

COMMONWEALTH OF KENTUCKY  
BEFORE THE SITING BOARD

In the Matter of:

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

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**MOTION TO RECUSE AD HOC SITING BOARD MEMBER  
JUDGE/EXECUTIVE MACK McGEHEE**

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Lost City Renewables LLC (“Lost City”), by counsel, respectfully request that Judge Mack McGehee, a member of the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”), recuse himself from the above-referenced matter. As grounds for this motion, Lost City states as follows:

Lost City has filed an application for a Certificate of Construction for a solar generating facility in Muhlenberg County, Kentucky, which is set for an evidentiary hearing by the Siting Board on Friday, June 13, 2025. On June 6, 2025, Governor Andy Beshear appointed Judge/Executive Mack McGehee as an ad hoc member to the Siting Board.

The Siting Board is composed of seven members, and KRS 278.702(d) requires the Governor to appoint two ad hoc public members to the Siting Board who are from the county where the proposed project is located. The permanent members of the Siting Board include the members of the Public Service Commission, the secretary of the Energy and Environment Cabinet or the secretary’s designee, and the secretary of the Cabinet for Economic Development or the secretary’s designee. Each of these members provides specific technical experience and knowledge to make an informed decision on a

proposed project's compliance with statutory requirements for approval of a project outlined in KRS 278.700-718. The two ad hoc appointees of the Siting Board can provide local knowledge and perspective to the Siting Board for its consideration of applications.

Unlike the five permanent members of the Siting Board, ad hoc appointees to the Siting Board are not bound by the Executive Branch Code of Ethics. However, the Executive Branch Ethics Commission issued an Advisory Opinion articulating the ethical responsibility of ad hoc members of the Siting Board, "While ad hoc members [of the Siting Board] may not be subject to the jurisdiction of the Executive Branch Ethics Code, they 'do not check their ethical responsibilities at the door' to the Siting Board."<sup>1</sup> The Commission even went so far as to recommend that the Siting Board adopt an internal ethics policy to require all Board members, permanent and ad hoc, to abstain from certain cases "to avoid any actual conflicts or appearances of impropriety."<sup>2</sup>

The Siting Board is the regulatory body tasked with the review of certificates of construction for electric generating facilities and transmission lines that are not regulated by the Public Service Commission. KRS 278.714(3). Similar to the Public Service Commission, when the Siting Board acts in this capacity, it functions as a "quasi-judicial agency utilizing its authority to conduct hearings, render findings of fact and conclusions of law, and utilizing its expertise in the area . . . ."<sup>3</sup> The Siting Board will conduct a formal evidentiary hearing regarding Lost City's application and will issue a written decision containing findings of fact and conclusions of law on Lost City's application.

Though the members of the Siting Board are not judges, the Judicial Code of Conduct provides instructive guidance for standards of impartiality for Siting Board members. Canon 2 of SCR 4.300 requires that a judge "shall avoid impropriety and the appearance of impropriety in all the judge's activities." Further, "a judge shall disqualify himself or herself in a proceeding in which the judge's

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<sup>1</sup> Executive Ethics Branch Advisory Opinion 24-02 at 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 465 (Ky. 1994).

impartiality may reasonably be questioned . . . .”<sup>4</sup> A decision maker’s impartiality is a fundamental cornerstone to due process.<sup>5</sup> The Kentucky Constitution, as Kentucky courts have interpreted, articulates this specific protection against arbitrary state action, “with respect to adjudications, whether judicial or administrative, this guarantee is generally understood as a due process provision whereby Kentucky citizens may be assured of fundamentally fair and unbiased procedures.”<sup>6</sup> The General Assembly similarly articulated the same concern for judicial propriety in KRS 26.015(2)(e) as a judge must disqualify himself or herself if the judge has any knowledge of circumstances in which his impartiality may reasonably be questioned.

