

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

<b>In the Matter of:</b>	)	
	)	
<b>In the Matter of the Application of Summer Shade Solar, LLC for a Certificate of Construction for an approximately 106-Megawatt Merchant Electric Solar Generating Facility in Metcalfe County, Kentucky pursuant to KRS 278.700, et seq., and 807 KAR 5:110</b>	)	<b>Case No. 2025-00064</b>

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**POST-HEARING BRIEF**

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Summer Shade Solar, LLC (“Summer Shade”), by counsel, and pursuant to 807 KAR 5:110, Section 7 and Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) order dated September 11, 2025, submits this Post-Hearing Brief. The record in this matter demonstrates that the Siting Board should approve a construction certificate for its application to construct a 106-megawatt merchant electric solar generating and battery energy storage facility with reasonable conditions as discussed throughout the record.

Questions were raised at the evidentiary hearing and in post-hearing data requests regarding setbacks proposed by the project. Summer Shade submits that its proposed setbacks are reasonable, particularly in this case, in which there is no one who has submitted oppositional comments in the record of this case. Summer Shade believes that support in the community and lack of opposition is reflective of its extended community outreach.

**I. Community Outreach**

Summer Shade Solar has made a substantial effort to engage the public in numerous ways regarding the Project, as demonstrated by the following discussion of community outreach in the Application:

Project representatives have been making regular outreach trips to the Project area throughout 2024 and 2025, including engagement with landowners adjacent to the Project as well as community officials. Additional methods of communication included phone calls, email, and informational flyers. Summer Shade Solar has made efforts to demonstrate their commitment to being a thoughtful corporate citizen in the community, and has made contributions to the Summer Shade Fish Fry, Founder's Day, and the Bowling Park food pantry. Project representatives have also joined the Chamber of Commerce and attended their quarterly breakfast events to stay engaged with community leaders and officials.

An in-person public meeting was held on January 29, 2025, at 5:30pm CDT in the Metcalfe County Government Building. This meeting was intended to inform the public about the Project and receive comments from the public. The notice for the in-person meeting was published on January 15, 2025, in *The Edmonton Herald News*, the local newspaper of general circulation in Metcalfe County, Kentucky. The tearsheet and affidavit of publication are attached as Attachment D. In addition, individual notices of the meeting were mailed to property owners adjoining the proposed project two weeks in advance of the meeting. Copies of these letters are also attached as Attachment D.

The Applicant conducted a public information meeting in the form of an open house. Project representatives and subject matter experts provided information in the development, permitting, construction, and operation of the proposed Summer Shade Solar Project. Attendees were able to view Project maps, ask questions, and take home Project materials. Please see Attachment D for copies of the materials provided at the public information meeting. In the public meeting, attendees were invited to examine various posterboard stations on topics including Applicant company information, a Project map and design overview, permitting process and timeline, environmental studies, Project equipment, local economic benefits, and visual renderings. The public information meeting was well attended by landowners, neighbors, public officials, and others. Experts who were present at the public meeting, and available to answer questions from attendees included:

- Jim Woodruff, Senior Vice President, Public Affairs, Candela
- James Cook, Chief Development Officer, Candela
- Aubree Muse, Manager, Development, Candela
- John Loy, Renewable Energy Contractor, Candela
- Kenny Rambo, President/CEO, Heartland Communications Consultants
- Whitney Wurzel, Account Coordinator, Heartland Communications Consultants
- Marcelo Uriel, Operations, Naturgy Renewables
- Mark Carney, Managing Director, e3rm permit consultant

The meeting also offered attendees the opportunity for informal conversations with representatives of Summer Shade about questions and concerns. The following is a brief description of other public involvement

activities, in addition to the public meeting and various outreach activities/meetings with local stakeholders, undertaken prior to the submission of this Application. Summer Shade will continue these efforts and will participate in any public notice, comment and hearings which may be initiated as part of ongoing permitting activities.

