

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF STONEFIELD )	
SOLAR, LLC FOR A CERTIFICATE OF )	
CONSTRUCTION FOR AN APPROXIMATELY )	
120 MEGAWATT MERCHANT ELECTRIC SOLAR )	CASE NO.
GENERATING FACILITY AND NONREGULATED )	2022-00011
TRANSMISSION LINE IN HARDIN COUNTY, )	
KENTUCKY PURSUANT TO KRS 278.700 AND )	
807 KAR 5:110 )	

ORDER

On October 31, 2022, Stonefield Solar, LLC (Stonefield Solar) filed a motion requesting the Siting Board schedule an informal conference (IC) for the purpose of discussing the three Notices of Deficiency (NOD) for the application that was tendered on August 19, 2022.<sup>1</sup> Stonefield Solar stated it was requesting the IC to determine what information is necessary to cure the deficiencies in the application.

LEGAL STANDARDS

The procedures and requirements for the filing of an application for a construction certificate of a merchant solar generating facility are found in KRS 278.704, KRS 278.706, KRS 278.708, KRS 278.710, and 807 KAR 5:110. KRS 278.706 outlines the filing requirements for the application for a solar facility. KRS 278.706(2)(d) requires that an application include a statement certifying that the proposed facility will be in compliance

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<sup>1</sup> See Siting Board Notice of Deficiency Letter (filed Aug. 22, 2022) (NOD 1), Siting Board Notice of Deficiency Letter (filed Aug. 26, 2022) (NOD 2), and Siting Board Notice of Deficiency Letter (Oct. 10, 2022) (NOD 3).

with any local planning and zoning requirements. KRS 278.706(2)(e) requires a statement that the facility will be in compliance with the statutory setbacks or in compliance with local setbacks if those have been established under KRS 278.704(3).<sup>2</sup>

KRS 278.702(3) establishes the Siting Board as a governmental entity attached to the Public Service Commission (Commission) for administrative purposes with Commission Staff serving as permanent administrative staff for the Siting Board. Although 807 KAR 5:001, Section 9(4) allows Commission Staff to participate in an IC at the request of a party to discuss any matter that could aid in the handling of the case, the regulations governing Siting Board procedures in 807 KAR 5:100 and 807 KAR 5:110 do not address staff participation in ICs

#### DISCUSSION AND FINDINGS

As noted above, neither 807 KAR 5:100 and 807 KAR 5:110 expressly addresses whether Siting Board Staff may conduct an informal conference with a party. However, the Siting Board has considered granting ICs in situations when the situation or issue in the case warrant.

Stonefield Solar, in its application and both responses to the NODs, asserted that, because the property is currently zoned Heavy Industrial I-2, that setbacks applicable to I-2 zoning apply and the Siting Board does not have statutory authority to interpret a local county ordinance or require an application to request a deviation from the setback requirements in KRS 278.704(2) under the facts presented in this matter.<sup>3</sup>

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<sup>2</sup> KRS 278.706(2)(e).

<sup>3</sup> See Stonefield Solar Response to Notice of Deficiency (filed Aug. 24, 2022), Stonefield Solar Response to Second Notice of Deficiency (filed Sept. 22, 2022), and Stonefield Solar Motion for Informal Conference (filed Oct. 31, 2022).

The Siting Board reiterates that the application was found deficient pursuant to KRS 278.706(2)(d) because as of the date the application was filed, the properties on which the project will be built are predominately zoned Rural Residential, R-2 with a small portion falling into the Heavy Industrial, I-2 Zone.<sup>4</sup> In the Rural Residential, R-2 Zone solar facilities are not a permitted use. Therefore, the application is deficient because, as filed, the project cannot be in compliance with the current local ordinances.

The Siting Board notes that in the application, the responses to the NODs, and the motion for an IC, Stonefield Solar indicated that at some point there will be an application to have the land the project sits upon to be rezoned I-2 and the project would comply with the zoning requirements of the I-2 Zone. However, because the property is not zoned I-2, the project cannot be in compliance with the current local planning and zoning requirements as required by KRS 278.706(2)(d).

KRS 278.706(2)(e) requires that an application state that the project will comply with the statutory setback found in KRS 278.704(2) if there is not applicable planning and zoning requirements. There are not applicable local requirements under the current zoning for the property. Thus, the statutory language requires Stonefield Solar to provide a statement that the facility will be in compliance with the statutory setback requirement or request a deviation pursuant to KRS 278.704(4) in order to satisfy the statutory filing requirements for the application. Until the property is zoned I-2, the Siting Board must review the application in light of the current R-2 zoning.

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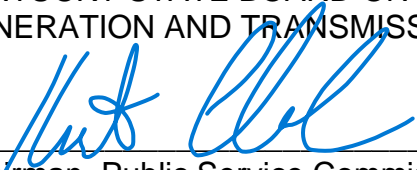
<sup>4</sup> See Application, Exhibit A and [www.arcgis.com/home/webmap/viewer.html?webmap=39b5fa0b1c1b451f81d9faa61b78978f&extent=-86.3539,37.4207,-85.3397,37.8877](http://www.arcgis.com/home/webmap/viewer.html?webmap=39b5fa0b1c1b451f81d9faa61b78978f&extent=-86.3539,37.4207,-85.3397,37.8877) (last accessed Dec. 6, 2022).

For the above reasons, the Siting Board finds that Stonefield Solar has not established good cause to schedule an IC to further its arguments regarding the applicable legal standards, and therefore the motion should be denied. KRS 278.706 clearly states the requirements for an application for a construction certificate. Holding an IC to debate the Siting Board's determination regarding this issue will not aid in the handling of the case.

IT IS THEREFORE ORDERED that Stonefield Solar's motion for an informal conference is denied.

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KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

  
\_\_\_\_\_  
Chairman, Public Service Commission

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Vice Chairman, Public Service Commission

  
\_\_\_\_\_  
Commissioner, Public Service Commission

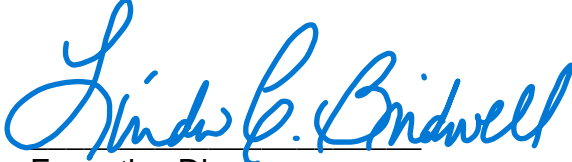
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Secretary, Energy and Environment Cabinet,  
or her designee

  
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Secretary, Cabinet for Economic Development,  
or his designee

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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director  
Public Service Commission  
*on behalf of* the Kentucky State  
Board on Electric Generation  
and Transmission Siting

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