Even if a decision maker is not biased, “it is a universally recognized tradition of the law that the appearance of impartiality is next in importance only to the fact itself.”<sup>7</sup> Members of the Siting Board and Public Service Commission have long abided by this principle. In Siting Board Case No. 2010-00223, ad hoc Siting Board member and County Judge/Executive Donald Hugh McCormick recused himself from participating in the case.<sup>8</sup> Judge/Executive McCormick, a retiring employee of Big Rivers, recused himself from the matter because his employment created the appearance of a conflict of interest. In another matter, Public Service Commissioner Pitt-Clark recused herself from participating in a proceeding in which her husband’s law firm participated.<sup>9</sup>

At present, Lost City seeks the Siting Board to recuse Judge/Executive McGehee because he made repeated statements expressing a bias against the Lost City project prior to his appointment to the Siting Board.

On November 26, 2024, Judge McGehee authored an op-ed titled “Judge-Executive Mack

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<sup>4</sup> Canon 3E(1) of SCR 4.300.

<sup>5</sup> *Johnson v. Mississippi*, 403 U.S. 212, 215-216 (1971); *Bracy v. Gramley*, 520 U.S. 899, 904-905 (1997).

<sup>6</sup> *Smith v. O’Dea*, 939 S.W.2d 353, 357 (Ky. App. 1997).

<sup>7</sup> *Wells v. Walter*, 501 S.W.2d 259, 260 (Ky. App. 1973).

<sup>8</sup> *Application of Southern Indiana Gas & Electric Co. D/B/A Vectren Energy Delivery of Indiana, Inc. for a Certificate to Construct an Electric Transmission Line from its A.B. Brown Plant to the Big Rivers Reid EHV Station*, Case. No. 2010-00223, at 2 (Letter Dated Sept. 22, 2010 and electronically filed Sept. 27, 2010).

<sup>9</sup> *Application for Adjustment of Rates of Kentucky-American Water Company*, Case No. 2007-00143 (Ky. P.S.C. Oct. 4, 2007).

McGehee comments on proposed solar project” in the Leader News, the local paper in Greenville Kentucky.<sup>10</sup> Judge McGehee penned that his purpose in drafting the op-ed was to inform the community of the pros and cons related to the project. However, Judge/Executive McGehee ends his piece with the following paragraphs:

It’s my common sense opinion that due to the fact Muhlenberg County has thousands of acres of former surface mined land controlled by KY Dept of Fish and Wildlife and the private sector, a 3400 acre TVA reservation that has access to the electric grid, thousands of acres in electric transmission corridors with access to the grid, former KU power plant reservation with access to the electric grid, and other brown field areas within its borders; we need to limit these solar projects to these areas, that is not usable for agriculture.

These areas are remote and will not be a hindrance to the production of Green Energy within Muhlenberg County. I believe no one would object to this proposal that resides here. Muhlenberg County doesn’t need to lose anymore agriculture land to power generation or should our nation. We are losing thousands of agriculture acres a day to these type of projects in the United States in the name of Green Energy.

Agriculture is vital to our economy and not to menschen [sic] does feed us, and other people around the world. The influx of agriculture dollars in our local economy is far greater than anything solar can offer. I believe with a little work we can have green energy in Muhlenberg County without the loss of agriculture acres.<sup>11</sup>

Judge/Executive McGehee clearly expressed a personal position against the proposed Lost City application because he believes renewable energy projects should not be on land currently in agriculture production. Later, on March 27, 2025, at the public meeting Lost City conducted with residents of Muhlenberg County about the project, Judge McGehee again spoke out with concerns about the project – specifically he raised concerns about community correspondence with Lost City, chemicals used on the property, corporate ownership, and decommissioning.<sup>12</sup>

Judge/Executive McGehee’s op-ed and public comments violate Lost City’s procedural due process rights and indicate a lack of impartiality in this matter.<sup>13</sup> Procedural due process requires a

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<sup>10</sup> “Judge-Executive Mac McGehee comments on proposed solar project,” *Leader-News*, p. A-7 (Nov. 26, 2024). Attached as Exhibit 1.