- On December 10, 2022, Summer Shade representatives spoke with the nephew of an adjoining neighbor over the phone to discuss the project and hear concerns regarding the project.
- On January 23, 2023, Summer Shade representatives spoke with the nephew of an adjoining neighbor over the phone to answer follow-up questions regarding the project.
- On February 1, 2023, Summer Shade representatives spoke with the nephew of an adjoining neighbor over the phone to discuss the project and hear concerns regarding the project.
- On February 10, 2023, Summer Shade representatives spoke with the daughter of an adjoining neighbor over the phone to discuss the project and hear concerns regarding the project.
- On February 22, 2023, Summer Shade representatives spoke with multiple adjoining neighbors over the phone to provide information about the project and hear concerns.
- On February 1, 2024, Summer Shade representatives spoke with multiple adjoining neighbors over the phone to answer questions and hear concerns about the project.
- On March 4, 2024, Summer Shade representatives met with an adjoining neighbor to provide information about the project and hear concerns.
- On April 6, 2024, Summer Shade representatives spoke with a member of the community over the phone to discuss the project and project easements.
- On April 11, 2024, Summer Shade representatives met with the Chair of the Summer Shade Volunteer Fire Department Board to introduce the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could help the fire department and community.
- On April 22, 2024, Summer Shade representatives met with multiple adjoining neighbors to provide information about and discuss the project.
- On April 24, 2024, Summer Shade representatives met with an adjoining neighbor to provide information about and discuss the project.
- On May 4, 2024, Summer Shade representatives attended a community Fish Fry. Company representatives made a donation to benefit the local fire department.
- On May 11, 2024, Summer Shade representatives attended the Summer Shade Founders Day to join the community in celebrating the town of Summer Shade.
- On May 20, 2024, Heartland Communications joined the Metcalfe County Chamber of Commerce to begin interacting with the Metcalfe

County economic development community and learn their needs and ongoing initiatives.

- On May 29, 2024, Summer Shade representatives met with an adjoining neighbor to provide information about the project and hear concerns.
- On May 29, 2024, Summer Shade representatives met with the Chair of the Summer Shade Volunteer Fire Department Board to discuss updates to the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could help the fire department and community.
- On May 29, 2024, Summer Shade representatives met with the Metcalfe County Judge Executive to introduce the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community and boost community reception to the project.
- On May 29, 2024, Summer Shade representatives met with the Executive Director of Bowling Park to introduce the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On May 29, 2024, Summer Shade representatives met with the Chamber of Commerce Director to introduce the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On May 29, 2024, Summer Shade representatives met with a community member that owns Southern Wood, a local business, to introduce the project and address any questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On May 29, 2024, Summer Shade representatives met with a community member that previously owned McMurtry Funeral Home, a local business, to introduce the project and address any questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On June 10, 2024, Summer Shade representatives met with an adjoining neighbor to discuss the project and address questions and concerns about the project.
- On July 9, 2024, Summer Shade representatives attended a Summer Breakfast event hosted by the Edmonton-Metcalfe County Chamber of Commerce. Company representatives introduced the project during this breakfast and expressed enthusiasm about working with the community.
- On July 9, 2024, Summer Shade representatives met with the Chair of the Summer Shade Volunteer Fire Department Board to discuss updates to the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could help the fire department and community.

- On July 9, 2024, Summer Shade representatives met with a community member that owns Southern Wood, a local business, to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On July 9, 2024, Summer Shade representatives met with a community member that previously owned McMurtry Funeral Home, a local business, to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On July 9, 2024, Summer Shade representatives met with the Summer Shade Magistrate to introduce the project and address any questions or concerns regarding the project.
- On September 18, 2024, Candela joined the Metcalfe County Chamber of Commerce as a general member to support economic development within the community.
- On September 24, 2024, Summer Shade representatives met with the Chamber of Commerce Director to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On September 24, 2024, Summer Shade representatives attended a Fall Breakfast event hosted by the Edmonton-Metcalfe County Chamber of Commerce. Summer Shade was introduced as a new chamber member and representatives provided a project overview to the audience, with handouts available.
- On October 3, 2024, Summer Shade representatives met with multiple adjoining neighbors to provide information about and discuss the project.
- On December 4, 2024, Summer Shade representatives met with the Chair of the Summer Shade Volunteer Fire Department Board to discuss updates to the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could help the fire department and community.
- On December 4, 2024, Summer Shade representatives met with a community member that owns Southern Wood, a local business, to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On December 5, 2024, Summer Shade representatives met with the Metcalfe County Emergency Management Director to introduce and discuss the project, address any concerns about the project, and to ask for feedback on the project site plan, especially regarding emergency management needs for the project.
- On December 5, 2024, Summer Shade representatives met with the former Judge Executive for Metcalfe County to discuss the project and

