

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF TELESTO)	
ENERGY PROJECT LLC FOR CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY)	CASE NO.
110-MEGAWATT MERCHANT ELECTRIC SOLAR)	2022-00096
GENERATING FACILITY IN HARDIN COUNTY,)	
KENTUCKY)	

ORDER

On June 28, 2022,¹ Telesto Energy Project, LLC (Telesto) filed an application with the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) seeking a Certificate of Construction to construct an approximately 110-megawatt (MW) ground-mounted solar photovoltaic electric generating facility (Project) comprising of approximately 675 acres in Hardin County, Kentucky.

There are no intervenors in this matter. Pursuant to a procedural schedule established on July 15, 2022,² Telesto responded to two rounds of discovery. A site visit was held on August 31, 2022. Siting Board consultant BBC Research & Consulting (BBC) filed its report (BBC Report) on October 17, 2022. Telesto submitted its response to the BBC Report on October 24, 2022. A formal hearing was held on November 1, 2022.

¹ Telesto tendered its application on June 24, 2022. By letter dated, June 27, 2022, the Siting Board rejected the application for filing deficiencies. The deficiencies were subsequently cured, and the application was deemed filed on June 28, 2022.

² The procedural scheduled was amended by an Order dated September 9, 2022.

Telesto submitted a post-hearing brief.³ Telesto filed its responses to post-hearing requests for information on November 17, 2022. The matter now stands submitted for a decision.

LEGAL STANDARD

The filing requirements and standard of review for requests to construct a merchant generating facility are set forth in KRS 278.700–.718. KRS 278.704(1) requires that an application be filed and approved by the Siting Board before the construction of a merchant electric generating facility can commence. KRS 278.706 requires that the application include evidence of public notice and compliance with local planning and zoning ordinances.

KRS 278.708(2) requires Telesto to prepare a site assessment report (SAR) that includes (1) a detailed description of the proposed site; (2) an evaluation of the compatibility of the facility with scenic surroundings; (3) potential changes in property values and land use resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the site; (4) evaluation of anticipated peak and average noise levels associated with the facility’s construction and operation at the property boundary; (5) the impact of the facility’s operation on road and rail traffic to and within the facility, including the anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility; and (6) any mitigating measures suggested by Telesto to minimize or avoid adverse effects identified in the SAR.

³ Telesto’s Post-Hearing Brief (filed Nov. 11, 2022) (Post-Hearing Brief).

KRS 278.710(1) delineates the criteria on which the Siting Board will grant or deny the certificate, which includes (1) impact on scenic surroundings, property values, and surrounding roads; (2) anticipated noise levels during construction and operation of the facility; (3) economic impact on the region and state; (4) whether the proposed facility will meet all local planning and zoning requirements existing on the date the application was filed; (5) impact of the additional load on the reliability of jurisdictional utilities; (6) setback requirements; (7) efficacy of mitigation measures proposed by Telesto; and (8) whether Telesto has good environmental compliance history.

PROPOSED FACILITY

The project will be located on 650 acres of property in an unincorporated area of Hardin County, Kentucky, near Elizabethtown.⁴ The project will contain approximately 276,000 solar photovoltaic panels with associated ground-mounted racking, 34 central inverters, and a substation transformer.⁵ A medium voltage cable will connect to the inverters and run underground between 7,000 and 8,000 feet to the project substation.⁶ The project substation will be located outside of the project's boundary, near the East Kentucky Power Corporation (EKPC) Central Hardin 138 kV substation.⁷ The project substation will be interconnected to the EKPC substation by an approximately 1,200-foot

⁴ Application, paragraph 12.

⁵ Application, Exhibit C, Site Assessment Report (SAR), paragraphs 4–7.

⁶ Telesto's Response to Siting Board Staff's Second Request for Information (Staff's Second Request) (filed Oct. 3, 2022), Item 7.

⁷ SAR, paragraph 7.

underground nonregulated transmission line.⁸ Telesto has not filed an application for a nonregulated transmission line in this proceeding.

