

COMMONWEALTH OF KENTUCKY
BEFORE THE ELECTRIC GENERATION
AND TRANSMISSION SITING BOARD

In the Matter of:

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

CRAB RUN SOLAR PROJECT, LLC’S APPLICATION FOR REHEARING OF
BOARD’S JUNE 17, 2026 ORDER RELATIVE TO (1) CONDITION 21 AND PARTIAL
DENIAL OF ITS MOTION FOR DEVIATION FROM SETBACK REQUIREMENTS;
AND (2) CONDITIONS 12, 13, AND 17

I. INTRODUCTION AND RELIEF SOUGHT

Pursuant to KRS 278.400, Crab Run Solar Project, LLC (“Crab Run”) respectfully files this application seeking rehearing relative to certain conditions adopted by the Kentucky Electric Generation and Transmission Siting Board (“Board”) in its June 17, 2026 Order granting Crab Run’s Application for a Certificate of Construction (“Order”) for the subject merchant solar electric generating facility (“Project”).

Specifically, Crab Run seeks rehearing and modification of the Order and Appendix A thereto relative to (1) Condition 21 (pertaining to setbacks) and the Board’s related partial denial of Crab Run’s January 23, 2026 Motion for Deviation from Setback Requirements, as well as clarification of a portion of Condition 21; and (2) Conditions 12, 13, and 17 (pertaining to vegetative screening).

II. LEGAL STANDARD FOR REHEARING

KRS 278.400 authorizes any party, within 20 days after service of an order, to apply for rehearing with respect to matters determined in the order. The application must specify the matters

on which rehearing is sought. The Board may grant rehearing, may receive additional evidence that could not with reasonable diligence have been offered earlier, and may change, modify, vacate, or affirm its prior order and enter such order as it deems necessary.

Rehearing is appropriate here because the subject portions of the Order and conditions in Appendix A contain inconsistencies in and unsupported setbacks; grant the Certificate of Construction but are silent on the detrimental effect the setbacks have on the Project's capacity and ultimate constructability; and contain obligations for vegetative screening that will may result in future issues in implementation and compliance.

III. SPECIFIC MATTERS ON WHICH REHEARING AND MODIFICATION IS REQUESTED

Crab Run respectfully requests rehearing and modification of the Order on the following specific matters:

A. Condition 21 in Appendix A, specifically the 500-foot setback to solar panels contained therein, and the Board's related partial denial of Crab Run's January 23, 2026 Motion for Deviation from Setback Requirements under KRS 278.704(4). Crab Run also seeks clarification on the required setback distance from solar panels to non-participating parcel lines.

B. Conditions 12, 13, and 17 in Appendix A.

A. Rehearing is Necessary Because the 500-Foot Setback in Condition 21 is Unclear, Inconsistent with the Evidence, and in Conflict with the Board's Grant of a Certificate of Construction.

KRS 278.704(2) provides the applicable setback requirement in the event, as here, of no applicable local planning and zoning ordinance governing setbacks:

Except as provided in subsections (3), (4), and (5) of this section, no construction certificate shall be issued to construct a merchant electric generating facility unless. . . all proposed structures or facilities used for generation of electricity are two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.

The Board may and has on numerous occasions granted deviations from this setback requirement pursuant to KRS 278.704(4). That section states:

The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed to and, as located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.

Crab Run's Application and responses to the Board Staff's three sets of data requests show a thoughtfully-designed, compact layout within an approximately 412-acre project area, utilizing only approximately 245 acres for placement of solar electric generation infrastructure. Those facts are directly relevant to whether the Project is designed and located to satisfy the statutory goals at a closer distance.

As designed, the relevant proposed minimum Project distances are as follows, with the applicable setback to this application for rehearing highlighted in yellow:

Project fenceline to nonparticipating residence:	166 feet
Solar panel to nonparticipating residence:	335 feet
Inverter to nonparticipating residence:	657 feet
Project substation to nonparticipating residence:	1,699 feet ¹

Condition 21 states as follows:

21. Crab Run Solar shall place panels, inverters and switchyard components consistent with the distances that have been prescribed in this Order.