learn about his experience with the now-operating Glover Creek solar project in Metcalfe County.

- On December 5, 2024, Summer Shade representatives met with the current Metcalfe County Judge Executive to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community and boost community reception to the project.
- On December 5, 2024, Summer Shade representatives met with the Executive Director of Bowling Park to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On December 5, 2024, Summer Shade representatives met with multiple adjoining neighbors to provide information about and discuss the project.
- On December 6, 2024, Summer Shade representatives donated \$3,000 to Bowling Park Food Pantry, which was used to buy food for Christmas boxes that were distributed to those in need within the community.
- On January 15, 2025, Summer Shade representatives met with multiple adjoining neighbors to provide information about and discuss the project and updates about the project. A flyer with contact information was left at one of these neighboring properties. Printed information on property values and health concerns were also distributed as a follow-up to address concerns made previously by an adjoining neighbor that had requested these materials in previous discussions with Summer Shade representatives.
- On January 15, 2025, Summer Shade representatives met with the former Metcalfe County Superintendent to discuss the project and how Summer Shade could benefit the local school system.
- On January 15, 2025, Summer Shade representatives met with a community member that owns Southern Wood, a local business, to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On January 15, 2025, Summer Shade representatives spoke with the Summer Shade Magistrate over the phone to discuss updates to the project and set up another in-person meeting. Summer Shade representatives also discussed the project's PIM date.
- On January 16, 2025, Summer Shade representatives met with multiple adjoining neighbors to provide information about and discuss the project. A flyer with contact information was left at one of these neighboring properties.
- On January 16, 2025, Summer Shade representatives met with the Metcalfe County magistrate to provide information about and discuss the project.

- On January 16, 2025, Summer Shade representatives met with the current Metcalfe County Superintendent to discuss the project and how Summer Shade could benefit the local school system.
- On January 16, 2025, Summer Shade representatives met with the Metcalfe County Judge Executive to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community and boost community reception to the project.
- On January 16, 2025, Summer Shade representatives met with the Executive Director of Bowling Park to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On January 16, 2025, Summer Shade representatives met with the Chamber of Commerce Director to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On January 28, 2025, Summer Shade representatives spoke with an adjoining neighbor over the phone to discuss employment opportunities regarding grazing sheep on the project.
- On January 29, 2025, Summer Shade representatives met with the Metcalfe County Judge Executive to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community and boost community reception to the project.
- On January 29, 2025, Summer Shade representatives met with the Executive Director of Bowling Park to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On January 29, 2025, Summer Shade held its Public Meeting at 5:30pm CDT, pursuant to KRS 278.706(2)(f)1, to inform the public about the Project and receive comments from the public. This meeting was held at the Metcalfe County Government Center, which is located in Edmonton, KY near the project site.
- On March 19, 2025, Summer Shade representatives met with an adjoining neighbor to discuss the project and employment opportunities with the project.
- On March 19, 2025, Summer Shade representatives met with an adjoining neighbor to discuss the project and how the adjoining neighbor could become a participating landowner.
- On March 25, 2025, Summer Shade representatives met with the current and former Metcalfe County Superintendents to discuss the project and how Summer Shade could benefit the local school system.
- On March 25, 2025, Summer Shade representatives met with the Chair of the Summer Shade Volunteer Fire Department Board to discuss

updates to the project and address any questions or concerns regarding the project. Summer Shade representatives discussed how they could help the fire department and community.