DISCUSSION AND FINDINGS

I. KRS 278.708: SAR Filing Requirements and Mitigation Measures

Mitigation Measures Proposed by Telesto and Siting Board Consultant

As required by KRS 278.708(4), Telesto proposed various mitigation measures consistent with the statutes regarding traffic, noise, roadway preservation, permitting, setbacks, public safety, karst and water protection, and scenic preservation.⁹

In accordance with KRS 278.708(5), BBC recommended mitigation measures in the following areas: site development; compatibility with scenic surroundings; potential changes in property value and land use; peak and average noise levels; road traffic, dust, and road degradation; economic impacts; decommissioning; public outreach and communication; and complaint resolution.¹⁰ Telesto stated that it generally agreed with the recommendations in the BBC Report; however, it felt that the BBC Report used a prior design plan when reviewing sound sensitive receptors.¹¹

Detailed Site Description

KRS 278.708(3)(a)(1–6) requires that the detailed site description in the SAR include a description of (1) surrounding land uses for residential, commercial, agricultural, and recreational purposes; (2) the legal boundaries of the proposed site; (3) proposed

⁸ Telesto's Supplemental Response to Siting Board Staff's First Request for Information (Staff's First Request) (filed Dec. 12, 2022), Item 19.

⁹ SAR, paragraphs 42–50.

¹⁰ BBC Report at B8–B11.

¹¹ Response of Telesto Energy Project LLC to Consultant Report (filed Oct. 24, 2022) (Response to Consultant Report) at 1 and 7–8.

access control to the site; (4) the location of facility buildings, transmission lines, and other structures; (5) location and use of access ways, internal roads, and railways; and (6) existing or proposed utilities to service the facility.

Telesto submitted a SAR with the application.¹² The SAR contained a preliminary site plan,¹³ which was subsequently updated.¹⁴ The updated site plan included the existing roads and railways, project boundaries, property lines, proposed fencing, underground collection lines, overhead transmission lines, wetlands and streams, solar arrays, buildable areas, potential project substation, and point of interconnection with the Central Hardin Substation.¹⁵ Telesto planned two anticipated points of access to the site: one on the southeastern boundary of the project along Hayden School Road, and another in the eastern portion of the project along Cecilia Road.¹⁶

The surrounding area is primarily rural agricultural land. The land use is 58 percent agricultural, 27 percent agricultural/residential, and 15 percent residential.¹⁷ The legal boundaries for the proposed project site were included in the SAR.¹⁸ There are no

¹² Application, Exhibit C, SAR.

¹³ Application, Exhibit A.

¹⁴ Notice of Filing and Attached 10% Design Layout Plan, with Cover Letter (10% Design Plan) (filed Aug. 23, 2022).

¹⁵ 10% Design Plan at 2 and 3.

¹⁶ SAR, Exhibits A.1 and A.5, and BBC Report at Section B at 2.

¹⁷ BBC Report at Section B at 2.

¹⁸ Application, Exhibit D.

schools, hospitals, or nursing homes within two miles of the project's boundaries.¹⁹ There are two residential neighborhoods within the two-mile radius of the project.²⁰

Security fences meeting the National Electrical Safety Code (NESC) will enclose the site and potential substation.²¹ If electric service is necessary for construction, it will be purchased from Nolin Rural Electric Cooperative Corporation.²² Retail water service is not planned, but, if necessary, it will be provided by Hardin County Water District No. 2.²³

Telesto stated it intends to build a medium voltage collection system that will run underground from the project boundary approximately 8,800 feet to the project substation.²⁴ Telesto has not executed leases for the underground collection system.²⁵ In a filing subsequent to the hearing, Telesto provided a new map for the underground collection system, but noted that no easements or property rights have been secured for the system.²⁶ The underground collection system will pass under roads owned and maintained by the city of Elizabethtown. Telesto has not yet begun the process of obtaining permits or crossing agreements.²⁷

¹⁹ KRS 278.704(4) Motion for Deviation from Setback Requirements, Attached Map-Figures, and Cover Letter (filed Aug. 8, 2022) (Motion for Deviation) at 2.