The Siting Board approves a distance of 500 feet between any solar panel or string inverter and any residential neighborhood and 100feet from any exterior property line. Crab Run Solar shall not place solar panels or string inverters, if used, closer than 500 feet from a residence, church, or school, 25 feet from non-participating adjoining parcels, or 50 feet from adjacent roadways and. Crab Run Solar shall not

¹ Order at pp. 8-9, citing Crab Run's Response to Siting Board Staff's Second Request, Item 16.

place a central inverter and if used, energy storage systems, closer than 450 from any adjacent residences, churches, or schools. 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. All agreements by participating landowners to lesser setbacks must include language advising the participating landowners of the setbacks otherwise required herein. All agreements with participating landowners to lesser setbacks must be filed with the Siting Board prior to commencement of the Project.

Based on the language in the Order and, consistent with the Board's orders on applications for other recent solar projects, Crab Run understands the highlighted language to impose (1) a 500-foot setback from solar panels to the nearest residential structure in any grouping of residences that qualify as a "residential neighborhood" under KRS 278.700(6)²; and (2) a 500-foot setback to each residential structure contained within "residential neighborhoods."

As an initial matter, Crab Run notes that it is not requesting rehearing on all portions of the setbacks imposed by the Order and Appendix A. But, respectfully, the 500-foot setback merits rehearing, and modification is appropriate. Additionally, Crab Run requests clarification on whether the intended setback from non-participating property lines is 100 feet or 25 feet, as both distances appear in Condition 21. For context, the distance from the nearest panel to a non-participating property line in Crab Run's Application was 73 feet.³

First, the evidence does not support imposition of a 500-foot setback. There was no evidence that a 335-foot setback would cause any adverse noise, health, safety, or property value

²² This is how the Board has previously calculated required setbacks to a "residential neighborhood," rather than other measuring points, such as the outer boundary of any parcel containing a residential structure in a "residential neighborhood." Using the outer parcel boundary would, in reality, create a required setback of well more than 500 feet and be contrary to the Board's apparent intent in this Order.

³ Crab Run continues to believe this distance is appropriate, and no greater setback is merited to ensure compliance with the statutory goals.

impacts to the residential neighborhoods. Further, the Board’s consultant, Elliot Engineering⁴, did not recommend a 500-foot setback or otherwise indicate the setbacks proposed by Crab Run were inadequate. Had it done so, Crab Run would have responded in writing to oppose such recommendations and prepared analysis and further evidence for presentation at the Formal Hearing.

Based upon the language of the Order, the Board imposed Condition 21 as a noise mitigation measure for construction.⁵ Specifically, it stated “[T]he Siting Board further finds that, based on the entire record, to ensure the impact of construction noise does not unduly impact nearby residents, Crab Run Solar will be required to implement specific mitigation measures. . . . These mitigation measures are outlined in Appendix A to this Order, specifically mitigation measures 19 through 21.”⁶ But Condition 21 does much more than purport to mitigate construction noise: it is a permanent condition that will exist for the life of the Project. This permanent restriction is not warranted where the Board explicitly found that “the operational noise from inverters and the main transformer should have little to no effect on residences in the area.”⁷ Therefore, any imposition of setbacks aimed at noise mitigation during operations are not supported by the record or the Board’s findings.

While not stated in relation to Condition 21, it appears that another concern of the Board in imposing the 500-foot setback is visual impact to nearby residences. Indeed, the language of the Order, taken as a whole, appears aimed to require Crab Run to render the Project all-but-invisible to neighbors. There has never been a requirement to eliminate any view a nearby resident might

⁴ Throughout the Order, the Board’s Consultant for this Project is erroneously indicated to be Wells, rather than Elliot. Wells is another consultant that the Board uses for evaluating projects, but to Crab Run’s knowledge it was not involved in evaluating the Crab Run Solar Project.

