

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

IN THE MATTER OF:

ELECTRONIC APPLICATION OF LOST CITY	)	
RENEWABLES LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY	)	CASE NO.
250 MEGAWATT MERCHANT ELECTRIC SOLAR	)	2024-00406
GENERATING FACILITY IN MUHLENBERG	)	
COUNTY, KENTUCKY PURSUANT TO KRS	)	
278.710 AND 807 KAR 5:110	)	

**BRIEF OF INTERVENORS**

**INDEX**

Section	Page Number
I. Introduction	2
II. Legal Standard	2
III. Statutory Setback Requirements	4
IV. The Proposed Facility Is Not Compatible with Scenic Surroundings	9
V. Changes in Property Value	9
VI. Impact on Surrounding Roads	12
VII. Noise	13
VIII. Economic Impact on Region and State	14
IX. Satisfaction of Local Planning and Zoning Requirements	14
X. Efficacy of Mitigation Measures	15
XI. Does the Applicant Have a Good Environmental Compliance History?	19
XII. Conclusion	19

## **I. INTRODUCTION**

This matter is before the Siting Board upon Lost City Renewables, LLC's application to build a 250-megawatt solar electric generating factory. Lost City proposes to cut 600 acres of standing timber on rolling land in southern Muhlenberg County and construction of a 10.5-mile electric transmission line to connect its solar generating facility into the power grid. Lost City has ignored the environmental devastation it will create, the destruction of the community where it will be located, and the utter lack of feasibility of the site for its proposed use. Lost City's application and its supporting documentation are incomplete. Further, its "experts" completely ignore any conclusion in materials upon which they rely which are not harmonious with applicant's goal of destroying wildlife, watersheds, county roads, and a community's way of life. Finally, applicant contends it should be allowed to deviate from statutorily mandated setbacks while its principle, under oath, agreed setbacks would be followed; and its experts agree the greater the setback, the less the neighbors are impacted both financially and in their quiet enjoyment of their property.

As will be hereinafter set forth, based upon the application and applicant's supporting testimony, as well as its lack of any demonstrated ability to perform its obligations, the application should be denied or at a minimum applicant should be required to follow the statutory setbacks of 1,000 feet from a non-participating property owner and 2,000 feet from residential neighborhoods.

## **II. LEGAL STANDARD**

KRS 278.700-.718 set forth the filing requirements and standard of review for requests to construct a merchant electric generating facility. KRS 278.704(1) requires that an application be filed with and approved by the Siting Board prior to construction. KRS

278.704(2) provides statutory setback requirements for merchant electric generating facilities. KRS 278.706 sets forth the requirements for a completed application, which includes a full description of the proposed site, evidence of public notice, compliance with setback requirements, etc.

KRS 278.708(2) requires Lost City Renewables, LLC (“Lost City”) to prepare a site assessment report (SAR) that includes (1) a detailed description of the proposed site; (2) an evaluation of the compatibility of the facility with scenic surroundings; (3) potential changes in property values and land use resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the site; (4) evaluation of anticipated peak and average noise levels associated with the facility’s construction and operation at the property boundary; (5) the impact of the facility’s operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility; and (6) any mitigating measures to be suggested by Lost City to minimize or avoid adverse effects identified in the SAR.

KRS 278.710(1) delineates the criteria on which the Siting Board will grant or deny the certificate, which includes the (1) impact on scenic surroundings, property values, and surrounding roads; (2) anticipated noise levels during construction and operation of the facility; (3) economic impact on the region and state; (4) whether the proposed facility meets all local planning and zoning requirements existing on the date the application was filed; (5) impact of the additional load on the reliability of jurisdictional utilities; (6) setback requirements; (7) efficacy of mitigation measures proposed by Lost City; and (8) whether the Applicant has a good environmental compliance history.

These requirements and applicant's failure to address many of these will be detailed below.

### III. STATUTORY SETBACK REQUIREMENT

Some confusion seems to exist over which setback requirements of KRS 278.700, et seq. apply to solar farms apply. Some of that confusion appears to be intentionally created. Hereinafter set forth is a discussion of the setback requirements.