²⁰ Motion for Deviation at 2.

²¹ SAR, paragraph 13.

²² SAR, paragraph 16.

²³ SAR, paragraph 16.

²⁴ Telesto's Response to Staff's First Request (Staff's First Request), Item 18 (filed Aug. 29, 2022). See also Hearing Video Testimony (HVT) 09:39:25.

²⁵ HVT at 09:42:40.

²⁶ Telesto's Supplemental Response to Staff's First Request, Item 19.

²⁷ HVT at 09:41:40.

Once the collection system reaches the project substation, Telesto will build an approximately 1,200-foot 138 kV transmission line to interconnect to the EKPC Central Hardin Substation.²⁸ In a post-hearing filing, Telesto stated it has selected the site for the substation, but it does not yet have a property agreement in place.²⁹ Telesto has determined that the transmission line interconnecting the project substation to the EKPC Central Hardin Substation will run underground.³⁰

Having reviewed the record of this proceeding, the Siting Board finds Telesto has not complied with the requirements for describing the facility and a site development plan, as required by KRS 278.708. Pursuant to KRS 278.708(3)(a)(4), Telesto must provide location of the facility buildings, transmission lines, and other structures for the SAR to be deemed complete. Often during the pendency of a case before the Siting Board, solar developers make changes to the site layout. However, in all the other cases considered by the Siting Board, the solar developer has been able to explain with a degree of certainty where the major project components will be located, fulfilling the requirement of KRS 278.708(3)(a)(4). Telesto is unable to provide the locations of the underground collection system, the project substation, or the project transmission line to the Siting Board with any degree of certainty. It is still not clear where the ultimate location of the collection system or the project substation will be because Telesto has not secured the property rights for these parcels. Additionally, the stated location of the project substation was provided untimely for consideration by the Siting Board because it was filed 13 days

²⁸ HVT at 09:39:30.

²⁹ Telesto's Supplemental Response to Staff's First Request, Item 19.

³⁰ Telesto's Supplemental Response to Staff First Request, Item 19.

after the case had been submitted for a decision. Based upon the case record, the Siting Board cannot find Telesto complied with KRS 278.708(3)(a)(4).

Compatibility with Scenic Surroundings

Telesto indicated that the project is located in an agricultural area surrounded by some residential areas and an airport.³¹ Telesto indicated the site was designed to make minimal changes to the current terrain and vegetation.³² Telesto also proposed a vegetative screening plan consisting of double rows of native evergreen trees that will further reduce the visual impact of the project.³³

The Elizabethtown Regional Airport is located within a two-mile radius of the project.³⁴ According to the Glare Hazard Analysis conducted by Stantec Consulting Services Inc. (Stantec), glare from the panels is not anticipated to cause interference with the take-off or landing of any planes at the airport.³⁵ The Federal Aviation Administration and the Kentucky Airport Zoning Commission reviewed the project and determined there should be no visual impacts to pilots.³⁶

Having reviewed the record, the Siting Board finds that, while there will always be an impact on the scenery of neighboring properties, the impact of this project is minimal.

³¹ SAR, paragraph 19.

³² SAR, paragraph 20.

³³ SAR, paragraph 22.

³⁴ SAR, paragraph 23.

³⁵ SAR, paragraph 23, and Application, Exhibit G, Glare Hazard Analysis at 20.

³⁶ Telesto's Response to Staff's First Request, Item 15, and Telesto's Responses to Post-Hearing Requests for Information (filed Nov. 17, 2022), Item 5.

The proposed vegetative buffer would minimize the effect that the proposed facility will have on the scenic surroundings of the site.

