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

IN THE MATTER OF: ELECTRONIC APPLICATION OF CRAB RUN SOLAR PROJECT, LLC FOR A CERTIFICATE OF CONSTRUCTION FOR AN UP TO 45 MEGAWATT MERCHANT ELECTRIC SOLAR GENERATING FACILITY IN MARION COUNTY, KENTUCKY	)))))) **Case No. 2025-00276**

INTERVENORS' POST-HEARING BRIEF

Submitted by:
Kathy Dow, Glenn Russell, Lynn Russell,
Susan Spalding, Terri L. Miles,
Mary Angela Mattingly, Richard Mattingly,
Bobby Thomas, Olivia Thomas, Robert Thomas,
Brian Thompson, and Kim Thompson
Adjacent Landowners / Intervenors, Pro Se
Frogtown Road, Loretto, Kentucky 40037

May 5, 2026

I. INTRODUCTION

Crab Run Solar Project, LLC (the "Applicant") proposes to construct 110,052 ground-mounted photovoltaic panels affixed to large mechanical tracking systems mounted on multiple driven piles, 12 power inverters, below-ground collection cables, a step-up substation, a switchyard, gravel access roads, chain-link perimeter fencing, and a potential operations and maintenance building — all located in close proximity to several residential neighborhoods and adjoining properties (the "Project").

Under Kentucky law (KRS 278.704), the Project fails to meet the 2,000-foot neighborhood setback required by KRS 278.704(2) for a merchant electric generating facility. Because the Applicant has not disclosed a power purchase agreement or identified any power purchaser, this Board cannot fully determine whether the Project will operate as a merchant facility or as a dedicated supply resource for a

regulated utility. If the Project is ultimately determined to be a utility under KRS 278.010(3), the 1,000-foot adjoining-property restriction in KRS 278.704(2) would apply in addition to the neighborhood setback. Assuming, as the Applicant urges, that the Project is a merchant facility, the Applicant asks this Board for a "deviation" from the 2,000-foot requirement, but admits that it must prove that its proposed facilities would still "meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those [otherwise required by law]." KRS 278.704(4).

Intervenors Kathy Dow, Glenn Russell, Lynn Russell, Susan Spalding, Terri L. Miles, Mary Angela Mattingly, Richard Mattingly, Bobby Thomas, Olivia Thomas, Robert Thomas, Brian Thompson, and Kim Thompson are adjacent landowners in Marion County, Kentucky. Ten of the twelve Intervenors reside along Frogtown Road in Loretto within Residential Neighborhood 1; Intervenors Mary Angela Mattingly and Richard Mattingly reside on Loretto Road and are adjacent landowners whose property falls within an additional proposed neighborhood (the "Arthur Mattingly–Loretto Road Neighborhood"), to be considered as a fourth statutory residential neighborhood under KRS 278.700(6) that was not previously identified in the Applicant's Motion for Deviation or by the Intervenors. They appear before this Board pro se in opposition to, or alternatively seeking protective conditions upon, the application of Crab Run Solar Project, LLC for a Certificate of Construction for a 45-megawatt merchant electric solar generating facility (the "Project").

Intervenors do not object to renewable energy development as a matter of principle. Their concerns are specific: the proposed Project, as currently designed and sited, places solar generating structures approximately 335 feet from the nearest dwelling — and as little as 35 feet from the boundary of their residential neighborhood — a reduction of more than 98% from the 2,000-foot statutory setback required by KRS 278.704(2). For the reasons set forth below, the evidence in this record does not support the requested deviation without meaningful additional protective conditions, and the Board should either deny the deviation or impose the conditions described herein.

II. STATEMENT OF FACTS

A. The Project and the Parties

The Applicant, Crab Run Solar Project, LLC, is a subsidiary of Savion, LLC, which is wholly owned by Shell plc. The Project is located along Arthur-Mattingly Road in northwestern Marion County, with an estimated 8-month construction period.

B. The Residential Neighborhoods and Intervenors' Properties

The Motion for Deviation identifies three residential neighborhoods within 2,000 feet of the proposed Project structures. A fourth proposed residential neighborhood — the Arthur Mattingly–Loretto Road Neighborhood — was not considered by the Applicant and is addressed separately below.

- Residential Neighborhood 1 (Frogtown Road, west): 35 residences. The Applicant measures the nearest panel at approximately 335 feet from the nearest dwelling. The Project fence is as close as 35 to 105 feet from Frogtown Road parcel boundaries (DR2 Response 39, Table 1).
- Residential Neighborhood 2 (east): 5 residences, approximately 891 feet from the nearest boundary.

- Residential Neighborhood 3 (north): 80 residences. The Applicant measured the nearest dwelling at approximately 2,915 feet and excluded it from the deviation analysis on that basis. Under the correct parcel-boundary measurement, however, Neighborhood 3's parcel boundary abuts the Project Area at approximately 73 feet from the nearest panel — well within the 2,000-foot setback, and therefore requires proof that an approved deviation would meet the goals of the designated statutes under KRS 278.704(4).

Intervenors respectfully propose a fourth residential neighborhood for the Board's consideration. The five properties at 6320 Loretto Road and 140 through 340 Arthur Mattingly Road appear to satisfy the definition of a "populated area of five (5) or more acres containing at least one (1) residential structure per acre" within the meaning of KRS 278.700(6) — the definition of a "residential neighborhood" under Kentucky law. This five-acre area, containing five residential structures at exactly one structure per acre, is identified below.

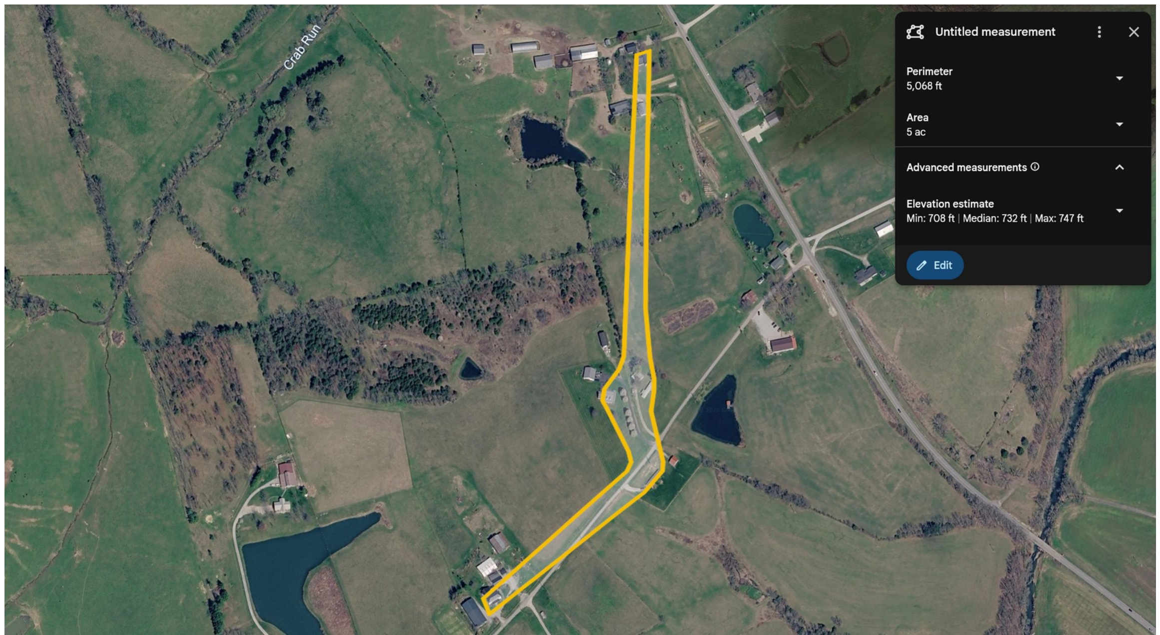

Figure 1. Arthur Mattingly–Loretto Road Neighborhood: five residences within a five-acre populated area (KRS 278.700(6)). Area: 5 ac; perimeter: 5,068 ft.