#### A. Property Boundaries

KRS 278.704—the statute requiring a construction certificate for a merchant electric generating facility—and KRS 278.706—the statute detailing the requirements for a construction certificate application—indicate two different setback requirements. In its application, Lost City cites to KRS 278.706(2)(e) as the statutory setback requirement, however by Lost City's own admission, the plain language of the statute indicates that this setback requirement does not apply to Lost City's proposed project. KRS 278.706(2)(e) provides that:

If the facility is not proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source or in an area where a planning and zoning commission has established a setback requirement pursuant to KRS 278.704(3), a statement that the exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used for generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility, unless facilities capable of generating ten megawatts (10MW) or more currently exist on the site. If the facility is proposed to be located on a site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, a statement that the proposed site is compatible with the setback requirements provided under KRS 278.704(5). If the facility is proposed to be located in a jurisdiction that has established setback requirements

pursuant to KRS 278.704(3), a statement that the proposed site is in compliance with those established setback requirements;

(emphasis added). The statute indicates a 1,000-foot setback requirement for facilities that use coal waste as a fuel source, but does not address facilities that do not, like Lost City's proposed facility. However, Lost City automatically assumes that the only facilities required to have a 1,000-foot setback are those that use coal waste and entirely ignores the setback requirements in KRS 278.704(2).

KRS 278.704(2) states that:

[N]o construction certificate shall be issued to construct a merchant electric generating facility unless the exhaust stack of the proposed facility and any wind turbine is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and all proposed structures or facilities used for generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility. For purposes of applications for site compatibility certificates pursuant to KRS 278.216, only the exhaust stack of the proposed facility to be actually used for coal or gas-fired generation or, **beginning with applications for site compatibility certificates filed on or after January 1, 2015, the proposed structure or facility to be actually used for solar or wind generation shall be required to be at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.**

(emphasis added). This statutory subsection in the way it begins creates confusion. KRS 278.704 requires merchant generating facilities to apply for and obtain a construction certificate prior to commencing construction. Subsection (2) begins by stating the setback requirements for construction certificates—which only require setbacks from exhaust stacks and wind turbines—but then transitions, *in the middle of the paragraph*, to additional

requirements for a site compatibility certificate referencing KRS 278.216. To be approved for a site compatibility certificate under KRS 278.216, any proposed structure or facility to be used for solar generation must be at least 1,000 feet from any adjoining property boundary.

While generally KRS 278.216 applies to utilities, its requirements are included in a statute applicable to merchant electric generating facilities and construction certificates, creating an inherent ambiguity as to the applicable setback requirement. If the 1,000-foot setback requirement from adjoining property owners was not intended to apply to merchant-electric generating facilities not owned by a utility, then what is the legislative purpose of including *this* language in *this* statute? While the legislative intent is unclear, the plain language of the statute must be given meaning. It is clear for proposed structures after January 1, 2015, are required to be 1,000 feet from the property boundary and 2,000 feet from residential neighborhoods.

Moreover, this statute as interpreted by applicant creates an arbitrary application of two setback requirements, dependent only upon *who proposes* the facility. If the 1,000-foot setback requirement only applies to utility owned facilities, then merchant-owned facilities not using coal waste or exhaust stacks would essentially have no setback requirement. Just as Lost City plans to do, these merchant-owned facilities can place structures a mere feet away from adjoining property boundaries. The construction, equipment, structures, and facilities of the solar farms are essentially the same—the *only* difference is the *type* of entity that *owns* the proposed facility. This difference and proposed application are entirely arbitrary, which creates further ambiguity.

Lost City's own application and supplemental reports indicate that property values are impacted less with greater setbacks. Thus, any ambiguity must be resolved in favor of the

neighboring property owners. Lost City's application preliminary site description only indicates a setback of 100 feet. This is drastically less than the 1,000 feet requirement provided in KRS 278.704(2). With such a short setback, property values are likely to be impacted and peaceful enjoyment by Intervenor and their neighbors of their own property dramatically reduced.

Exceptions to the setback requirements in KRS 278.704 exist only when a county or city planning and zoning commission has established otherwise or when the board grants a deviation because the proposed facility would meet the goals of "KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716." KRS 278.704(3)-(4). There is no county ordinance or planning and zoning commission regulation at issue here, nor is there a basis for a deviation. First, Lost City has not requested a deviation. In fact, Lost City's application specifically states that "no deviation from the statutory setbacks is required to be obtained." Even so, the proposed facility does not satisfy the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716.

While these statutes do not list a specific "goal," the premise of these statutes is to require methodical planning of solar farms, and to protect the adjoining landowners. For instance, the purpose of KRS 278.216, .704, and even .706 is to prevent solar farms from being built directly adjacent to adjoining landowners. Lost City's proposed solar project intends to do just that—it intends to build its facility a mere 100 feet from neighboring property boundaries. Not only does this not meet the goals of these statutes, but it directly contradicts the purpose of the statutes. Clearly, this is an application filed on or after January 1, 2015, and that language must be given its plain meaning.