Impact on Property Values

Telesto submitted two property value impact reports; one from Kirkland Appraisals, LLC (Kirkland Report) and one from CohnReznick LLP (CohnReznick Report).³⁷ Both the Kirkland Report and the CohnReznick Report found that, based upon a comparative analysis, the solar facility would not have an impact on the property values of abutting or adjacent residential or agricultural properties.³⁸ The CohnReznick Report found no negative impact to property value for properties near a solar farm.³⁹ The Kirkland Report indicated that the solar facility would function harmoniously with the nearby surroundings and that operation of the solar facility would not generate the level of noise, odor, or traffic as compared to a fossil fuel generating facility or other industrial facilities.⁴⁰

BBC conducted an analysis of the property value studies provided by Telesto. The BBC Report noted that the Kirkland Report contained a matched-pair analysis and a comparative study analyzing data from numerous solar facilities across the country of property values in proximity to such facilities.⁴¹ The BBC Report's review of the CohnReznick Report noted that the report and the addendum included an analysis of property transactions adjacent to existing solar farms along with interviews with real

³⁷ SAR, Exhibits E.1, E.2, and E.3.

³⁸ SAR, paragraph 25.

³⁹ SAR, Exhibit E.3 at 25.

⁴⁰ SAR, Exhibit E.1 at 1.

⁴¹ BBC Report at C-32.

estate professionals and county assessors active in markets where solar farms are located.⁴²

BBC concluded the proposed project is unlikely to have a measurable adverse impact on property values because the project area is predominantly rural and the vegetative buffers will help conceal the project from view.⁴³ BBC stated that the property values of some adjacent residential properties with small lots, especially those with lots smaller than five acres and in closest proximity to the solar panels, might be at risk of a reduction in value. BBC recommended that Telesto's viewshed screening plan should include efforts to reduce impacts on the views from residential properties that are smaller than five acres and located adjacent to the proposed Project.⁴⁴ Telesto indicated that those adjacent property owners and residents were considered when the current site plan and screening plan were developed.⁴⁵

Having reviewed the record, the Siting Board finds sufficient evidence to conclude that the proposed Telesto facility will more than likely not have any adverse impact on nearby property values as long as proper mitigation measures are implemented. The characteristics of the solar facility's operations are passive. The facility does not produce any material air, noise, waste, or water pollution nor does it create any traffic issues during operations.

⁴² BBC Report at C-32.

⁴³ BBC Report at C-35.

⁴⁴ BBC Report at C-35.

⁴⁵ See Response to the Consultant's Report at 1 and 2.

Anticipated Noise Level

Stantec conducted the construction and operation noise studies for Telesto.⁴⁶ The construction phase of the project will take approximately 12 months and will be conducted in phases beginning with site preparation and progressing to the installation of equipment.⁴⁷ Heavy equipment generally used during site development includes bulldozers, graders, backhoes, impact pile drivers, loaders, and trucks.⁴⁸ Typical noise levels produced by construction equipment can range from 73 dBA (welder/torch) to as high as 101 dBA (impact pile driver) at 50 feet from the source.⁴⁹ Telesto indicated the use of pile drivers is the loudest part of construction and will take between six to eight months as the activity moves across the project area.⁵⁰

For the purposes of the noise study, an impact pile driver sound level of 117.0 dBA at one meter was used and three pile drivers were assumed to operate simultaneously.⁵¹ Stantec used the U.S. Environmental Protection Agency (EPA) standard to assess construction noise. The EPA standard is 70 dBA over a 24-hour period as the level of environmental noise, which will prevent any measurable hearing loss. The EPA standard also uses a noise level of 55 dBA outdoors and 45 dBA indoors as preventing activity interference.⁵² Telesto estimated that sound levels from the types of equipment employed

⁴⁶ SAR, paragraphs 11–15. See also Application, Exhibit H and BBC Report, Section C, at 36–43.

⁴⁷ Application, Exhibit H at 7–8.

⁴⁸ SAR, paragraph 34 and Application, Exhibit H at 8.

⁴⁹ Application, Exhibit H, Table 2 at 8.

⁵⁰ SAR, paragraph 36.

⁵¹ Application, Exhibit H at 4 and 6. Also see Telesto's Response to Staff's First Request, Item 39.