Intervenors Mary Angela Mattingly and Richard Mattingly reside at 6320 Loretto Road, which is adjacent to the Project boundary on karst terrain where sinkholes, springs, and subsurface waterways connect to Crab Run Creek and which falls within the proposed Arthur Mattingly–Loretto Road Neighborhood.

C. The Motion for Deviation and Expert Submissions

On January 23, 2026, the Applicant filed a Motion for Deviation from the 2,000-foot setback of KRS 278.704(2), characterizing the proposed minimum distance as 335 feet from the nearest dwelling. As confirmed in the Applicant's own Second Data Request Response 39, Table 1, the Project fence is 35 to 105 feet from Frogtown Road parcel boundaries — not 335 feet. In support of the Motion, the Applicant submitted expert reports on property value (Kirkland Appraisals, reviewed by E. Clark Toleman),

economic impact (Dr. Joshua Pinkston, reviewed by Mark Watters), noise (Tony Agresti/ERM), and visual impact (Ben Sussman/ERM).

KRS 278.704(4) specifies the complete list of statutes whose goals a deviation applicant must demonstrate would be met at the closer distance: KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716. The Motion's discussion of these statutory "goals" does not address the goals of KRS 278.216. The Motion also asserts at paragraph 12 that KRS 278.218 is "inapplicable" to this Project because the Applicant is not a utility as defined in KRS 278.010(3). The legal consequences of both omissions are addressed in the argument below.

Tab 7 of the Application sets forth the Applicant's efforts to identify a suitable project site. The factors listed are transmission access, land availability, and environmental constraints. Proximity to residential neighborhoods is not identified as a criterion in the site-selection process.

While this proceeding was pending, the Kentucky General Assembly enacted House Bill 677 and House Bill 869 (2026 Reg. Sess.), amending KRS 278.704, KRS 278.706, and KRS 278.710 to establish new minimum standards for merchant electric generating facility proceedings, including decommissioning bond requirements, co-beneficiary protections for adjacent landowners, mandatory ownership transfer notification, and enforcement transition to the Energy and Environment Cabinet. The new laws also provide that the Board's enforcement authority over the facility transitions to the Energy and Environment Cabinet once commercial operations begin, making it essential that any protective conditions be structured as enduring certificate obligations rather than informal commitments. The Board should apply these provisions to any certificate issued in this proceeding.

D. Key Admissions at the April 28, 2026 Hearing

The formal hearing was limited to cross-examination of the Applicant's ten witnesses. Cross-examination produced the following record-level admissions directly relevant to the deviation standard:

- Setback measurement: Engineer Cole Jennings (ERM), asked directly "what is the closest distance between the solar panels and a residential property line," answered "335 ft" — the same figure he attributed to the dwelling distance. (Hearing Tr. at 3:08:21) The application's own Tab 2 states that "Parcel boundary data was not considered in the identification of residential neighborhoods." The Applicant's Data Request Response 39, Table 1 confirms the actual panel-to-property-line distance is 35 to 105 feet.
- Property value report integrity: Mr. Kirkland certified he had not personally inspected any of the 19 adjacent residential properties. Pages 163–182 of his report are material from a different project — disclosed by Mr. Kirkland on direct examination, not caught by the reviewing appraiser, and uncorrected in the record. Pages 23–24 contain Graves County demographic data applied to Marion County — surfaced through cross-examination, also not caught by the reviewer.
- Noise assessment errors: Mr. Agresti's Noise Assessment Report contained an acknowledged error in Table 8 not identified until the day of the hearing; a corrected addendum was filed April 24, 2026. Even on corrected figures, construction equipment noise at NSA 1 reaches 67 dB(A) and pile-driving Lmax reaches 76.5 dB(A). Mr. Agresti confirmed that no ambient noise measurements were taken at the closest residence (Hearing Tr. at 5:51:54), no physical mitigation was evaluated, and there are no legally enforceable noise standards in Kentucky at any level of government. (Id. at 5:53:46)

- Panels can be redesigned: Cole Jennings confirmed on cross-examination that solar panels could be moved to provide greater setback from the property boundary if required by the Board — establishing that the project is not physically incapable of redesign.

III. LEGAL STANDARD

KRS 278.704(2) requires that all proposed structures used for generation of electricity be 2,000 feet from any residential neighborhood. A "residential neighborhood" is defined by KRS 278.700(6) as a populated area of five or more acres containing at least one residential structure per acre — a geographic area defined by its parcel boundaries, not by the location of any individual dwelling. The Applicant's characterization of the setback as 335 feet to the nearest dwelling therefore misstates both the measurement endpoint and the statutory object of protection.

KRS 278.704(4) authorizes a deviation only if the Applicant proves that the proposed facility, as designed and as located, would meet the goals of the enumerated statutes at a closer distance. The burden rests entirely on the Applicant. General references to industry practice and prior Board orders do not substitute for this site-specific showing. In *Summer Shade Solar* (Case No. 2025-00064), the Siting Board — acting on its authority under KRS 278.708(6) to impose "any mitigation measures that the board deems appropriate" — required a 400-foot setback from any residence, protecting 119 non-participating homes none of which were within an identified residential neighborhood. On reconsideration, the Board upheld that requirement, stating that "developers need to exercise consideration in developing site plans so close to residential homes." That protection runs to all adjacent property owners — not only those within identified residential neighborhoods. KRS 278.216, which this Board identified in Lost City Renewables (Case No. 2024-00406) as focused on the effects of the generation on nearby properties, covers all neighboring landowners regardless of neighborhood classification. The Board's conditioning authority under KRS 278.708(6) authorizes it to impose protective conditions on all adjacent property owners, not only those within residential neighborhoods. The site-specific conditions presented here — closer parcel-boundary distances than those in any prior Marion County solar certificate, documented karst geology, and an active residential community along Frogtown Road whose members have intervened in this proceeding — require conditions more protective than those imposed in prior Board solar certificates. It is the effects of the planned facility on all adjoining residents' actual properties that the Board must evaluate.

Those statutory goals are not abstract regulatory criteria — they are protections enacted for the benefit of nearby property owners and the surrounding public. Each statute named in KRS 278.704(4) reflects a specific legislative judgment that large electric generating facilities impose real costs on adjacent communities: costs to water quality, noise environments, visual character, and property values. The residential setback in KRS 278.704(2) is the legislature's most direct expression of that judgment — a protective floor below which a generating facility cannot descend without affirmatively demonstrating, on site-specific evidence, that the statute's protective purpose is preserved at the closer distance for the actual residents affected. The deviation standard does not ask whether prior boards have granted similar requests or whether the Applicant's experts believe the impacts are manageable in the abstract. It asks whether the goals of the protective statutes are actually met — for these properties and these people — on the evidence in this record.