⁵ Order at p. 16.

⁶ Order at p. 16.

⁷ Order at p. 15.

have of a project's components. To the contrary, applicable statutes focus on whether reasonable mitigation measures have been proposed, including to decrease and soften visual impacts. Here, the evidence was that the Project's design, including 335-foot setback from closest nonparticipating residence, achieves this goal. That is especially so when combined with the robust vegetative screening the Project has planned and its intention to comply with the Board's enhanced vegetative screening conditions in the Order, except as addressed below.

As part of their opposition, Intervenors requested a 500-foot setback but never offered any study or evidence as to why that distance, and not 335 feet, or 400 feet, or 450 feet, etc. was necessary to achieve the statutory goals.

Further, the Board's task—as a statewide body acting for the benefit of all Kentuckians—is to balance impacts on nearby residences with the overall benefits of the Project to the broader community in which the Project is located and the Commonwealth's citizens as a whole. Here, the evidence strongly showed—and the Order specifically noted—the many benefits of the Project as proposed by the Applicant. These include:

- “Significant positive economic and fiscal impacts to Marion County” from direct, indirect, and induced effects resulting from construction of the Project. In total, the construction phase of the Project will result in 175.71 jobs, \$7.6 million in labor income, and \$17.68 million in economic value added.⁸
- Additional and ongoing direct, indirect, and induced effects from the operations of the Project. In total, the operations phase will result in 3.34 jobs, \$342,841.93 in labor income, and \$899,240.53 in economic value added.⁹

⁸ Order at pp. 19, citing Crab Run's Application, Tab 10, Attachment H at 10.

⁹ Order at pp. 19, citing Crab Run's Application, Tab 10, Attachment H at 10 (but listing the construction statistics); Crab Run Application, Tab 10, Attachment H at 11 (correct operations statistics)

- An increase of five to six times in tax revenue from the property or, if the Project enters into an Industrial Revenue Bond (IRB) and Payment in Lieu of Taxes (PILOT) Agreement with Marion County, an upfront payment of \$66,953 and \$2,649 annually in occupational taxes.¹⁰
- No adverse impact on nearby property values.¹¹
- No air, noise, waste, or water pollution and no traffic issues during operation.¹²

Additionally, the 500-foot setback should be reheard and reduced to ensure reasonable consistency with the Board's required setbacks for other projects. Crab Run recognizes the Board's authority to consider projects on a case-by-case basis. However, the Board has granted motions to approve similar setback distances to those Crab Run requested numerous times in the past, in situations that did not appear to be markedly different than those present here.¹³

Recently, the Board considered a similar situation relative to the Summer Shade Solar Project, in which it imposed a 400-foot setback akin to the 500-foot setback imposed here. There, Summer Shade filed a motion for reconsideration, which was denied. Even utilizing the Board's

¹⁰ Order at pp. 20-21, citing Crab Run's Application, Tab H at 13, 14 and Crab Run's Response to Siting Board Staff's First Request, Item 59.

¹¹ Order at pp. 12, citing Crab Run's Application, Tab 12, Site Assessment Report, Exhibit B at 1-2.

¹² Order at pp. 13.