⁵² SAR, paragraph 30, and Telesto's Response to Staff's First Request, Item 43.

on this project will range from 79 to 90 dBA at 50 feet and that the maximum sound level at the nearest sound receptor from pile driver operation is 63 dBA.⁵³

In the sound mapping, Stantec found multiple noise receptors within the 55/dBA/1,000-foot contour line. The nearest non-participating residence is 450 feet from proposed project components and the nearest public noise receptor is the Elizabethtown Regional Airport which is over 2,000 feet away from the nearest proposed solar panel.⁵⁴

Telesto stated no noise mitigation measures are necessary during construction, other than the vegetative buffer.⁵⁵ Telesto argued that since not all equipment would be operating at the same time and the noise will be temporary no further mitigation is necessary.⁵⁶ Telesto indicated that there is no evidence showing that other possible noise mitigation measures would be effective.⁵⁷

During the operations phase of the project, noise will emanate from 37 inverters and the substation transformer.⁵⁸ Stantec's operational sound analysis encompassed 156 sensitive receptors within one-half mile of project facilities.⁵⁹ The analysis assumed that the inverters and substation were running at all times with an inverter sound power level of 95.5 dBA and a substation transformer sound power level of 107.7 dBA.⁶⁰

⁵³ Application, Exhibit H at 8–9.

⁵⁴ SAR, paragraph 29, and Exhibit H at 6.

⁵⁵ Telesto's Response to Staff's First Request, Item 42 and Response to Staff's Second Request, Item 3.

⁵⁶ Application, Exhibit H at 8.

⁵⁷ Telesto's Response to Staff's First Request, Item 42.

⁵⁸ Application, Exhibit H at 9. *Also see* SAR, paragraph 32.

⁵⁹ Application, Exhibit H at 6 and 9.

⁶⁰ Application, Exhibit H at 6 and Telesto's Response to Staff's First Request, Item 37.

Stantec found 77 receptors will experience maximum daylight sound levels of 35 dBA or less, 73 receptors between 35.1 and 40 dBA, and 6 receptors between 40.1 and 45 dBA.⁶¹

BBC evaluated the noise study conducted by Stantec for Telesto. BBC noted several discrepancies for noise receptor distances from construction activity.⁶² BBC noted that two noise receptor distances, R109 at 514 feet and R-230 at 515 feet, provided in Telesto's supplemental response to Staff's First Request were closer to the nearest inverter than the distance listed in the Stantec's Sound Study of approximately 850 feet.⁶³

BBC noted the Sound Study conducted by Stantec included a chart with sound levels of construction equipment from the Federal Highway Administration Handbook (Handbook). The sound level for an impact pile driver in the Handbook is 84 to 101 dBA at 50 feet.⁶⁴ BBC stated it was not clear how Stantec concluded that construction noise from pile drivers would be 79 to 90 dBA, specifically stating that "it is unclear why the pile drivers used at the Telesto project site would be substantially quieter than standard impact pile drivers used in other similar projects."⁶⁵ BBC calculated noise levels from pile driving at the noise receptors within Telesto's 55 dBA/1,000 feet sound contour and concluded that these specific receptors could experience noise levels up to 78 dBA.⁶⁶ BBC stated that there are 19 noise receptors within 600 feet of the nearest panel and that

⁶¹ Application, Exhibit H, Table 3 at 9.

⁶² BBC Report, Section C at 40.

⁶³ BBC Report, Section C at 40. See also Telesto's Supplemental Response to Staff's First Request (filed Sept. 20, 2022), Item 35.

⁶⁴ BBC Research and Consulting Report, Section C at 39 and Application, Exhibit H, Table 2 at 8.

⁶⁵ BBC Report, Section C at 39.

