitigation Measure 20 ruled that the site plan should be adopted for setback purposes, which conflicts with the later portion of the paragraph setting 800-foot setbacks.

Leaving the 800-foot setbacks in place creates actionable prejudice for the Applicant. Incorporating 800-foot setbacks from residences and churches would significantly alter the site plan from the one submitted to and approved by the Siting Board. Many panels and other infrastructure would need to be moved to make the Project viable if forced to comply with the 800-foot setbacks from residences and churches, and additional properties may even need to be added to make the Project viable, which the Siting Board has already explicitly stated in the Order that the Applicant cannot do. Thus, leaving the 800-foot setbacks from residences and churches in place, without any evidence in the record to support such setbacks, creates such significant prejudice for the Applicant as to obviate the need for an equitable solution to the errors in Mitigation Measure 20 and Order page 26.

#### **V. Conclusion**

WHEREFORE, for the foregoing reasons, New Frontiers respectfully requests that the Siting Board enter an order making the modifications discussed above for Order page 26 and

Mitigation Measure 20 from the May 2, 2025 Order to reflect either 1) the setbacks demonstrated in the site plan shall control in any conflict with setbacks required in the Order, or 2) revise the Order language removing the 800-foot setback for panels from standalone homes and churches, and instead require that standalone residences be setback 464 feet from panels and churches be setback 501 feet from panels.

Dated this 22nd day of May 2025.

Respectfully submitted,



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