<sup>11</sup> *Id.*

<sup>12</sup> Public Meeting VR at 1:40:30-1:47:45 (March 27, 2025) (<https://www.youtube.com/watch?v=g35S3xHDSIU>).

<sup>13</sup> *Electronic Investigation of Kentucky Power Company Rockport Deferral Mechanism*, Case No. 2022-00283 (Ky. PSC November 23, 2022).

hearing, “the taking and weighing of evidence if such is offered, a finding of fact based upon a consideration of the evidence . . . .”<sup>14</sup> Judge/Executive McGehee has clearly articulated his opinion about the approval of the project before Lost City submitted a single filing to the Siting Board. Judge/Executive McGehee penned his op-ed in the *Leader-News* nearly a month before Lost City filed its Notice of Intent with the Siting Board on December 23, 2025 and two months before Lost City filed its application on January 29, 2025. All the expert studies, project schematics, and project materials Lost City submitted to the Siting Board were not publicly available until it filed its application – two months after Judge/Executive McGehee’s op-ed appeared in the *Leader-News*. Judge/Executive McGehee’s opinion is not based on any consideration of evidence in the record. To allow him to participate on the Siting Board would violate Lost City’s procedural due process rights. Judge/Executive McGehee’s statements on his preferred use of agricultural land clearly demonstrates a lack of impartiality in this matter. Moreover, Judge/Executive McGehee provided public comment to the Siting Board at a meeting set only to discuss this project’s case on March 27, 2025.

Further, as Lost City expressed in its February 27, 2025 letter to Governor Beshear regarding the appointment of members to the Siting Board,<sup>15</sup> Judge/Executive McGehee is not the appropriate ad hoc member to be appointed to the Siting Board. As Lost City expressed to the Governor:

KRS 278.702(1)(d) dictates that one of those local members be “the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located. If the proposed location is not within a jurisdiction with a planning commission, then the Governor shall appoint either the county judge/executive of a county that contains the proposed location of the facility . . . .” I interpret this statute to indicate that if the location of the proposed facility is within the jurisdiction of a planning commission, the chair of that planning commission must be appointed to the Siting Board.

KRS 100.121 authorizes a county and cities therein to form a joint planning commission by agreement. In 1972, Muhlenberg County adopted and executed an agreement establishing the Joint City-County Planning Commission with the Cities of Central City, Drakesboro, Greenville, and Powderly. This agreement is attached as Exhibit 1 to this letter. Notably, the agreement indicates that “the jurisdiction of the joint

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<sup>14</sup> *Hilltop Basic Resources, Inc. v. County of Boone*, 180 S.W.3d 464, 468 (Ky. 2005).

<sup>15</sup> Letter to Governor Beshear regarding Appointment of Members to the Kentucky Siting Board (filed Feb. 27, 2025).

city-county planning operation shall include . . . the County of Muhlenberg.” See Section II(2). It also established a Board of Adjustment for Muhlenberg County. See Section IV(1)(A)(e).

...

The Powertel administrative case (and Shadoan) further supports the position that the Muhlenberg Joint City-County Planning Commission has county-wide jurisdiction. Because KRS 278.702(1)(d) dictates that one of those local members be “the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located,” there can be little debate as to which local official must statutorily be appointed to the Siting Board for Lost City’s case.

The chair of the planning commission was the appropriate ad hoc member to be appointed to the Siting Board rather than Judge/Executive McGehee.

Prior to his appointment to the Siting Board, Judge/Executive McGehee articulated his negative sentiments against the Lost City project in writing and in public comment. He has foregone any illusion of impartiality and has expressed strong bias against Lost City and the project. As such, allowing Judge McGehee to serve as an ad hoc member of the Siting Board would violate Lost City’s procedural due process rights and would violate long-standing practices of impartiality and propriety for both administrative and judicial decision makers. For the foregoing reasons, Judge/Executive McGehee should recuse himself from this matter.