⁶⁶ BBC Report, Section C at 41.

these noise receptors would likely experience noise levels during pile driving between 74 and 76 dBA.⁶⁷ BBC concluded pile driving will have the most substantial impact on the nearest residences, but the sound will not be at a dangerous level and does not violate National Institute of Occupational Safety and Health guidelines.⁶⁸ BBC suggested multiple mitigation measures in addition to the vegetative screening planned by Telesto.⁶⁹

In its response to the BBC Report, Telesto claimed BBC used incorrect measurements when determining the number of noise receptors.⁷⁰ During the hearing, Telesto stated the distances to noise receptors provided in its supplemental response to Staff's First Request, Item 35, was based on its 5% Design Layout Plan (5% Design Plan) and that its updated 10% Design Plan contained the most accurate information, including new distances from pile driving to sound receptors.⁷¹ Telesto, through Stantec, testified that the critique of the BBC Report was based upon the new measurements in the 10% Design Plan, but acknowledged that BBC used the 5% Design Plan measurements when generating the conclusions in its report.⁷² Telesto finally confirmed during testimony that the new distances to noise receptors for the 10% Design Plan were not provided to the Siting Board or BBC.⁷³

⁶⁷ BBC Report, Section C at 41.

⁶⁸ BBC Research and Consulting Report, Section C at 42.

⁶⁹ BBC Research and Consulting Report, Section C at 43.

⁷⁰ Response to Report of Siting Board Consultant at 7–8.

⁷¹ HVT at 12:19:03–12:22:30.

⁷² HVT at 12:19:03–12:22:30.

⁷³ HVT at 12:22:30–12:22:48.

The Siting Board is troubled that Telesto would file an application and responses to information requests based on one set of information and then during the course of these proceedings update the information for itself and not provide it to the Siting Board or its consultant. Not only did Telesto fail to update the record with the new study, but it also maintained that the BBC Report was inaccurate and contrary to the evidence of record, although that assertion was proven to be incorrect. The Siting Board notes that Telesto, even after being questioned at the evidentiary hearing in this matter about where the referenced noise information was in the record, did not take the time after the hearing to ensure the new distances in the 10% Design Plan were contained in the record for consideration. Based upon the evidence in the record, the Siting Board cannot make a finding that the application is in compliance with the statutory requirement of disclosing the anticipated noise levels.

Impact on Roads, Railways, and Fugitive Dust

Construction is expected to take 12 to 15 months.⁷⁴ During that time there will be intermittent and temporary impacts to traffic flow on roads near the project.⁷⁵ The project will be accessed by: St. John Road/State Road 1357, running east-west on the northern boundary of the project; Hayden School Road, running along the southeastern boundary of the project; and, Cecilia Road that bisects the eastern portion of the project and connects St. John Road to Hayden School Road.⁷⁶ Stantec conducted a Traffic Impact Study and concluded there will not be significant changes in road traffic during

⁷⁴ Telesto's Response to Staff's First Request, Item 3.

⁷⁵ SAR, paragraph 39.

⁷⁶ BBC Report, Section B at 5–6.

construction.⁷⁷ There are no railways that will be affected during construction or operations.⁷⁸ BBC found there will be minimal traffic impacts on the roads near the project, but this will be alleviated with mitigation measures.⁷⁹

The operational phase will have little impact on roads and traffic. Few permanent employees or deliveries are expected.⁸⁰

There will be fugitive dust during the construction phase. Telesto indicated it will use water for dust control as well as covering trucks that are transporting dirt.⁸¹ Additionally, Telesto indicated that cut and fill will be balanced so dirt will not have to be removed from the site.⁸² Dust will not be a factor during operations.

Overall, the Siting Board finds that traffic, road, and fugitive dust issues could be addressed with Telesto's mitigation measures and those proposed by BBC.

II. KRS 278.710(1) – Criteria

Economic Impact on the Affected Region and State

Stantec performed an economic impact analysis for Telesto. According to the economic impact report, the proposed solar development will invest over \$150 million in Hardin County and the Commonwealth of Kentucky.⁸³ The project is expected to generate significant positive economic impacts, including the creation of construction

⁷⁷ Application, Exhibit I at 15.

⁷⁸ SAR, paragraph 40.

⁷⁹ BBC Report, Section B at 10.

⁸⁰ SAR, paragraph 39.