## **B. Residential Neighborhoods**

Lost City’s application incorrectly states that there are no residential neighborhoods within 2,000 feet of the proposed facility. KRS 278.700(6) clearly defines a residential neighborhood. For purposes of KRS 278.704, a residential neighborhood is a “populated area of five (5) or more acres containing at least one (1) residential structure per acre.”

Lost City interprets this statute to essentially require a five-acre area with exactly five homes, each sitting on exactly one acre. This interpretation is flawed. Theoretically, by Lost City’s interpretation, if five residential structures are within one five-acre area, but each lot is 2 acres, this is not a residential neighborhood. The statute does not require each property to be sitting on exactly one acre—it requires an aggregate of five residential structures within any five-acre area. Lost City’s interpretation of a residential neighborhood imposes such strict guidelines to essentially render the 2,000-foot setback requirement meaningless—especially in a rural area such as Muhlenberg County.

Notwithstanding Lost City’s omission, there are multiple residential neighborhoods within 2,000 feet of the proposed project. On March 28, 2025, Jay McElwain e-mailed a public comment to the PSC identifying multiple residential neighborhoods within 2,000 feet of the proposed facility and provided maps supporting his findings—none of which were disclosed by Lost City. And to date, Lost City has not refuted or rebutted Mr. McElwain’s observations in any way. McElwain’s photographs are attached. (See Attachment 1, enlarged previously.) The plain language of the statute is clear—residential neighborhoods must be at least 2,000 feet from any proposed solar structure or facility. Once again, Lost City’s application fails to comply with statutory setback requirements.



#### **IV. THE PROPOSED FACILITY IS NOT COMPATIBLE WITH SCENIC SURROUNDINGS**

Based upon its application and testimony before the Siting Board, Lost City proposes to remove more than 600 acres of trees/standing timber on its approximately 1,200-to-1,400-acre site depending upon which of applicant's descriptions of the site are utilized. A review of Lost City's supporting documentation reveals it is difficult to accurately ascertain the topographic features of the site. Nevertheless, a review of the Dunmor Quadrangle 7.5-Minute Series Topographic Map reveals the contours of the area of the proposed development. (See Attachment 2. See also Attachment 3, photos provided by applicant as photos 15 and 16 to Phase I Environmental Site Assessment.) The contour lines appear closely spaced, indicating the hilly nature of the area. Those closely spaced contours will make it impossible to screen the solar panels from the viewshed of the adjoining landowners. Clearly, plantings at the bottom of a hill do not screen solar panels at the top of the hill or on the hillside from view.

#### **V. CHANGES IN PROPERTY VALUE**

Applicant offered Richard Kirkland to support his position no negative impact on property values will be experienced by the adjoining landowners. Mr. Kirkland (hereinafter "Kirkland") relies upon what he claims to be numerous sources; nevertheless, his conclusions upon review strain credibility. However, one of his responses to a question was candid. When asked whether or not greater setback from the solar facility lessens the impact on the values of surrounding properties (which would include Intervenors' residences) the less is the impact on values; he agreed the greater the setback the less the impact. Beyond that moment of candid inconsistency with his made-as-instructed report, Kirkland was incredible. He chose data when it supported his conclusion, rejected data inconsistent with his conclusions, criticized the

methodology of others while at the same time utilizing studies based upon the same methodology which he criticized and discounted in studies with which he disagreed.

Kirkland's lack of familiarity with the area in question is readily apparent. He testified Logansport is in Logan County. He failed to seek out brokers, a group upon which he claims to rely regarding the impact of a large Logan County project. He admitted he contacted no brokers in Logan County and was asked specifically whether or not he had contacted brokers in Russellville, Hopkinsville, or Greenville. His response was he had not.

Kirkland relies upon studies which utilize methodology he then criticizes when others utilized the same methodology and reached conclusions which differed from his desired outcome.

Many of the alleged "comparables" Kirkland utilized were not truly "comparable." Lost City is a 250-megawatt facility as proposed. His testimony revealed distinctions and dissimilarities to be drawn from each facility he utilized for comparison purposes. In Kentucky, Walton Solar is a 2-megawatt facility, Turkey Creek is a 50-megawatt facility, Bowling Green Solar is a 2-megawatt facility, Winchester is an 8.5-megawatt facility, Crittenden is a 2.7-megawatt facility, Simpsonville is a 0.5-megawatt facility, and Lancaster is a 50-megawatt facility. The list of similar facilities used for comparison continues in Kirkland's report.