RESPECTFULLY SUBMITTED,  
STURGILL, TURNER, BARKER & MOLONEY, PLLC



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*Counsel for Lost City Renewables LLC*

## Judge-Executive Mack McGehee comments on proposed solar project

Exhibit 1

I have been asked to address the community in the wake of implementation of Green Energy within our county. Due to Environmental Protection Agency regulations and their goals to end the use of fossil fuels in our nation; we are now facing the purposed installation of solar electric generation here in Muhlenberg and surrounding counties.

This purposed solar project and others to come in the future; are to replace coal fired steam power generation that has been shut down and removed from our county by Tennessee Valley Authority and Kentucky Utilities.

My purpose of this commentary is to inform you the public of the Pros and Cons related to these solar projects. I want to fully disclose this information as I receive it, so you can be fully informed as to how these projects can and will affect you and our community.

### **Positives of Merchant Solar Generation of electricity:**

- Green Energy is being required by the Federal government as a percentage of what is being produced by power companies such as TVA and KU-LGE who is and has been a presence here for many years.
- Due to EPA regulations some industries require a percentage of Green Energy they consume in their operation making our industrial parks attractive for them to locate here.
- The property owner who leases the land to the solar company could receive substantial lease payments between \$400 to \$2000 per acre, per year for long term leases up to 30 years.
- There is a possibility of increased tax revenue for the county, taxing districts, and the state by the property value increase from agriculture to industrial and tangible taxes collected from the infrastructure value. This in no way compares to lost coal severance funds that has been the main source of revenue for our county for many years.
- There will be a temporary influx of construction jobs 400 to 500 for 12 to 18 months during the construction

of the project.

- During the 12 to 18 months construction period workers will need fuel, food and lodging possible revenue to these businesses in Muhlenberg, or neighboring counties.
- 10 to 15 median income permanent jobs created

### **Negatives of Merchant Solar Generation of electricity:**

- The loss of land that is being utilized for Agriculture, Forestry, Lumber production, and Rural residences.
- Changes in the Ecosystem of the purposed area: destruction of wildlife habitat, clearing of large amounts of trees (approximately 900 acres for this project) which naturally converts carbon dioxide to oxygen naturally reducing our carbon footprint.
- Destruction of the natural scenic beauty and the added noise pollution during construction phase and the noise of the solar panel directors, and transformers during operation; that the neighboring property owners have to endure for the life of the project.
- During construction there will be an influx of vehicles on roads; worker's vehicles to and from work, heavy trucks bringing in materials and heavy equipment that will cause destruction to the roads and increase the possibility of accidents for the neighboring residents.
- Increase of water run-off of the solid surface solar panels and the compacted soil around the panels will create soil erosion of surrounding property. Soil erosion will cause creeks and streams to be filled with sediment which in turn causes flooding issues and in-large the flood plains.
- There are no regulations in place to require sediment basins to control storm run-off from the property, or requirements to remove topsoil and subsoil and store it for future reclamation of the area after the project is retired in the future (30 years).
- There are no regulations that require the topography be restored to within 3% of original as mining is required to by reclamation laws in place.

- This being a relatively new process, in this country; is not subject to regulatory constraints due to no long-term data on the effects on human health or the environment. If you research the United Kingdom and European countries more data is available.

It's my common sense opinion that due to the fact Muhlenberg County has thousands of acres of former surface mined land controlled by KY Dept of Fish and Wildlife and the private sector, a 3400 acre TVA reservation that has access to the electric grid, thousands of acres in electric transmission corridors with access to the grid, former KU power plant reservation with access to the electric grid, and other brown field areas within its borders; we need to limit these solar projects to these areas, that is not usable for agriculture.

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Agriculture is vital to our economy and not to men-schen does feed us, and other people around the world. The influx of agriculture dollars in our local economy is far greater than anything solar can offer. I believe with a little work we can have green energy in Muhlenberg County without the loss of agriculture acres.