The Applicant's Motion for Deviation treats the cited statutes as procedural checkboxes — file the CEA, execute an interconnect agreement, commit to follow operating procedures. That reading confuses

compliance with goals. KRS 278.704(4) requires a substantive, site-specific, forward-looking showing that the goals would be met at the closer distance — all of them, at the actual parcel-boundary distances, on this record.

The relevant goals of each cited statute, applied to this record, are as follows. KRS 224.10-280 requires actual protection of water quality, waste management, and water withdrawal — not merely filing the CEA form. KRS 278.708(3)(d) requires the site assessment to evaluate anticipated peak and average noise levels at the property boundary — most naturally read as the non-participating neighbors' parcel lines, not the Applicant's own project fence. KRS 278.708(6) authorizes the Board to require any mitigation measures it deems appropriate; KRS 278.710(j) makes decommissioning bond compliance a criterion that must be satisfied before the Board may issue a certificate. KRS 278.216, identified by this Board in Lost City Renewables (Case No. 2024-00406) as focused on the effects of generation on nearby properties, expressly recognizes that erecting noise barriers is appropriate mitigation for electric generating facilities. KRS 278.218 protects the public interest in orderly ownership transfers of generating assets — a goal the Motion cannot avoid by declaring the statute inapplicable. KRS 278.700–278.716, including KRS 278.704(2) and KRS 278.708, require the site assessment to demonstrate adequate protection of residential neighborhoods from noise, visual impact, water quality degradation, and property value harm — at the actual parcel-boundary distance.

The Applicant claims merchant status to access the more favorable deviation standard of KRS 278.704(4). That classification should carry a lasting consequence: a facility that obtains its certificate as a merchant generator must remain one. If, after the certificate issues, the Applicant sells power to or for the public within the meaning of KRS 278.010(3)(a), it should be required to satisfy the statutory goals applicable to regulated utilities at that time — not escape them by pointing to a merchant certificate obtained when no power purchaser had even been identified. Because enforcement authority over the certificate transitions to the Energy and Environment Cabinet Secretary once commercial operations begin, the EEC Secretary is the appropriate authority to address any future change in the nature of the facility's power sales that would bring it within the definition of a regulated utility. The Board should structure any certificate conditions accordingly, and require disclosure of any executed power purchase agreement before the certificate issues.

IV. ARGUMENT

A. The Deviation Should Be Denied

A Fourth Potential Statutory Residential Neighborhood Was Not Identified in the Motion

KRS 278.700(6) defines "residential neighborhood" as "a populated area of five (5) or more acres containing at least one (1) residential structure per acre." The statute imposes two conjunctive requirements: the populated area must be five or more acres, and it must contain at least one residential structure per acre. Intervenors submit that the record evidence supports a finding that both requirements are met. The five residences at 6320 Loretto Road and 140 through 340 Arthur Mattingly Road constitute a populated area of five acres — confirmed by direct measurement — containing exactly five residential structures, one per acre. The neighborhood's linear configuration along two intersecting roads does not defeat its statutory status. In *Lost City Renewables* (Case No. 2024-00406), this Board held that a populated area qualifies as a residential neighborhood if it is "reasonable in shape," and expressly found that neighborhoods "whether clustered or linear" satisfy the statutory definition. The Arthur

Mattingly–Loretto Road Neighborhood is a linear configuration mirroring the bend of the two roads' intersection, and similar in nature to the type the Board approved in *Lost City Renewables*. One of the five properties — 340 Arthur Mattingly Road — also appears within the boundary of the Applicant's Residential Neighborhood 2. That overlap does not undermine either neighborhood. KRS 278.700(6) defines neighborhoods as populated areas; it does not require that they be mutually exclusive. The Applicant drew Neighborhood 2's boundary to minimize the scope of mitigation it would need to propose — a practical choice that does not preclude a separate and independently qualifying populated area from encompassing a property at its edge. If the Board finds this area qualifies as a residential neighborhood, each such neighborhood generates an independent 2,000-foot setback obligation. The deviation the Applicant sought for Neighborhood 2 covers the setback measured from Neighborhood 2's boundary; it would create no coverage for any independent setback obligation running from the proposed Arthur Mattingly–Loretto Road Neighborhood's distinct boundary. The Applicant's Motion for Deviation does not identify this proposed neighborhood. It does not measure or disclose the distance from any proposed project structure to its boundary. It does not seek a deviation from the 2,000-foot setback of KRS 278.704(2) with respect to this neighborhood. Intervenors respectfully request that the Board determine whether this area qualifies as a residential neighborhood under KRS 278.700(6), and if so, address the absence of any deviation request in its final order.

1. The Actual Panel-to-Property-Line Distance Is 35 Feet — Not 335 Feet

KRS 278.704(2) protects residential neighborhoods — geographic areas defined by their parcel boundaries under KRS 278.700(6). The correct statutory measurement runs from the nearest panel to the nearest residential property line. Under that measurement, the deviation request is from 2,000 feet to as little as 35 feet — the distance from the Project fence to the closest Frogtown Road parcel boundary, confirmed in the Applicant's own Second Data Request Response 39, Table 1. The 335-foot figure the Applicant relies on measures to the nearest dwelling, not the property line. Every Applicant witness who was asked confirmed the same error: engineer Jennings answered "335 ft" when asked the panel-to-property-line distance; visual impact witness Sussman confirmed his simulations measured to the residence; and development manager Johnson described the requested setback as running from the nearest panel to a landowner. (Hearing Tr. at 3:08:21, 3:58:18, 1:08:11) Tab 2's own text — "Parcel boundary data was not considered in the identification of residential neighborhoods" — establishes that the Applicant drew neighborhood boundaries around dwellings rather than property lines, inverting the statutory definition of "residential neighborhood" under KRS 278.700(6).

The Applicant's own Data Request Response 18 confirms what the site plan geometry makes evident: "Given the site size and constraints, the Project could not be reconfigured within the site boundaries to comply with the 2,000-foot setback." The Applicant is not seeking a deviation because doing so produces a better or more protective project — it is seeking one because the project physically cannot be built on this site at any setback approaching the statutory requirement. The Board should weigh that heavily: this is not a request to fine-tune a design, it is a request to approve a project that is fundamentally incompatible with the statutory protection floor at this location.

The Motion's own paragraph 3 further reveals a systematic inconsistency in the Applicant's measurement methodology. The Motion states that residential neighborhoods were "identified conservatively by calculating the distance from the Project Area to the boundary of the parcel closest to the Project." Yet for Neighborhoods 1 and 2, the claimed deviation distances measure from the nearest panel to the nearest dwelling, not the nearest parcel boundary. The Motion's treatment of Residential

Neighborhood 3 exposes the inconsistency directly: the Motion acknowledges that Neighborhood 3's parcel boundary "abuts the Project Area" and is "approximately 73 feet away from the nearest proposed structure or facilities used for generation of electricity (solar panels)" — but then excludes Neighborhood 3 from the deviation analysis because the nearest dwelling is 2,915 feet away. The Applicant applies parcel-boundary measurement when it helps exclude a neighborhood from coverage, and dwelling measurement when it minimizes the apparent deviation for neighborhoods that must be included. Applied consistently, the Motion's own parcel-boundary methodology yields a Neighborhood 1 setback of 35 to 105 feet from the project fence.