⁸¹ SAR, paragraph 41.

⁸² SAR, paragraph 41.

⁸³ Application, Exhibit M at 3.

jobs, expansion of the local tax base, and the benefits of having a long-term employer and long-term responsible corporate citizen in the region.

Stantec used the Jobs and Economic Development Impact (JEDI) modeling to perform the economic impact analysis. The modeling focused at the state level.⁸⁴ Telesto estimates that approximately 336 temporary full-time jobs will be created over the construction period with a direct payroll of approximately \$35.6 million and an equivalent economic impact.⁸⁵ The indirect and induced economic impacts are estimated to contribute another 170 jobs with an additional \$8 million in payroll and \$15.9 million in increased economic activity.⁸⁶ The total construction phase economic impact is estimated to be 506 total full-time equivalent jobs in Kentucky with a new payroll of \$43.6 million and an economic impact of 59.6 million.⁸⁷

The ongoing economic impact from the project's operational phase is estimated to be small, relative to the one-time impacts from the construction phase. During the project operations phase, Telesto estimates that one full-time job will be created with a direct payroll of approximately \$76,300 and an equivalent economic impact.⁸⁸ The indirect and induced economic impacts are estimated to contribute approximately another two jobs with an additional \$111,800 in payroll and \$266,000 in increased economic activity.⁸⁹ The

⁸⁴ Application, Exhibit M at 4 and Table 2.

⁸⁵ Application, Exhibit M at 4 and Table 2.

⁸⁶ Application, Exhibit M at 4 and Table 2.

⁸⁷ Application, Exhibit M at 4 and Table 2.

⁸⁸ Application, Exhibit M at 4 and Table 2.

⁸⁹ Application, Exhibit M at 4 and Table 2.

total operations phase economic impact is estimated to be three total full-time equivalent jobs in Kentucky with a new payroll of \$194,200 and an economic impact of \$459,900.⁹⁰

Stantec did not use the JEDI model to estimate the economic impact for Hardin County. The economic impact analysis was based a scaling factor of 2.49 percent derived from Hardin County's gross domestic product (GDP) relative to Kentucky's GDP.⁹¹ Based upon this scaling factor, Stantec estimated that the Telesto project would create eight direct full-time jobs and 13 indirect full-time jobs during construction. This would create a new payroll in Hardin County of \$1.1 million and an additional \$0.4 Million in increased economic activity.⁹² For the operations phase, Stantec estimated that the economic impact will be modest as compared to the construction phase but noted that Telesto will give preference to local residents for these jobs.⁹³

Telesto does not intend to negotiate an Industrial Revenue Bond (IRB) or a Payment in Lieu of Taxes (PILOT) Agreement with the Hardin County Planning and Zoning Commission.⁹⁴ Telesto estimates that it will pay over \$2.2 million in income taxes to Kentucky as a result of the direct and indirect employment during the construction phase.⁹⁵ Also, Telesto estimates that it will pay over \$10,000 annually in income taxes to Kentucky because of the direct and indirect employment during the operations phase.⁹⁶

⁹⁰ Application, Exhibit M at 4 and Table 2.

⁹¹ Application, Exhibit M at 4 and Table 2.

⁹² Application, Exhibit M at 5 and Table 3.

⁹³ Application, Exhibit M at 4.

⁹⁴ Telesto's Response to Staff's First Request, Item 34.

⁹⁵ Application, Exhibit M at 5.

⁹⁶ Application, Exhibit M at 5.