*Judge Executive Mack McGehee*

### **OPINION DISCLAIMER:**

*The views and opinions expressed in these columns are those of the individuals quoted and do not necessarily reflect the views or position of this publication or its affiliates.*

By CLEO ROBERSON

Moving to a new place after 60-plus years in the old place is a challenge.

I think I have mentioned through the years that my husband could not bring himself to ever throw anything away, which is why we probably managed to stay married. (He wouldn't let go of me either.) He was a sentimental guy for sure. For example, in his handcarved dresser is a collection of multi-shaped, colored pacifiers. Whenever one of the grandchildren had to give up their "pacifier" he could not bear to throw away the ones at the house so he stuck them in his "memory drawer" just to look at them over and over. It may be sentimental, but it was an understatement.

As I began the dreaded task of packing up our family's life, deciding what to keep and what to give, I turned up a bit. I had wanted to make this move to Tennessee 20 years ago when my husband first retired, but he wouldn't hear of it. He was "going anywhere." But it would've made so much more sense. Our boys and grandchildren all lived in Tennessee. I guess that put multiple times to no avail. Husband just never caught onto the concept of change. And I was mentioning that once again to our youngest son as we packed and I used the phrase I always used about that situation. "The only thing your father ever changed without a fight was his underwear." I shared. He laughed. He knew.

As that remark hit granddaughter, Cleo, who had been listening closely, looked at me and said, "What about his sister Grassy?" Cur and I laughed. She was



Cleo Roberson

## Off the Leash

### On the Move

completely serious. But it was the truth. The man hated change in any form—even changing seasons bothered him.

But as we continued to pack, more and more "treasures" appeared—items from a Western Kentucky basketball game, football game, Cincinnati Reds game, St. Louis Cardinal game, many including the boys and grand. There were even stacks of yellowing photos from movies we had made together including "Valley of the Dolls" which was released in 1967, and we were there. The guy just couldn't let anything go that ever meant anything to him. One thing that kept me from crying during the packing and stacking was how mad I was at him for not being here during all of this. It would have been so much easier with him muttering and grumbling alongside me as I sort through the items to decide what to keep and what to toss. The thing is, the last thing I saw of him was when I found things I had forgotten I ever had. I didn't remember having a double lifetime supply of Tupperware either. I had all managed to sneak it away into the back of cabinets where only a circus performer showing acrobatic lung area could ever reach. And now it had that old sticky plastic feel to it.

Then there were the clothes. Husband's clothes still sat in a box I had never taken them out of. I don't wear shirts. And now I had a. I liked to look at them. All hanging neatly there like they were just waiting for

him to come back and pick a set out. His shoes were still lined neatly beneath them and now they had to be packed up as well. No more pretending that someday they would be needed.

And so it went. Besides at some things long forgotten. Tears at others that could never be forgotten. And pictures—so many pictures to look through that it could take days to go through them. So they were just boxed up to hold for a rainy day, pursuing after I was finally sorted in.

The day the moving was pulled up to the new house, Rebecca, my daughter-in-law was already waiting for them with the key in hand. As soon as I arrived with two bags and a very unhappy cat I jumped out to get them into the backyard (not the car) so they could have some breaks. One of the advantages of the new house was that it housed a nice, pretty, strong fence and when I saw it I liked it. I put both dogs inside the fence and named to take the cat inside still in her run.

That's when something when flashed past me. It was the younger, smaller dog, Jill who was now across the street trying to meet new neighbors. Jill fit just perfectly through the fence bars without any trouble at all. So much for my planning. I had been worrying about what would happen to the cat when she managed to get out but it never crossed my mind that Jill would be the first escapee!

By the oldest one, kept carrying boxes in while I sat everything down and headed to Lenoire to buy a special surprise to wrap all the way around the fence. He finished it in the dark. With Rebecca instructing the men on furniture and Tupperware placement and my still packing furniture, I was on my way to being in a new place close to our sons, grand and great. Everything was different but somehow it felt familiar. I had not expected that, but it was a good thing.