In *Lost City Renewables* (Case No. 2024-00406), the applicant claimed there were no residential neighborhoods within 2,000 feet of its project — a claim the Board rejected. Applying the area-and-density standard of KRS 278.700(6), the Board identified multiple residential neighborhoods and required that no generating equipment be within 1,000 feet of any identified neighborhood, measured from the nearest non-participating residential structure within that neighborhood to any generating equipment. The Frogtown Road Intervenors are within Residential Neighborhood 1. The Board's required setback for in-neighborhood residences in *Lost City* was 1,000 feet, measured the same way the 335-foot distance in this case is measured: from the nearest non-participating residential structure to any generating equipment. That required distance is nearly three times what the Applicant proposes here. Separately, Lost City's closest panel to any residence — 339 feet — was a residence outside all identified neighborhoods; the Board set 339 feet as the minimum floor for those non-neighborhood residences. Crab Run's proposed 335-foot distance falls below even that non-neighborhood floor. The Frogtown Road residences are not outside a neighborhood — they are within one. The applicable standard for them is the 1,000-foot in-neighborhood benchmark, not the 339-foot non-neighborhood floor. The Applicant asks this Board for the opposite outcome: approval at its existing configuration, without moving a single panel. The Applicant's own engineer, Cole Jennings (ERM), confirmed that if the Board required a greater setback, the project could be redesigned by removing panels or adjusting row spacing. (Hearing Tr. at 3:23:47–3:24:27)

2. The Record Fails the Statutory Goals Required for Deviation on Noise, Water Quality, and Visual Impact

KRS 278.704(4) requires the Applicant to demonstrate that the Project as designed and located would meet the protective goals of each cited statute at the proposed closer distance. The record fails that standard on four independent grounds, each tied to a specific statutory mandate:

- Noise (KRS 278.708(3)(d) / KRS 278.708(6) / KRS 278.216 goals): KRS 278.708(3)(d) requires the site assessment to evaluate anticipated peak and average noise levels at the property boundary. The SAR satisfies this requirement only in part. For operations, it provides a single worst-case figure of 44.3 dBA at one point along the Project's own fence line — over 850 feet from the nearest home — while modeling NSA 1 itself at only 32.0 dBA. For construction — the more acute impact — no property-line figure appears at all. The critical gap: KRS 278.708(3)(d)'s "property boundary" is most naturally read as the non-participating neighbors' parcel lines, not the Applicant's own fence. The Frogtown Road parcel lines sit 35 to 105 feet outside the Project fence, between the fence and the dwellings, and were never modeled for construction noise. Because NSA 1 lies 166 feet from the Project boundary, those parcel lines would experience higher peak noise than the 67 dB(A) general-equipment and 76.5 dB(A) Lmax pile-driving figures already documented at the dwelling. The Board's own noise reviewer certified SAR compliance with KRS 278.708(3)(d) — but that certification is overbroad: it covers

operational noise at the project fence while ignoring the complete absence of construction noise figures at any non-participating property line. No physical mitigation was proposed. Mr. Agresti confirmed that for pile driving "there's really no practical mitigation measures" and was never asked whether a physical barrier would reduce noise. The modeled sources (Noise Assessment, Table 3) include only the 12 inverters and step-up transformer; tracking drive mechanisms are excluded. Beyond human-health thresholds, the EPA guidelines used as a surrogate do not account for the natural acoustic environment adjacent residents experience today — birdsong, wind through leaves, water flow. Any permanent addition to that soundscape displaces those sounds regardless of whether the added level falls below a hearing-protection threshold. There are no legally enforceable noise standards in Kentucky at any level of government — no threshold against which violations could be adjudicated. (Hearing Tr. at 5:53:46)

- Water quality (KRS 224.10-280): The goal of the Cumulative Environmental Assessment statute is actual protection of water quality — not merely filing the CEA form. The Project sits directly upstream from Crab Run Creek, a livestock water source for adjacent agricultural properties. No baseline water quality measurements exist for the Creek or neighboring wells. The karst terrain beneath the Project — sinkholes, springs, and subsurface waterways connecting to the Creek — creates direct pathways from surface runoff to groundwater that bypass surface treatment controls entirely. The CEA assumes normal rainfall will clean the panels and no chemical washing will be required; that assumption is directly contradicted by the documented whiskey fungus risk in Marion County's bourbon corridor. No pre-approved chemical list for panel-cleaning agents, antifungal treatments, herbicides, or pesticides exists in the record. The Applicant has not demonstrated that water quality goals are met at 35 feet from the parcel boundary; it has not even established a baseline against which to measure. That failure is compounded by a more fundamental evidentiary gap: geotechnical analysis will not begin until after the certificate issues, and the project layout is confirmed to be subject to change once it does. (See Section IV.D.) Without that analysis, the Applicant does not know where panels can safely be placed, whether pile-driving will intercept subsurface drainage routes, or whether its stormwater controls will function as designed on actual subsurface conditions. KRS 278.704(4) requires the Applicant to demonstrate that the project "as designed and as located" meets the goals of the cited statutes — not that it might meet them after a future study the Applicant has not yet commissioned. The Applicant has deferred past the point of Board decision the very analysis that would determine whether the land and water goals of KRS 224.10-280 can be met at this site at all. That is not a burden carried; it is a burden evaded.
- Visual impact (KRS 278.708 / KRS 278.700–278.716): The site assessment report requirements of KRS 278.708 exist to ensure the Board has an adequate factual record on which to evaluate impacts on adjoining residents. The visual impact record is structurally incomplete: no photomontage simulations exist for Years 1 through 5, when screening trees are 4 to 10 feet tall and provide no meaningful opacity. The Applicant's own landscape architect testified that mature screening height takes 15 to 20 years. (Hearing Tr. at 4:12:37) The Board is asked to approve a 35-year industrial installation on the strength of a single Year 15 simulation that assumes successful establishment of every planting. Viewpoints for the visual simulations were not selected with input from adjacent landowners, and no simulation was prepared from any Intervenor's actual property. This gap is not a technical deficiency — it is a deliberate omission of the years during which Frogtown Road residents will bear the full unmitigated visual impact of 110,052 panels.

On water, noise, visual impact, and property value, the record fails the site-specific substantive showing that KRS 278.704(4) requires. The Applicant's Motion treats deviation as a procedural exercise — submit the documents, cite prior approvals, promise to comply. But the statute demands a finding, grounded in evidence, that the goals of each cited law are actually met at the proposed distance for these specific properties and these specific residents. That finding cannot be made on this record.

B. The Property Value Evidence Is Defective

The Kirkland property value report is the Applicant's primary evidence that the deviation does not harm adjacent landowners. Cross-examination at the April 28, 2026 hearing produced admissions that go to the methodology, document integrity, and site-specific reliability of the report. The Board's reviewing appraiser, E. Clark Toleman, conditioned his neutrality conclusion on the setback and buffer screening being "in place." Neither the Kirkland report nor the Toleman review provides a reliable basis for the Board to find that the deviation is neutral or beneficial to adjacent property values.