¹³ Case No. 2023-00360, Application of Fron Bn, LLC (Frontier Solar) for a Certificate of Construction for an Approximately 120 Megawatt Merchant Solar Electric Generating Facility and Nonregulated Electric Transmission Line in Marion and Washington Counties (Order 6/25/24) (approving a setback from residences of 270 feet from any panel or string inverter and establishing general setback guidelines for solar panels and string inverters of 150 feet from a residence, 25 feet from non-participating adjoining parcels, and 50 feet from adjacent roadways); Case No. 2024-00406, Application of Lost City Renewables LLC for a Certificate of Construction for an Approximately 250 Megawatt Merchant Electric Solar Generating Facility in Muhlenberg County, Kentucky (Order 7/28/25) (establishing same general guidelines for setbacks); Case No. 2023-00361, Application of Kentucky Utilities Company and Louisville Gas and Electric Company for a Site Compatibility Certificate for the Construction of a Solar Facility in Mercer County, Kentucky (Order 7/12/24) (approving setback of 150 feet (residences) and 50 feet (non-participating adjoining parcels and adjacent roadways) from all solar facilities); Case No. 2024-00105, Application of Pike County Solar Project, LLC for a Certificate of Construction for an up to 100 Megawatt Merchant Electric Solar Generating Facility in Pike County, Kentucky (Order 11/15/24) (approving setback of 150 feet (residences), 25 feet (nonparticipating adjoining parcels) and 50 feet (adjacent roadways) from all solar facilities); Case No. 2024- 00104, Application of Lynn Bark Energy Center, LLC for a Certificate of Construction for an up to 200 Megawatt Merchant Electric Solar Generating Facility in Martin County, Kentucky (Order 11/27/24) (same).

rationale in that Order, as applied to the present case, there is insufficient justification for a significantly greater setback here than in that situation. The Board is bound by the statutory factors contained in KRS 278.710 and must act, even in exercising its discretion, with fairness and consistency.

Finally, it would be inconsistent of the Board to grant the Certificate of Construction while imposing a setback condition that significantly adversely impacts whether the Project can actually be constructed. This Project has a capacity of up to 45 MW, and Project facilities will only occupy approximately 245 acres within the Project area. The attached map (**Exhibit A**) depicts the overlay of a 500-foot setback from residences to solar panels on the Project area.

A 500-foot setback to solar panels necessarily results in a decrease in the output capacity of the Project. The issue was raised for the first time during the Formal Hearing as to the impact of greater setbacks. During the Formal Hearing, a question was posed hypothetically to Witness Cole Jennings, when the Board inquired how the Project would be affected if the Board were to impose a 450- or 500-foot setback from solar panels to the nearest residence in a “residential neighborhood.” At that time, the impacts of such increased setbacks had not been analyzed. Mr. Jennings analyzed this question generally post-hearing and determined that the implementation of a 450-foot or greater setback from neighboring residences would result in a forced reduction of maximum capacity for the Project. If rehearing is permitted, Crab Run will introduce additional evidence demonstrating that a 500-foot setback will decrease Project capacity and buildability. Such a setback (assumed to be from the border of the Project Area along Frogtown Road on the west side of the Project Area based upon questions posed), would also require the relocation of various components, including but not limited to solar panels, access roads, fencing, and electrical

cabling. The implementation of a 500-foot setback would further reduce the capacity based on the removal of additional buildable land.¹⁴

The loss of Project area and capacity threatens all the recognized benefits associated with the Project for the local community and Commonwealth. Because capacity ties directly to the economic benefits of the Project (especially in tax benefits, local construction jobs, and monetary influx into the local economy), the resulting harms to the Marion County community from an enhanced setback to 500 feet well outweigh the marginal benefit of attempting to further reduce visual impact during the initial several-year window in which required vegetative screening is maturing.

For all of these reasons, Condition 21 should be amended to provide a setback of 335 feet from solar panels or string inverters to the nearest residence within a “residential neighborhood” and residences in each “residential neighborhood.” Additionally, the setback in Condition 21 from non-participating landowner property lines to panels or string inverters should be clarified given the inconsistency in both 25 and 100-foot distances stated.

B. The Board Should Grant Rehearing relative to Conditions 12, 13, and 17 and Eliminate Those Conditions.

Crab Run respectfully requests rehearing and elimination of Conditions 12, 13, and 17, which provides as follows.

12. If any components of the facility are visible to neighboring homes after construction, Crab Run Solar shall assess the feasibility of a screening plan, including consulting neighbors to determine whether there are adverse impacts to their viewshed. If a screening plan is considered, regardless of whether it is

¹⁴ See Crab Run’s Post-Hearing Brief at pp. 5-6.

ultimately implemented, notice of such consideration shall be filed with the Siting Board.