The failure of Kirkland to distinguish between project size and pre-existing surrounding land use is not explainable. As was pointed out, some of his alleged comparisons were in already industrial areas. Consequently, the data which he utilized for his conclusions has no applicability to a rural mix of residences and agricultural fields.

In other proceedings before the Siting Board, one in March 2021 regarding Horseshoe Bend Solar, LLC (case No: 2020-00190), Wells Engineering hired by the Commission

identified the problems with Kirkland's work. Those criticisms have not changed. Review of other reports filed by Kirkland will reveal he always reaches the same conclusions and all contain almost identical language.

During the course of his testimony, Kirkland was asked on multiple occasions about his methods in instances where he relied on methodology he had criticized. Kirkland's response was consistent: he did not rely upon it "heavily." Among his methods was not comparing similar properties several miles away from a solar site. Specifically, regarding the failure to compare those sales to one closer to the solar site. Kirkland's only response was his "methodology is sound."

When he was confronted about a Kokomo, Indiana solar project he had utilized and reminded he had not disclosed, that project was in a high-intensive and industrial area. His response was again unconvincing.

Kirkland's report notes topography can impact visibility. Kirkland admitted he had failed to disclose in his report information regarding the topography of the Lost City site. His report also fails to describe the topography of comparable sites.

A review of Kirkland's report reveals in it his primary concern is appearance. Kirkland conceded appearance was the main consideration and added appearance is addressed through distance and landscaping. The distance factor being a factor applicant seeks to avoid. When confronted with the proposition the more rolling the terrain the more difficult it is to landscape and protect the view, Kirkland agreed saying, "Yes, and that's where distance helps."

Kirkland was asked about topsoil removal and stated, "Retention and keeping all the topsoil in place is an important part of all these developments." He seemed to indicate topsoil should not be removed. Nevertheless, commission data request 1-24 and 2-6 seem to indicate

topsoil will be removed then stockpiled for reuse. The stockpiling of topsoil for reuse does nothing to preserve the land nor mitigate the impact on surrounding landowners.

## **VI. IMPACT ON SURROUNDING ROADS**

The site is surrounded by several roads. A review of the maps supplied by the applicant and its site and its “traffic impact analysis” identifies US 431, Kentucky 949, Mason-Poyner Road, and Forgy Mill Road. While US 431 is mentioned, applicant’s own traffic impact report reveals the site is not accessible from US 431. Consequently, access will be gained utilizing Kentucky 949, Forgy Mill Road, Mason-Poyner Road (described as an unmarked gravel road), and Free Lane (another unmarked gravel road).

In his comments to the Board, Kyle McPherson provided photographs depicting the state of a portion of the roads involved. (See Attachment 4.) No one on behalf of the applicant disputed the accuracy of those depictions. In fact, further, based on the presentation of Shane Kelley with Stantec, it would appear that trucks which will be utilized to haul timber which may be removed from the site were not part of the traffic impact study.

Marty Marchaterre describes or admitted the narrow two-lane character of the county roads involved. He described on these roads there will be 150 worker-driven vehicles each day during construction and 25 to 30 delivery vehicles each day. He described these as a mix of cargo vans and flatbed trucks. Marchaterre also conceded the impact of any trucks hauling timber had not been considered.

In his testimony, Dr. Coomes conceded the cost to the county for road repair or upgrade is not a factor in his analysis. This cost to existing residents should not be ignored. As the photographs illustrate, the roads are barely adequate for their current traffic. The cost to improve or repair those roads after a year or more of the increased construction traffic must be

taken into consideration. As described in the traffic impact report, cost for appropriate signage and traffic direction in an effort to increase driver safety and reduce risk of collision for approaching traffic will be incurred. While it is stated, “Lost City will develop and implement a traffic management plan to reduce traffic impacts and keep traffic safe,” presently, that assertion is only a goal. The conclusion goes on to state Lost City will “develop a road use agreement” with the county to repair or pay for wear and tear or damage to county roadways. Currently, no proof has been presented such an agreement exists or has even been proposed. The representations give no assurance that anything will occur other than the disruption of use of the roadways by the current residents.