1. No Site Visits; Pre-Announced Conclusions; Never an Adverse Finding

Mr. Kirkland personally inspected none of the 19 adjacent residential properties. His standard certification language states: "I have not made a personal inspection of the property that is the subject of this report" (Kirkland Report at p. 183, Application Tab 12, Exhibit B, Certification ¶10). Every Kirkland solar project report in the record — including the one before this Board — opens with "My findings support the Kentucky Siting Board Application" before any findings are presented. Mr. Kirkland admitted on cross-examination that he has never completed a report finding negative property value impact — when projects have homes within 50 feet of panels, he declines to finish the report rather than produce an adverse finding. (Hearing Tr. at 5:16:13–57) He is retained exclusively by developers. The Board determines what setbacks are protective — not the appraiser hired to support the application.

The same pattern of predetermined conclusions appears in *Lost City Renewables* (Case No. 2024-00406): "I have never completed a report that indicated a negative impact." (Hearing Tr. at 37:19 (June 6, 2025).) The Flat Run Solar report before this same Board (Case No. 2020-00080) uses the identical opening language. That pattern is compounded by a contradiction within the report's own data. The sale/resale dataset underlying the Kirkland report contains 41 data points ranging from –11% to +15% (Kirkland Report at PDF p. 145). The matched-pair dataset contains 166 data points ranging from –10% to +12% (id. at PDF p. 146). Mr. Kirkland applies a ±5% threshold as the filter for "real harm" — values within that band are dismissed as market imperfection. But multiple individual results in both datasets exceed that threshold in the negative direction: the –11% sale/resale result and the –10% matched-pair result each surpass his own standard for a finding of impact. He never explained why those specific results fall outside his ±5% harm threshold yet produced no finding of impact — denying on cross-examination that any negative impact existed at all, and addressing negative property attributes only in broad, general terms untethered to the data points his own report identifies. Results his own rule would classify as harmful are folded into a median and declared noise, with no property-specific analysis. His testimony that he has "never completed a report finding negative property value impact" is accurate only because he controls the aggregation: the underlying data his report relies on contains exactly the negative findings he says do not exist.

2. Document Integrity Failures

- Pages 163–182: Twenty pages of material from a different report, unrelated to this Project, appear in the Kirkland report — an error so obvious that a careful reading of the document would have revealed it immediately. Mr. Toleman did not identify it. Mr. Kirkland disclosed it himself on direct examination, characterizing it as "a holdover or paste from a different report." (Hearing Tr. at 5:12:03) No corrected report has been filed in this docket. The peer review that the Board received was performed on a document that its own author acknowledged was wrong; the Board has never received a peer review of the actual report.
- Pages 23–24: Graves County demographic data — the wrong county — appears in the body of the report, outside the pages 163–182 range that Mr. Kirkland withdrew. This error was not disclosed by Mr. Kirkland; it was surfaced through cross-examination. (Hearing Tr. at 5:47:34) Mr. Toleman did not identify it either. Two distinct factual errors in the same report, neither caught by the Board's independent reviewer, is not a coincidence of oversight — it is evidence that the peer review was not performed with the care the Board's process requires.

3. Measurement Error Inflates Every Distance

Mr. Kirkland measures every relevant distance from the panel to the dwelling, not the property line — inflating each distance in his analysis by 230 to 290 feet. His comparables are remote from the facts here: the most recent matched-pair involved a home at 1,780 feet from the nearest panel — more than five times the Intervenors' distance — and his closest comparable was a new subdivision built after its adjacent solar farm was constructed, not an established rural community absorbing an industrial installation. (Hearing Tr. at 5:27:56–5:30:04)

4. Agricultural Parcels and Development Value: The Kirkland Analysis Has a Structural Blind Spot

The Applicant's own Motion for Deviation discloses that parcel 030-068 — a 132.59-acre non-participating parcel to the north of the Project — has a boundary approximately 73 feet from the nearest proposed solar panels, with the existing residence located approximately 2,915 feet away. (Motion for Deviation at 3) The Kirkland report lists parcel 030-068 but records its home-to-panel distance as N/A. When PSC Staff asked at the hearing whether the property value of a parcel whose boundary sits 73 feet from the facility would be negatively impacted, Mr. Kirkland answered "No" without consulting his report. (Hearing Tr. at 5:28:20–5:28:37) That answer had no evidentiary basis: his report contains no distance figure for that parcel from which any conclusion could be derived.

The deeper problem is what the house-to-panel methodology cannot see. The relevant question for parcel 030-068 is not whether the existing residence 2,915 feet away is affected. It is whether the land itself retains its full market value as developable property. Any future buyer seeking to build on the portion of that parcel adjacent to the installation would be forced to site a home well back from the 73-foot boundary — reducing the developable footprint and shrinking the portion of the parcel that commands residential land value. The Kirkland report categorically records agricultural parcel impact as N/A, treating all such land as permanently non-residential for the full 35-year certificate term. No evidence in this record supports that assumption. KRS 278.704(4) requires the deviation to meet the goals of KRS 278.216, which this Board in *Lost City Renewables* (Case No. 2024-00406) identified as focusing on the effects of generation on nearby properties. "Properties" means land — not only existing

dwellings. The Board cannot find that the property value goals of KRS 278.704(4) are met on the basis of a report that did not analyze the class of property most directly affected by panel-to-boundary proximity.

C. The Economic Benefits Are Overstated

The Applicant projects short-term construction-phase economic benefits, but operations-phase benefits are far more limited than represented, and several key projections are directly contradicted by the record.

- Employment: Only two to four operations-phase jobs are projected over the 30-year project life. Savion's only operational Kentucky solar project — Martin County Solar, begun 2024 — hired only 47 of 420 construction workers (~11%) from Martin County. Over 500 residents attended a Savion job fair before construction; Martin County Judge/Executive Lon Lafferty publicly questioned the disparity before this same Board at a 2024 hearing for a second Savion project. Savion's own representative acknowledged the company "could have done a better job of hiring more local folks from the county" — sworn testimony before this same Board. (Lynn Bark Energy Center, Case No. 2024-00104, Hearing Tr. at 1:31:09 & 1:42:08 (Oct. 16, 2024) (Savion representative and Judge/Executive Lon Lafferty).)
- IRB/PILOT: No IRB or PILOT discussions with Marion County had begun as of the hearing date; Ms. Johnson testified the Applicant "intend[s] to make an effort to negotiate with the county." (Hearing Tr. at 1:32:29) The county retains full authority to negotiate these arrangements independently; Dr. Pinkston's economic model contains no IRB/PILOT scenario.
- Decommissioning bond deficiencies: The net decommissioning cost estimate of $3,097,158 (Decommissioning Plan, ERM Project No. 0787671 (Dec. 9, 2025), Table 4 at p. 11) uses uninflated 2025 prices, with no inflation adjustment built into the baseline. While the Board has required five-year bond reviews in comparable cases — as in Lost City Renewables (Case No. 2024-00406) — that mechanism does not cure the deficiency in a baseline estimate that makes no allowance for the real cost of removal in 2063 dollars. Adjacent non-lessee landowners — including all Intervenors — have no right to demand bond performance. The bond's co-beneficiary protections flow to participating landowners, but those protections are undermined by purchase options embedded in the Applicant's lease agreements: if the Applicant exercises those options and acquires the underlying parcels, the former landowner-beneficiary becomes the Applicant itself — leaving no independent third party with standing to demand performance. These deficiencies are independently confirmed and compounded by the statutory standard now established by the Kentucky General Assembly. Newly enacted KRS 278.706(2)(m) requires the decommissioning bond to be sized to the net present value of projected decommissioning costs, mandates that both adjacent landowners and the Energy and Environment Cabinet be named as co-beneficiaries with the right to demand performance, and requires mandatory five-year bond reviews throughout the facility's operational life. The Applicant's proposed bond — a flat $3,097,158 in uninflated 2025 dollars — fails each of these statutory requirements. Newly enacted KRS 278.710(j) goes further: it makes compliance with KRS 278.706(2)(m)'s decommissioning bond requirements a criterion for certificate issuance, meaning the Board cannot issue a certificate of construction unless it finds that the bond will satisfy the statutory standard. A bond that fails the NPV sizing requirement, excludes non-lessee adjacent landowners as co-beneficiaries, and omits the EEC as a required party does not satisfy that criterion.