- On March 25, 2025, Summer Shade representatives met with the Metcalfe County Judge Executive to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community and boost community reception to the project.
- On March 25, 2025, Summer Shade representatives met with the Executive Director of Bowling Park to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On March 25, 2025, Summer Shade representatives met with the Chamber of Commerce Director to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed how they could get involved with the community.
- On March 25, 2025, Summer Shade representatives met with a community member that owns Southern Wood, a local business, to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On March 25, 2025, Summer Shade representatives met with a community member that previously owned McMurtry Funeral Home, a local business, to discuss updates to the project and address any additional questions or concerns regarding the project. Summer Shade representatives discussed the community and how they could get involved.
- On March 25, 2025, Summer Shade representatives attended a Spring Breakfast event hosted by the Edmonton-Metcalfe County Chamber of Commerce. Summer Shade representatives were available to discuss the project with any community members at the breakfast and continued to learn about the community's needs.
- On April 25, 2025, Summer Shade representatives exchanged emails and had a phone conversation with adjacent neighbors to respond to questions regarding the mailed notice of application they received about the Project.
- Between 2022 and 2023, Summer Shade representatives met with the Smith family to discuss the project and potential lease options. The family ultimately decided not to participate with the project.
- Between 2024 and 2025, Summer Shade representatives attempted to meet with multiple adjoining neighbors, but their efforts were never answered. Flyers about the project that included contact information were left for these neighbors.<sup>1</sup>

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<sup>1</sup> Application, Section 6 "Public Notice Report."

Summer Shade believes that this extensive outreach confirms its dedication to being a good community steward and further demonstrates that its proposed project design is acceptable to the community and nearby landowners.

## **II. Setbacks**

The project's proposed setbacks are reasonable. Specifically, Summer Shade specially proposed the following condition:

Summer Shade Solar shall place panels, inverters, and substation equipment consistent with the distances to noise receptors to which it has committed in its maps and site plans. However, Summer Shade Solar shall not place solar panels or string inverters, if used, closer than 150 feet from a residence, church, or school, 25 feet from non-participating adjoining parcels, or 50 feet from adjacent roadways. Summer Shade Solar shall not place a central inverter, and if used, energy storage systems, closer than 350 feet from any adjacent residences, church, or school. These further setbacks shall not be required for residences owned by landowners involved in the Project that explicitly agree to lesser setbacks and have done so in writing.

To the extent that the Siting Board believes different setbacks should apply, KRS 278.708(6) states that “[t]he applicant shall be given the opportunity to present evidence to the board regarding any mitigation measures.”

Questions arose about whether there are “residential neighborhoods,” as defined by KRS 278.700, within 2,000 feet of the project site. As Summer Shade has explained, the project performed an initial cursory review of possible residential neighborhoods in the vicinity and determined that there were six areas that needed a more detailed evaluation to determine if they met the statutory definition of a residential neighborhood.<sup>2</sup> Information contained in Summer Shade's application relied on that initial cursory review. Upon a more in-depth review, Summer

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<sup>2</sup> See Motion Regarding Setbacks at 2 (filed May 16, 2025).

Shade determined that none of the six areas were residential neighborhoods within 2,000 feet of the generating facilities as defined by KRS 278.700, based on its interpretation of the statutory definition of residential neighborhoods.

Following that determination and the filing of the Motion Regarding Setbacks, the Siting Board issued a decision in another case involving Lost City Renewables LLC that discussed the definition of residential neighborhood. In that case, the Siting Board determined that a residential neighborhood may not be defined based exclusively on parcel sizes but, rather, would be based on “any contiguous area so long as it is reasonable in shape.”<sup>3</sup> Summer Shade respectfully submits that defining residential neighborhoods based on parcel size presents a better approach, as it provides a brightline rule by which everyone can understand how to determine whether an area meets the statutory deadline. In contrast, every individual could have his or her own opinion on what is “reasonable in shape,” thereby having multiple outcomes on whether areas are residential neighborhoods. This reasonable-in-shape interpretation of the statutory definition is seemingly unworkable, as it does not promote “the evenhanded, predictable, and consistent development of legal principles.” *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). “[T]he fact that a decision has proved ‘unworkable’ is a traditional ground for overruling it. *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009); (citing *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)).