## **VII. NOISE**

As has been previously set forth, Lost City’s application, while inconsistent with Mr. Joshi’s testimony, lists 38 residences as by number with the closest being 339 feet to the nearest array. The others are listed at varying distances. The report describes “noise” as “unwanted sound, which can be based either on objective effects (hearing loss, damage to structures, etc.) or subjective judgments (such as community annoyance).” It is clear new noises are not wanted by the residential neighbors. It is clear these noises are in addition to the existing sounds which they encounter in their everyday lives. While the report lists efforts to mitigate unwanted noise such as times during the day noise is produced, no representation is made the noise is completely eliminated. The report seems to describe the noise as a constant hum. It also minimizes the level of the noise. Clearly, a constant hum at any level is annoying. Further, the materials seem to fail to address the noise effects on wildlife.

## **VIII. ECONOMIC IMPACT ON REGION AND STATE**

The Commission is aware Dr. Paul Coomes testifies on behalf of the developer in many of these matters. Much like Kirkland, his conclusion is always the same. Nevertheless, when pressed, he recognizes his report may be incomplete. In this proceeding although he concedes “the timber has great value,” he did not take that timber and its multiplicative economic effect into account. He fails to account for the public cost of repairing or improving roadways. Among the studies he used is a review of six sites ten years ago. It appears he has not considered soil productivity, wildlife, or costs associated with flooding. He was unaware of how many acres of land had to be cleared. He failed to include in his analysis the cost of decommissioning. He assumed money paid to landowners will be spent in Muhlenberg County. At the same time, he recognized any spinoff jobs created in the retail and service sectors for Muhlenberg County would be “very few.” Coomes also seems to recognize few of the initial jobs created go to local workers.

Finally, Coomes agreed that if the project was situated on abandoned strip mine land, more economic benefit would be derived. He also recognizes that when residents perceive a loss of their quiet enjoyment of an amenity such loss is a negative factor. And has an economic cost he fails to consider.

## **IX. SATISFACTION OF LOCAL PLANNING AND ZONING REQUIREMENTS**

It must be conceded Muhlenberg County has no local planning and zoning requirements, nor any ordinance adopted by its Fiscal Court existing on the date the application was filed, which affects this project.

## **X. EFFICACY OF MITIGATION MEASURES**

As set forth throughout, questions arise regarding the mitigation measures which applicant proposes. In response to questioning, applicant's witnesses were asked numerous questions going to the efficacy of its mitigation plan. The overriding conclusion from the answers given is applicant's mitigation plans are likely to have little efficacy. Some of these issues have been addressed in preceding sections.

It would appear all agree from the testimony the greater the setback from non-participating adjoining landowners the more successful mitigation of all the negative factors will be. While Mr. Joshi unequivocally states, "We are not asking for deviation," it is clear the setbacks which are statutorily mandated may not be recognized by the applicant. Enforcing those setbacks would have the greatest efficacy and cause the least disruption to adjoining landowners in the event this project is approved.

No plan has been offered for the mitigation of the removal of 609 acres of timber and the resulting damage both temporary and permanent to native wildlife, including native endangered bat populations. Likewise, with the removal of the timber, no plan is offered to mitigate drainage and flooding issues. As pointed out by Deputy Secretary Lyons, he has never seen a proposal with so much timber clearing required. As a result, erosion is inevitable.

Further, the construction of 10.5 miles of private transmission line is unprecedented. As Deputy Secretary Lyons pointed out, with the problems identified with the location of this proposed project, "It should never have been looked at." Joshi was pressed with the timber removal issue when he was asked by Deputy Secretary Lyons, "Have you ever developed a project with this much timberland before?" While Joshi responded, "Yes" and that "it was close to 5,000 acres," Joshi had previously testified he had never had a project move past the

permitting stage. As Deputy Secretary Lyons inquired, “Will Lost City upon decommissioning replant 600 acres of trees?” No straightforward answer was given by applicant.

As pointed out by Commissioner Reagan in her questioning of Joshi, it is inexplicable why other locations weren’t chosen. The only conclusion is based upon Lost City’s own geotechnical studies, the hilly, sloping, and rocky and corrosive soil, mitigation will be impractical if not impossible.

No conclusions can be reached regarding mitigation since Joshi admits of the five projects he described he has, this one is “the farthest along.” One might assume the Stantec study with regard to wildlife would be looking at mitigation of its impacts. Nevertheless, instead of becoming aware of the primary landowner’s video advertising his property as a prime deer-hunting location, the options regarding those impacts and the conclusion no mitigation is necessary are based upon state-wide deer hunting data, not actual experience with this site.

Kelley describes the screening as single and double lines of trees and shrubs. As described above, the topography is rolling. No screening will grow tall enough to mitigate the impact on the view from adjoining properties and the travelling public.