- Ownership transfer and subsidy dependency: Shell transferred majority ownership (80%) of five comparable Savion projects — including Martin County Solar — to Tango Holdings LLC (Ares 80%, Savion 20%) before any were operational, publicly stating this "reflects Shell's strategy to selectively develop renewable generation projects and reduce ownership as they mature." Crab Run is developed under the same Shell/Savion structure. Ares Management discloses to its own investors that "the profitability of certain portfolio companies might be materially dependent on government subsidies being maintained" and that reductions "would likely have a material adverse impact." (Ares Core Infrastructure Fund Form 10-K (2025).) When asked directly whether the loss of federal tax credits would change the financial case, Ms. Johnson answered: "It does not change the financial case." (Hearing Tr. at 1:11:51) Dr. Pinkston presented no scenario modeling subsidy discontinuation or reduction. Newly enacted KRS 278.710(i) requires mandatory pre-transfer notification to the Board; enforcement authority transitions to the Energy and Environment Cabinet once operations begin, limiting the Board's window to act on post-transfer concerns to the pre-operational period. The Applicant's assertion that KRS 278.218 is "inapplicable" to this Project is inconsistent with the new law's mandatory transfer notification requirement and should be rejected.

D. The Application Is Premature and Incomplete

The Applicant seeks final Board approval for a project where critical analyses remain deferred and several filings are factually wrong.

- Geotechnical analysis deferred: Development manager Jeannine Johnson confirmed that geotechnical analysis will not begin until after the Board issues its certificate. (Hearing Tr. at 1:47:20) Civil engineer Michael Ivy independently acknowledged that "the layout's likely to change" once geotechnical and third-party hydrology studies are complete. (Hearing Tr. at 3:41:42) This deferred analysis involves a karst geology site where sinkholes, springs, and underground waterways connect to Crab Run Creek. The Mattingly property adjacent to the Project boundary has experienced sinkhole activity, based on the personal experience of Richard and Mary Angela Mattingly as long-time residents on and adjacent to that land.
- No baseline environmental studies: No baseline water quality testing on neighboring wells, no baseline soil testing, no pile embedment depth analysis, no post-construction hydrology modeling. Civil and stormwater engineer Michael Ivy acknowledged each of these gaps on cross-examination: "A well test has not been done to date on any current wells or neighboring wells" (Hearing Tr. at 3:29:27); "We haven't completed our post construction or post-development hydrology study" (Id. at 3:32:42).
- Stormwater and Creek risk: No compensation mechanism exists for adjacent landowners damaged by stormwater runoff. Panel-cleaning chemicals and antifungal agents have not been assessed for safety to aquatic organisms or livestock consuming Creek water.
- Vegetative screening deficiencies: The plan was designed by a Michigan-licensed landscape architect (not licensed in Kentucky). The plan includes wax myrtle — a southern coastal species that Secretary Lyons confirmed on the record does not do well "this far north in Kentucky," based on consultation with the forestry division, and which he asked be substituted with species more suited to Kentucky winters. (Hearing Tr. at 4:01:04–4:01:58) There is no minimum height requirement, no remediation deadline, and no community input process.

- Haul route: No formal haul route analysis has been conducted. The main transformer is estimated at 100,000 to 200,000 pounds; no detailed haul route survey or bridge load analysis has been submitted.
- Wrong construction schedule: A "Pike County Preliminary Construction Schedule" — not a Crab Run Solar-specific document — was submitted in the Applicant's Response to Staff's First Data Request (filed February 16, 2026). No Crab Run Solar-specific construction schedule exists anywhere in the record.
- Environmental violation disclosure incomplete: KRS 278.706(2)(k) requires a detailed listing of all environmental violations by the Applicant or "any person with an ownership interest." Tab 11 covers only "Crab Run Solar and Savion" — making no disclosure for any entity in the ownership chain above Savion, including Shell plc and any other entity in the Savion ownership chain above the project-level entity. The application does not address whether those entities qualify as "persons with an ownership interest" under the statute, nor whether their environmental violation records have been disclosed as required.
- Whiskey fungus: Marion County sits in the bourbon corridor. The maintenance plan does not address the documented whiskey fungus risk to vegetative screening, panel surfaces, or metal structures.

E. Conditions Required if the Certificate Is Granted

If the Board grants the deviation, the following conditions are necessary to provide meaningful protection for adjacent landowners. These conditions address the specific gaps confirmed at the April 28, 2026 hearing.

Setback Protection for Non-Neighborhood Adjacent Landowners

- The statutory framework establishes a 2,000-foot setback for residential neighborhoods under KRS 278.704(2), and the Board's conditioning authority under KRS 278.708(6) expressly authorizes it to require "any mitigation measures that the board deems appropriate" — language without limitation to neighborhoods, without limitation to landowners who are current residents, and without limitation to parcels that are presently zoned or used for housing. In Summer Shade Solar (Case No. 2025-00064), the Siting Board required a 400-foot setback from any residence covering 119 non-participating homes outside any identified neighborhood, invoking that same authority and stating that developers must "exercise consideration in developing site plans so close to residential homes" — language that encompasses all adjoining residential owners regardless of neighborhood classification. Agricultural parcels adjoining a solar project are not frozen in their current use. A 35-year industrial installation committed today affects not only the landowner who owns the field but every future owner of that land, including any person who acquires it to build a home. Proximity to a 412-acre, 110,052-panel industrial facility — fenced, bermed, mechanically active for 35 years — directly affects the residential development potential of every adjacent parcel and the property value that potential represents. The goals of KRS 278.216 (including the additional setback requirements for solar generation, incorporated into KRS 278.216 by the second sentence of KRS 278.704(2)), which this Board in Lost City Renewables (Case No. 2024-00406) identified as focusing on the effects of the generation on nearby properties, require that this long-horizon impact be addressed. The Board's authority under KRS 278.708(6) is the mechanism for doing so. The Board should impose perimeter-wide

setback, vegetative screening, and 10-foot earthen berm conditions along all non-participating parcel boundaries — not only those adjacent to existing residential neighborhoods — as conditions of any certificate.