* * *

13. To the extent that an affected adjacent property owner indicates to Crab Run Solar that a visual buffer is not necessary, Crab Run solar will obtain that property owner's written consent and submit such consent in writing to the Siting Board.

Condition 17 is a verbatim duplicate of Condition 13.

Crab Run does not seek elimination of these Conditions based upon an objection to providing appropriate visual screening. In fact, Crab Run is committed to employing effective visual screening to minimize visual impacts of the Project. To that end, Crab Run does not object to the other visual screening enhancements the Order and Appendix A require beyond the commitments Crab run already made in its Application and responses to Board inquiries to date.

Rather, Conditions 12, 13, and 17 should be removed because the other conditions in the Order addressing visual screening are appropriate and complete, and because Conditions 12, 13, and 17 present challenges in interpretation and future compliance.

First, multiple other conditions in the Order address and enhance Crab Run's obligations relative to vegetation and visual screening, which protect adjoining landowners. These conditions include the following:

Condition 11, which states:

11. Existing vegetation between solar arrays and nearby roadways and homes shall be left in place to the extent feasible to help minimize visual impacts and screen the Project from nearby homeowners and travelers. Crab Run Solar

will not remove any existing vegetation except to the extent it must remove such vegetation for the construction and operation of Project components.

Additionally, Crab Run does not object to the enhanced requirements in Conditions 14 and 16, which provide:

14. Crab Run shall implement planting of native evergreen species as a visual buffer to mitigate visual viewshed impacts, in areas where those viewshed impacts occur from residences or roadways directly adjacent to the Project and there is not adequate existing vegetation. If it is not adequate, then vegetation ten feet thick reaching six feet at maturity (in four years) will be added by Crab Run between Project infrastructure and residences, or other occupied structures, with a line of sight to the facility to the reasonable satisfaction of the affected adjacent property owners. Planting of vegetative buffers may be done over the construction period; however, Crab Run Solar should prioritize vegetative planting at all periods of construction to reduce viewshed impacts. All planting shall be done prior to the operation of the facility.

* * *

16. Crab Run Solar shall develop a more robust visual screening plan than what was proposed in its application, SAR, and the maps, including adding third row of vegetative screening. Crab Run is required to ensure that the proposed new vegetative buffers are successfully established and developed as expected over time. Should vegetation used as buffers die over time, Crab Run Solar shall replace plantings as necessary.

Unlike Conditions 12, 13, and 17, the other visual mitigation conditions impose measurable obligations that Crab Run can objectively meet and ensure compliance. Conditions 12, 13, and 17, taken together, appear to impose what could be a lengthy and ultimately inconclusive consultation

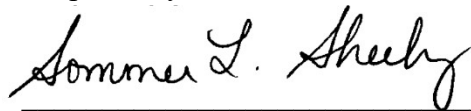
process with adjacent landowners. Among the open many questions resulting from these conditions are how Conditions 12, 13, and 17 interact with the enhanced and robust screening plan that is already required by the other conditions, the effect of a landowner's refusal to engage in "consultation" or otherwise request reasonable screening on the Project's ability to comply, and how the feasibility of a screening plan is determined.

Given the vagueness and compliance concerns in Conditions 12, 13, and 17, and the significant visual screening obligations already present in other conditions in the order, it is reasonable and appropriate for the Board on rehearing to eliminate those conditions.

IV. CONCLUSION

For the foregoing reasons, Crab Run Solar Project, LLC respectfully requests that the Board rehear the matters raised herein, revise the 500-foot setback in Condition 21 to 335 feet, and adjust its ruling on Crab Run's Motion for Deviation accordingly. Crab Run further requests clarification on the required setback from non-participating adjoining property lines from solar panels (stated as both 100 feet and 25 feet in Condition 21). Finally, Crab Run respectfully requests that the Board revise the Order to eliminate Conditions 12, 13, and 17.

Respectfully submitted,



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