By EMILY BURTON  
SHERMAN

The stomach bug makes quite a bit of noise. I guess something can cling to a crown while being in an ancient plastic trash can when change of gun have interrupted and continued for the past 10 years.

That's just the way it. Emily Burton Sherman goes, sometimes, said my husband afterwards. "You don't realize how bad it is until it starts." The same goes for holiday seasons, he added. I agree it is a fair comparison.

Warning signs are only second in terms to that certain cousin's evil eye when you dare take a place of dark eye over soft when from the bread basket. God forbid anyone mention fluoride or tooth until the only response left on the table are dinner spoons.

Yet, if we must return ourselves the tribulations of an annual holiday meal with crowded tables or ear aching, then let us go into the Bay with wind.

Situation one - Grandma's years for the good of days, when kids didn't have to worry about getting all their poisonous vaccines before school. Kids should get the measles and go over "on" like they used to. Mumps ain't even that dangerous.

Your response - "Well, you know who could really use a shot in the arm? Mike Tyson. Did you see that fight? What's he doing? Why do you think he even signed on for that? But you're wrong him, Uncle Ross. Right? And could you please pass me that delightful bowl of wine."



Emily Burton Sherman

## Thanksgiving talking points

Situation two - Aunt Gracinda can't wait for "the military" to round up every immigrant and throw 'em back over the fence, legal status be damned. Who cares if their kids were born here?

Your response - Speaking of round-ups, did you see the security video of the runaway walkway in Eastern Kentucky this month? It was an unguarded family get-together. No, you aren't the unguarded cousin list in Kentucky. What do you think you find one of them? I bet they'd love the pie, Aunt Joe. What did you put in it? And could you pass the bourbon, please.

Situation three - Uncle Karl is excited to see the Department of Education finally on the chopping block. "All it does is spend too much money protecting those different kids and overpaying my teachers." That he doesn't even have kids, except the ones named in the parenting complaints.

Your response - Ah, Uncle Karl sure got a good education in Atlanta, didn't he? Did you see the latest Coach Poll? Of course, not many would be able to read those polls if it wasn't for a federally funded education system, but I'm sure a nation like ours - with more than half its population reading below a 6th grade level - should cut even more funding. I'm sure that it can't possibly backfire into mass literacy, a lower GDP and an unaffordable labor force. And could you please pass me the bottle of moonshine? You don't have to worry about reading the label on that one - just look for the X. You know, like how you signed your name on that second set of divorce papers.

Situation four - you establish personal boundaries and family protocol before even arriving. Anytime, more controversial than what brand of wine we'll serve but less engaging is arguably off-limits. If it's not about your kids, Gracinda's false work or Sisy's latter times, you

don't bring it up. If you saw it on Facebook, Twitter-X, or at a class rally, you don't bring it up. Because it will social media's Switzerland, but be careful how deeply you dare wade into the waters of what constitutes an ugly sweater or a decent cornbread recipe. Remember your job is to not mention anyone's crazy but to avoid stepping in it.

This could be a difficult holiday. We were not born into our families to be peacekeepers, yet women especially often wear this mantle to engender marital stability of togetherness. Thus each year we sit at the table of our discontent as an act of defiance against. This is your gentle reminder that peace isn't an option when half the family wants to watch the world burn and another just wants an Attorney General with more sense than to send cash money to someone through "Venmo."

"Life, we learn me last, it is in the living, the times of every day, and here," wrote English Leacock. Every hour counts, the joyous one we expect, or the quiet one where family has unraveled to reveal that some familiar faces have grown strange. Don't let your living go to waste because of "shoulds" or "always have done." Yet, this is the season of thankfulness. But that takes many shapes. It can be right or wrong, as well as to what you should do over the holidays. Family has its seasons of togetherness and separation. It is ok to find commonality over pumpkin pie, or to embrace a bit of healthy dissent if you need it.

Send your love, even to dear old Aunt Gracinda. But don't forget to wear yourself just as kindly in return.

Emily Burton Sherman is a journalist, instructor, high school teacher and columnist who resides in Greenville.

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