- The Mattingly property at 6320 Loretto Road falls within the Arthur Mattingly–Loretto Road Neighborhood — a proposed statutory residential neighborhood under KRS 278.700(6). Independently, the site-specific karst conditions documented in this record require additional protection under KRS 278.708(6): given the documented sinkhole activity on the Mattingly property and the direct hydrological connection between the Project area and Crab Run Creek, no panels, inverters, or above-ground generating equipment should be permitted within any karst exclusion zone identified adjacent to the Mattingly property, to be determined by the geotechnical and third-party hydrology studies the Applicant has confirmed will not be completed until after certificate issuance. No construction on any portion of the Project adjacent to the Mattingly property should commence until those studies are complete and reviewed by the Board.
- Required protective conditions for all non-participating adjacent property owners, regardless of residential neighborhood classification, imposed under the Board's authority in KRS 278.708(6) and the goals of KRS 278.216: (a) no solar panel, inverter, or above-ground generating equipment within 1,000 feet of any non-participating residential structure within a residential neighborhood, consistent with the in-neighborhood standard the Board applied in Lost City Renewables (Case No. 2024-00406); (b) no solar panel, inverter, or above-ground generating equipment within 300 feet of any non-participating parcel boundary that is not included in a neighborhood — protecting the future residential development potential of adjacent parcels over the 35-year certificate term; a future builder observing a typical 50- to 100-foot building setback from their property line would place any residence 350 to 400 feet from generating equipment, consistent with the 400-foot residential setback the Board applied in Summer Shade Solar (Case No. 2025-00064); (c) no inverter, transformer, or substation within 1,000 feet of any non-participating parcel boundary; (d) no generating equipment within 100 feet of any adjacent public roadway; (e) a required continuous vegetative screening buffer and 10-foot earthen berm, as specified below, along all project boundaries abutting any non-participating parcel, including agricultural parcels not presently improved with a residential structure — the berm is a required condition, not a feasibility study; and (f) enhanced setback from the Mattingly parcel boundary as determined by the required geotechnical and hydrology studies.

Vegetative Screening and Earthen Berm

- Continuous triple-row staggered evergreen buffer, with a mix of native evergreen trees and shrubs, at minimum 6 feet in height at planting, along the full Project perimeter, including boundaries shared with non-residential agricultural landowners. Rows shall be staggered with a minimum 10-foot offset between rows to provide layered depth of screening. Screening planted at or near the non-participating parcel boundary, not along the Project fence line.
- Buffer to achieve 75% visual opacity within three growing seasons; annual inspection report filed with the Board; 90-day remediation deadline for any screening failure with replacement plantings or supplemental fencing.

- Prior to construction, the Applicant shall evaluate the technical and land-use feasibility of constructing an earthen berm of at least 10 feet in height along the full project perimeter abutting any non-participating parcel boundary. An earthen berm serves a dual function that no administrative measure can replicate. First, it provides immediate line-of-sight screening during the three to five years before vegetative plantings reach effective height — directly addressing the visual impact gap that the record's Year 1–5 simulation absence confirms. Second, it provides physical acoustic attenuation by blocking the direct sound propagation path to all adjacent residences and parcels — both during the 8-month construction period and across the 35-year operational life of the Project. This protection extends equally to non-residential agricultural parcels whose long-term value is directly affected by the presence of industrial solar infrastructure on an adjacent boundary. The Applicant's noise witness, Mr. Agresti, testified that "there's really no practical mitigation measures" for pile driving, citing limiting construction hours as the only available tool. (Hearing Tr. at 5:57:24) But Mr. Agresti was never asked about a physical barrier. A berm forces sound to diffract over its crest rather than travel directly to adjacent residences, producing documented insertion loss across all noise sources — pile driving, general construction equipment reaching 67 dB(A) at NSA 1, and inverter and transformer hum during operations. The record contains no testimony that a berm would be ineffective; the gap is that no physical barrier was ever evaluated by the Applicant's experts. Any required berm shall be planted with a continuous triple-row staggered installation of native evergreen shrubs and trees along its face and crest, at a minimum height of six feet at planting, with rows offset by at least 10 feet, supplementing the berm's immediate screening function and establishing long-term vegetative cover. The earthen berm is a required condition of any Certificate. The Applicant shall file with the Board, before any Certificate issues, a construction plan and cost estimate for the required berm prepared by a licensed civil engineer. The berm shall be constructed prior to the commencement of any panel installation.
- Prior to the issuance of any Certificate, the Applicant shall file with the Board the complete tracker and racking specifications, including: (a) ground clearance at horizontal position; (b) maximum tilt angle; and (c) maximum panel height above grade at maximum tilt. Any required earthen berm or screening shall be designed to meet or exceed the maximum panel height at maximum tilt. The panel datasheet in the record (Attachment L to the First Data Request Response) establishes a panel length of 2,300 mm (~7.5 feet); maximum height at operational tilt is not otherwise specified in the record and must be disclosed before construction commences.

Noise Mitigation

- String inverters with acoustic dampening materials, not central inverters. All inverters and transformers set back a minimum of 300 feet from any non-participating parcel boundary, consistent with the setback condition above.
- Pre-construction baseline ambient noise measurements shall be taken at each non-participating residential property boundary during nighttime hours (10:00 p.m. to 7:00 a.m.) and filed with the Board before construction commences. Operational noise during nighttime hours shall not exceed the measured pre-construction baseline by more than 5 dB(A) at any non-participating property boundary. Continuous noise monitoring at each non-participating property boundary (not only at dwellings) shall be conducted throughout the operational phase and results filed with

the Board quarterly; C-weighted dB(C) measurements shall be included to capture low-frequency content.

- Supplemental noise assessment including C-weighted measurements and characterization of low-frequency tonal content at 120 Hz, filed and approved before construction commences.
- Pile driving and other high-impact construction restricted to 7:00 a.m. to 6:00 p.m. weekdays only; real-time monitoring at each adjoining property line during all pile-driving; suspension required if levels at any non-participating property boundary exceed the pre-construction baseline measured at that boundary.
- Construction noise at any non-participating residential property boundary shall not exceed 85 dB(A) — the OSHA threshold requiring hearing protection — during active pile-driving or other high-impact operations. The Applicant’s noise witness confirmed peak construction noise at the closest non-participating home reaches approximately 76.5 dB(A); residents at that boundary are entitled to the same hearing-protection threshold as workers. Violation triggers an immediate construction suspension until levels are brought into compliance.

Decommissioning and Financial Assurance

- Bond sized to the net present value of projected decommissioning costs as required by KRS 278.706(2)(m), not less than the gross projected cost inflation-adjusted to Year 35 using a qualified economic methodology; prepared by a qualified independent professional who is not the Applicant’s own consultant; updated on the mandatory five-year schedule required by KRS 278.706(2)(m). The Board may not issue the certificate unless it finds this bond requirement will be satisfied, as required by KRS 278.710(j).
- All adjacent non-lessee landowners within 2,000 feet — including all Intervenors — named as co-beneficiaries with the right to demand performance, as required by KRS 278.706(2)(m). The Energy and Environment Cabinet must also be named as a co-beneficiary with enforcement authority, as required by KRS 278.706(2)(m). All underground infrastructure removed in full at decommissioning; no abandonment in place.

