

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

In the Matter of:

ELECTRONIC APPLICATION OF MYSO, LLC)	
(MAYFIELD) FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY)	
200 MEGAWATT MERCHANT SOLAR ELECTRIC)	Case No. 2025-00395
GENERATING FACILITY IN GRAVES COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND)	
807 KAR 5:110)	

POST-HEARING BRIEF

Comes now MYSO, LLC (“Applicant” or “Mayfield”), by and through counsel, pursuant to 807 KAR 5:110, Section 7, and the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board” or “Board”)’s June 12, 2026 Order, and provides its post-hearing brief in support of its Application for a Certificate of Construction. Specifically, this brief will discuss the Kentucky Legislature’s recent actions regarding the Board’s authority to regulate a battery energy storage system (BESS) as these may impact the Applicant in this matter. The Applicant respectfully requests the Siting Board determine that the Mayfield has satisfied the criteria necessary and to grant its requested construction certificate and setbacks identified in its Motion for Deviation from Setback Requirements.

I. Facts

Mayfield is seeking approval from the Siting Board for a certificate of construction for an approximately 200 megawatt merchant electric generating facility pursuant to KRS 278.700 *et seq.* (the “Project”) located in Graves County, Kentucky. Mayfield submitted its Application on January 28, 2026, and the Board determined the Application administratively complete on January

29, 2026. The Application included a site assessment report and other studies which addressed the criteria listed in KRS 278.706-.708.

As demonstrated in the Application, Mayfield plans to include a BESS facility near the Project's substation. Mayfield provided all currently known information concerning the BESS location and related operational details in Application materials, responses to data requests, and through testimony at the evidentiary hearing held on June 10, 2026. As provided in the record, the specific BESS units that will be utilized in the Project will not be determined until closer to the start date of construction.¹ However, the proposed BESS location is well set back from any residential structures and neighborhoods, and will be well-screened within the Project.² Minimal impacts, if any, are anticipated as a result of these mitigation measures.

The Board's independent consultant, Harvey Economics, filed its Review and Evaluation of the MYSO, LLC Site Assessment Report ("Report") with the Board after a thorough review and examination of the proposed Project, including an in-person site visit. The Report supported approval of the Project with certain mitigation measures.³ The Report was positive regarding the inclusion of BESS and suggested standalone residential setbacks of 450 feet from any BESS, along with maintaining the screening demonstrated in the vegetative screening plan filed in response to data requests, to avoid any negative impacts in the area.⁴

II. Discussion

Mayfield filed its Application in the early days of the Kentucky Legislature's 2026 Regular Session. At the time of filing, the last major amendment to KRS 278.700 *et seq.* (the "Siting Board

¹ See Response to Siting Board Staff's First Request for Information, Response Nos. 16, 24, 91; *see also* Response to Siting Board Staff's Second Request for Information, Response Nos. 20, 24, 25.

² See Site Assessment Report, Attachment A; *see also* Response to Siting Board Staff's First Request for Information, Response No. 15.

³ Harvey Economics, Review and Evaluation of the MYSO, LLC Site Assessment Report, at p. 2-8.

⁴ *Id.*, at pp. 5-8, 5-10 – 5-12, 5-30 – 5-31, 6-4 – 6-5.

Statutes”) had occurred during the 2023 session. At the time of filing, Mayfield was in compliance with the current state of these laws.⁵ During the Kentucky Legislature’s 2026 Regular Session, numerous bills addressing Siting Board issues were under consideration. By the conclusion of the legislative session in April, two bills amending the Siting Board Statutes had been passed. The first of these, 2026 Ky. HB 677 (“HB 677”), amended the Siting Board Statutes to explicitly address BESS co-located with Merchant Electric Generation Facilities (“MEGFs”) by including minimum setbacks and additional application requirements which specifically addressed storage components.⁶ The subsequent enactment of 2026 Ky. HB 869 (“HB 869”), however, largely removed all proposed BESS-related language from the Siting Board Statutes, highlighting the absence of BESS from previous iterations of the explicit statutory authority allotted to the Siting Board from the General Assembly and creating uncertainty regarding whether—and to what extent—the Siting Board has statutory authority to regulate BESS facilities going forward.⁷

Closer examination of the proposed language for inclusion in these bills provides additional context to this inquiry. Sections 25 and 26 of HB 677 amended the Siting Board Statutes to add facilities used in connection with “storage” of electricity as components subject to minimum setbacks (KRS 278.704) and related to additional application requirements (KRS 278.706), respectively. The subsequent enactment of HB 869, however, introduced potentially conflicting provisions. Section 56 of HB 869 removed “storage” from KRS 278.704, thus implying the decision of the Legislature to specifically exclude BESS facilities from the 2,000-foot statutory setback requirement. However, Section 57, retained “storage” in KRS 278.706(2)(e), requiring applicants to provide a statement that facilities used for the generation *or storage* of electricity

⁵ See No Deficiency Letter, January 29, 2026.

⁶ See 2026 Ky. HB 677, §§25-26.

⁷ See 2026 Ky. HB 869, §§56-57.

comply with that same setback, despite this language no longer being included in amended KRS 278.704. Thus, HB 869's incomplete removal of "storage" from the Siting Board Statutes may result in applicants being required to certify setback compliance for BESS facilities that are not themselves subject to the statutory setback as demonstrated by the legislative decision to remove this language from amended KRS 278.704.

The inclusion followed by the incomplete removal of "storage" by the Legislature from the Siting Board Statutes demonstrates the Legislature's acknowledgement that the Board's powers are both created and limited by its statutory framework. The absence of that initial language related to energy storage facilities in the Siting Board Statutes currently in effect suggests BESS are not currently within the Board's regulatory framework to the extent considered by HB 677. The Legislature's repeal of the relevant section of HB 677 through the enactment of HB 869, which could have impacted Mayfield's pending Application, means that the Applicant has demonstrated the criteria for granting a construction certificate pursuant to KRS 278.710 and has otherwise satisfied the statutory and regulatory requirements applicable to the inclusion of Mayfield's proposed BESS facility.

III. Conclusion

WHEREFORE, for the foregoing reasons, Mayfield respectfully requests that the Siting Board make a determination that it satisfied the necessary criteria for approval pursuant to KRS 278.710 and grant a construction certificate for its merchant electric generating facility in Graves County, and in this construction certificate, provide for the requested setbacks identified in its Motion for Deviation from Setback Requirements.

Respectfully submitted,

/s/Pierce T. Stevenson

Gregory T. Dutton

Pierce T. Stevenson

FBT GIBBONS LLP

400 West Market Street, Suite 3200

Louisville KY 40202

502-589-5400

502-581-1087 (Fax)

gdutton@fbtgibbons.com

pstevenson@fbtgibbons.com

and

Kathryn A. Eckert

FBT GIBBONS LLP

325 West Main Street, Suite 301

Lexington, KY 40507

(859) 231-0000

(859) 231-0011 (Fax)

keckert@fbtgibbons.com

Counsel for MYSO, LLC