In its Motion Regarding Setbacks, Summer Shade has explained why none of the identified six areas would meet the definition of a residential neighborhood based on certain factors, including size and number of the parcels and proximity to the project. Even if one were to consider a reasonably shaped area, it is not clear that there are any areas that have five or more

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<sup>3</sup> *Lost City Renewables LLC*, Case No. 2024-00406 at 25 (K.S.B. July 28, 2025).

acres containing at least one residential structure per acre within 2,000 feet of generating facilities of the project.

For example, of the six identified areas, Area 6 has the closest residence to a solar panel—approximately 300 feet from residence to solar panel. There are five parcels in Area 6 with five residences. A rectangular area drawn around the five residences has an area of approximately 11.3 acres, as shown below. This would not meet the density requirements of at least one residential structure per acre.



It is not apparent to Summer Shade that any of the six identified areas (or any others) within 2,000 feet of planned generating facilities meet the definition of a residential neighborhood when considering a contiguous area that is reasonable in shape that has five or more acres containing at least one residential structure per acre.<sup>4</sup> To the extent that the Siting Board, however, determines that there are any residential neighborhoods within 2,000 feet of the project, Summer Shade respectfully requests a deviation from the statutory setback requirements, pursuant to KRS 278.704(4). If such a determination is made, Summer Shade submits it is appropriate to base any approved distance based on the project plans as submitted in this case with a reasonable margin in case plans are slightly modified. The following table lists the proposed deviation, if applicable.<sup>5</sup>

<b>Area</b>	<b>Planned Distance to Panel (ft)</b>	<b>Requested Deviation (ft), if applicable</b>
<b>1</b>	<b>1,311</b>	<b>1250</b>
<b>2</b>	<b>1,125</b>	<b>1100</b>
<b>3</b>	<b>1,995</b>	<b>1900</b>
<b>4</b>	<b>946</b>	<b>900</b>
<b>5</b>	<b>1,990</b>	<b>1900</b>
<b>6</b>	<b>328</b>	<b>300</b>

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<sup>4</sup> Summer Shade acknowledges that Area 3 identified above would otherwise meet the definition of residential neighborhood based on size and density requirements, but there are not five parcels in Area 3 within 2,000 feet of the anticipated location of solar panels. *See* Motion Regarding Setbacks at 9-10 and 17.

<sup>5</sup> Summer Shade Response to Item 9 of the Post-Hearing Data Requests.


The Siting Board has granted deviations to the statutory setback requirements to residential neighborhoods, allowing projects to construct generating facilities 300 feet or less from residential neighborhoods, including in these cases:

- *Turkey Creek Solar, LLC*, Case No. 2020-00040 (July 22, 2021) (300 feet)
- *Mt. Olive Creek Solar, LLC*, Case No. 2020-00226, (Nov. 3, 2021) (150 feet)
- *Caldwell Solar, LLC*, Case No. 2020-00244 (Apr. 8, 2022) (300 feet)
- *Golden Solar, LLC*, Case No. 2020-00243, (Feb. 21, 2023) (300 feet)
- *Thoroughbred Solar, LLC*, Case no. 2022-00115 (Apr. 10, 2023) (300 feet)
- *Hummingbird Energy, LLC*, Case No. 2022-00272 (Dec. 13, 2023) (300 feet)

Based on this precedent and the fact that there has been no public opposition filed in this case, Summer Shade believes that a 300-foot setback from a residence in a residential neighborhood (if any) is reasonable.

Accordingly, Summer Shade respectfully requests that the Siting Board (a) approve a construction certificate for Summer Shade to construct its Project, (b) confirm that no separate approval for a transmission line is necessary or, in the alternative, approve a construction certificate for a transmission line between the project switchyard and utility substation and (c) confirm that the setback requirements of KRS 278.704(2) do not apply to the Project because there are no residential neighborhoods, schools, hospitals, or nursing home facilities within 2,000 feet of the Project or, in the alternative, to grant a deviation from the setback requirements of KRS 278.704(2).

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



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Submitted September 16, 2025