Tax Structure, Ownership, and Haul Route

- Full disclosure of any IRB or PILOT arrangements to the Board and Marion County Fiscal Court before any Certificate issues; subject to public notice and comment.
- Staff’s post-hearing Data Request No. 1 asks whether landowners will be notified if the project is sold — a question KRS 278.710(i) answers in the affirmative and to which the Board should have a complete answer before any certificate issues. No agreement, letter of intent, or option contemplating transfer of ownership or control of the Project shall be executed without 30 days’ prior written notice to the Board and to all Intervenors of record, as required by KRS 278.710(i); any successor entity must file a written assumption of all Certificate conditions with the Board before any transfer closes. The new law prohibits the Board from conditioning the certificate on its approval of any such transfer, but prior notification is mandatory and the written assumption requirement is within the Board’s conditioning authority under KRS 278.708(6). Because enforcement authority over the certificate transitions to the Energy and Environment Cabinet Secretary once commercial operations begin, all certificate conditions must be drafted as durable

obligations running with the certificate and enforceable by the EEC Secretary — not as informal agreements dependent on the Board's ongoing involvement.

- Power purchaser disclosure: Within 30 days of executing any power purchase agreement (PPA), the Applicant shall file with the Board and serve on all Intervenors of record a disclosure of: (a) the identity and regulatory status of the power purchaser; (b) whether the purchaser is a regulated public utility, G&T cooperative, or distribution cooperative under KRS 278.010(3); (c) the term, annual generation quantity, and price structure; and (d) any provision affecting the Applicant's federal tax credit structure, including any tax equity or pass-through arrangement. The Board retains authority under KRS 278.708(6) to impose additional conditions upon notification. This requirement survives any ownership transfer.
- Formal haul route analysis for all oversize and overweight loads completed before construction; all required overweight permits obtained from the Kentucky Transportation Cabinet and Marion County; road restoration bond posted.

Community Liaison

- The Applicant shall designate a named community liaison before construction commences, with a direct contact number and email available to all adjacent landowners within 2,000 feet of the Project boundary. The liaison shall convene at minimum one annual community meeting during both the construction and operations phases, with written notice mailed to all adjacent landowners at least 14 days in advance.

Environmental and Site-Specific Conditions

- No chemical agent may be used for panel cleaning, antifungal treatment, or any other maintenance activity on the panel array until the Applicant has submitted a chemicals disclosure identifying each proposed agent, its safety data sheet, and an independent evaluation of its safety to aquatic organisms and livestock consuming water from Crab Run Creek, and the Board has approved each agent's use. Use of any chemical agent not specifically approved through this process is a violation of the Certificate.
- The Applicant's maintenance plan shall specifically address fungal colonization of panel surfaces, racking, and metal structures — a documented phenomenon in Kentucky's bourbon-corridor climate that can reduce panel generating efficiency and necessitate chemical cleaning. The plan shall include an annual inspection protocol for fungal growth on panel surfaces and metal infrastructure, and shall confirm that any cleaning agents used to address fungal buildup comply with the chemical approval requirement set forth above.
- Groundwater withdrawal prohibition: The Applicant shall not drill any well or withdraw water from any groundwater source on the Project site for any purpose — including panel washing, dust suppression, cooling of electrical equipment, or domestic use at the operations and maintenance building — without prior written approval from the Board. Any application for Board approval shall include: (a) a karst-specific hydrogeological assessment by a licensed Kentucky Professional Geologist demonstrating that the proposed withdrawal will not materially reduce the water supply available to neighboring domestic wells; (b) an analysis of the effect of the proposed withdrawal on baseflow to Crab Run Creek, including any thermal loading from water returned to the surface after use; and (c) confirmation of compliance with all Kentucky Division of Water withdrawal permitting requirements. Municipal water supply is available in

Marion County and shall be the default water source for all Project uses. This condition is not a limitation on the Board’s authority to impose additional groundwater protections, and survives any ownership transfer.

- Binding annual cash contribution to the Marion County Area Technology Center, memorialized in a written agreement between the Applicant and the ATC prior to commencement of construction, surviving any ownership transfer.

V. CONCLUSION AND RELIEF REQUESTED

The proposed Crab Run Solar Project, as currently designed and sited, places a 412-acre, 110,052-panel industrial electric generating facility as little as 35 feet from the boundary of a residential neighborhood — and approximately 335 feet from the nearest dwelling — where Intervenors and their neighbors have made their homes along Frogtown Road, with additional adjacent landowners on Loretto Road also within the zone of impact. The Kentucky legislature established a 2,000-foot buffer for exactly this situation. The Applicant asks the Board to reduce that buffer by more than 98% on the correct statutory measurement — a deviation that eliminates the statutory protection entirely for every structure in the project, as the Applicant’s own submitted diagram confirms.

The record also reflects that proximity to residential neighborhoods was never a criterion in the Applicant’s site selection process, as Tab 7 of the Application makes plain. The requested deviation is not a refinement of a residentially sensitive design; it is a correction for a siting process that never considered residential proximity at all.

The evidence in this record does not support that deviation without meaningful protective conditions. The property value study’s neutrality finding is explicitly conditional on screening being in place. The economic benefits during operations are minimal, and the economic projections presented to the Board model no adverse scenario — not subsidy discontinuation, not the post-2030 tax credit structure, not any scenario other than optimal conditions for the full 35-year project life. The Applicant’s Decommissioning Plan excludes all non-participating adjacent landowners from bond coverage and fails each of the statutory requirements imposed by newly enacted KRS 278.706(2)(m), as documented in Section II.C. The visual impact analysis did not specifically evaluate the viewpoints of the Intervenors’ homes on Frogtown Road. These deficiencies are not merely evidentiary. Newly enacted KRS 278.710(j) makes compliance with the decommissioning bond requirements of KRS 278.706(2)(m) a criterion for certificate issuance — the Board cannot issue a certificate on a bond that fails the statutory NPV-sizing standard, excludes non-lessee adjacent landowners from co-beneficiary status, or omits the Energy and Environment Cabinet as a required co-beneficiary. That criterion is not satisfied on this record.

For these reasons, Intervenors respectfully request that the Board:

1. Deny the Motion for Deviation from the 2,000-foot setback requirements of KRS 278.704(2); or alternatively,
2. If the Board grants the deviation, deny the Certificate of Construction unless and until the Applicant demonstrates, through supplemental submissions, that a continuous earthen berm of at least 10 feet in height has been constructed along the full project perimeter abutting any non-participating parcel boundary, with native evergreen plantings along its face and crest achieving 75% visual opacity, a decommissioning bond satisfying the NPV-sizing and co-beneficiary

requirements of newly enacted KRS 278.706(2)(m) has been established, and the tax structure has been disclosed; or alternatively,

3. Grant the Certificate of Construction only upon the imposition of the protective conditions described in Section IV.E of this Brief, together with such additional conditions as the Board may find appropriate based on the full record, including any responses to the Siting Board Staff's post-hearing data requests.

Respectfully submitted this 5th day of May, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Intervenors's Post-Hearing Brief was filed with the Kentucky Public Service Commission through the Commission's eFiling System on May 5, 2026, which constitutes electronic service on all parties of record in Case No. 2025-00276 pursuant to 807 KAR 5:001 § 8(8). One paper copy has been submitted to the Commission's offices in Frankfort, Kentucky on the same date.

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