While some questioning focused on short-term impacts of wildlife, Chairwoman Hatton pointed out and Mr. Kelley agreed, long-term migration patterns will be disturbed. Follow-up questioning by Chairwoman Hatton, questioned whether or not approval of the application would be affected if the wildlife information was inadequate, it does not demonstrate the lack of a drastic effect on wildlife necessary for the project to be approved, Kelley, applicant’s expert in this area, concluded, “That was not [his] understanding and they were not required to do any native species surveys.” So it must be concluded no such studies



were done. Consequently, no conclusions are available for anyone to make regarding the efficacy of proposed mitigation efforts on wildlife.

Little discussion is made of mitigating the issues associated with glare. Kelley indicated that attempts would be made to screen to avoid the glare while admitting, “Glare is an issue, as you know” and screening can reduce glare. While we might recognize screening may reduce glare on a level site, only screening—which is not proposed—at intervals throughout the site would mitigate the glare from the acres upon acres of solar panels arranged on rolling hills.

Issues associated with an existing dam on the premises were identified. Shane Kelley, when testifying on behalf of the applicant was asked whether or not the existing dam is a regulated dam. Kelley “guessed” the answer regarding whether or not it is a regulated dam would be “no.” Clearly, no effort was made by the applicant to determine whether or not the existing dam on the site is or may become a regulated dam. Consequently, no conclusions can be made nor has applicant addressed any mitigation measures associated with that dam. Once again, a deficiency.

Mitigation regarding existing gas wells located on the premises also has not been addressed. Applicant’s consultants seem unaware whether or not those gas wells have been properly abandoned. Clearly, another shortcoming associated with the efficacy of mitigation measures.

Applicant’s consultants described the construction process which will include the removal and stockpiling of topsoil. Once again, little meaningful discussion exists in applicant’s proposal supporting the efficacy of any mitigation measures associated with what will more than likely be the destruction of hundreds of acres of topsoil.

During Deputy Secretary Lyons' questioning, he referred to FEMA flood maps depicting the 100- and 500-year flood plain and pointing out those flood plains were visible upon side-by-side comparisons and the proposal appears to depict solar panels arrayed in that flood plain. Discussion also occurred regarding recent flooding of a portion of the site. That flooding event seemed to be conceded No mitigation efforts regarding the flooding potential were offered.

During questioning, it was pointed out by Deputy Secretary Lyons the number of streams and wetlands on the property. It would appear the application does not provide for mitigation of the effect on those streams and wetlands. Once again, a glaring omission from the application.

The lack of a mitigation plan with regard to the effect on cemeteries, including those which applicant failed to identify within the area, is not addressed by applicant. Those were raised in the public comment of Kassidy Cobb and the well-researched report prepared by her outlining the historical significance of those cemeteries and those interred in the cemeteries. As she highlights, that aspect of applicant's cultural review is inadequate.

Ms. Cobb also points at the inadequacy of the archaeological review. As the name implies, "Lost City" is an area of archeological significance near the termination point of applicant's 10.5-mile transmission line. As described by applicant's experts, no effort was made to identify archeological features. The excuse given was an alleged TVA prohibition. Consequently, nothing reflects any effort to mitigate the destruction of archeologically significant materials.

## **XI. DOES THE APPLICANT HAVE A GOOD ENVIRONMENTAL COMPLIANCE HISTORY?**

Based upon the testimony of Shawn Joshi, the applicant has no history of environmental compliance. He testified this project is the farthest along of any project with which he had ever been involved. Joshi testified that none of the projects which he has been involved with are operational. He further testified that he is not involved in projects once they are operational. While Copenhagen may have 1.8 gigawatts operational based on Mr. Joshi's testimony, Mr. Joshi, the principal of Lost City Renewables, has none. He could not identify which entity would be the surety on Lost City's Bond to guarantee compliance.

Clearly, in light of Joshi's testimony and the submissions, no conclusion can be reached that the applicant has a good environmental compliance history.

## **XII. CONCLUSION**

As set forth above, more than adequate basis exists for Lost City's application to be denied. In the event the application is not denied, then in that event any issue associated with the setback lines should be resolved in favor of the Intervenor and their neighbors. Clearly, applicant's witnesses confirm the greater the setback from adjoining landowners, the less is the impact upon them.

Respectfully submitted this 27th day of June, 2025.

*/s/ Harold Mac Johns*

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### **CERTIFICATE OF SERVICE**

This is to certify that on June 27, 2025, a true and accurate copy of the foregoing document was electronically filed to the PSC site with a copy electronically mailed to the following:

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