Telesto expects to be assessed approximately \$6.7 million in property taxes to Kentucky over the 35-year expected life of the project, approximately \$191,000 per year.⁹⁷ This is in comparison to the \$47,000 per year in property taxes from the current agricultural use.⁹⁸ Telesto estimated it will pay less than \$20,000 in sales taxes from purchased materials in Kentucky.⁹⁹

At the public information meetings in Hardin County, Telesto provided an information sheet that claimed there will be 150 to 200 direct jobs during construction.¹⁰⁰ The estimate of the number of jobs that will be created based upon Telesto's prior experience in developing solar projects and the anticipated demand for labor in Hardin County over the next two years.¹⁰¹ This figure, provided to the local public, is in contrast to the hearing testimony regarding the modeled estimate of 336 direct jobs in Kentucky and only 8 direct jobs in Hardin County.¹⁰² Telesto, through its expert witness, stated that an updated analysis that would support the public statement of 150 to 200 Hardin County jobs was not available.¹⁰³ The expert witness also testified that the JEDI model could have been run at the county level, but he was not supplied with the appropriate information from Telesto's corporate parent, LightsourceBP.¹⁰⁴

⁹⁷ Application, Exhibit M at 5–6.

⁹⁸ Application, Exhibit M at 7.

⁹⁹ Application, Exhibit M at 7.

¹⁰⁰ Application, Exhibit B.2.e at 1.

¹⁰¹ Telesto's Response to Staff's Second Request, Item 2d, and HVT at 09:48:20–09:49:20.

¹⁰² See HVT 09:49:20–09:49:52.

¹⁰³ Telesto's Response to Staff's Second Request, Item 2c.

¹⁰⁴ HVT at 11:04:40–11:04:59, HVT at 11:05:23–11:05:59, and HVT at 11:07:10–11:08:22.

Based upon the case record the Siting Board finds the project will have a positive economic impact in Hardin County and the state. However, the Siting Board is concerned about Telesto's economic impact estimates because the modeling overestimates the number of direct jobs and total jobs compared to Telesto's public statements about the project. The economic impact modeling predicts a small number of local hires compared to the overall employment for the construction phase. The Siting Board is concerned that either the modeling, over 300 jobs, or the public estimates, 150-200 jobs, are incorrect. This combined with the fact that Telesto would not supply its own expert with the necessary information to do county level modeling is troubling to the Siting Board. This divergence in the number of jobs being created also casts doubt on the estimated amounts salaries generated and income tax revenue. Even though these estimates vary, and the job figures are questionable, there will undoubtedly be a positive economic impact to the state.

Existence of Other Generating Facilities

Telesto indicated there are no other existing facilities near the proposed site that generate electricity.¹⁰⁵ Telesto indicated site selection is based upon favorable geography, willing landowner participation, and access to transmission lines. Telesto stated the Project will connect with the Central Hardin 138 kV substation that is owned and operated by EKPC.¹⁰⁶

¹⁰⁵ Application, paragraph 19.

¹⁰⁶ Application, paragraph 19.

Local Planning and Zoning Requirements

At the time the Notice of Intent to File an Application was filed, Hardin County Planning and Development had enacted the Development Guidance System Zoning Ordinance, 2009 (Hardin County Ordinances).¹⁰⁷ The Hardin County Ordinances included provisions for solar projects as a conditional use in the county and created a process for a Conditional Use Permit (CUP).¹⁰⁸ The process for obtaining a CUP was outlined in Hardin County Ordinance 15-8.¹⁰⁹ A CUP issued pursuant to Section 15-8 required a 100-foot setback from any project components.¹¹⁰

On June 23, 2022, Hardin Circuit Court invalidated Section 15-8 of the Hardin County Ordinances.¹¹¹ On June 27, 2022, Telesto's application was accepted for filing by the Siting Board. Telesto acknowledged in the application that if Section 15-8 was invalidated, there would be no local planning zoning requirements for the project as required by KRS 278.704(3), and it would be subject to the setbacks in KRS 278.706(2)(e).¹¹² Telesto subsequently filed the request for a deviation from the 2,000-foot setback requirement in KRS 278.704(3) and requested a 100-foot setback as envisioned in the Hardin County CUP process.¹¹³

¹⁰⁷ Application, paragraph 17.

¹⁰⁸ Application, paragraph 17. *See also* Application, Exhibit K.2 for the entirety of the Hardin County Planning and Development, Development Guidance System Zoning Ordinance, 2009.

¹⁰⁹ Application, Exhibit K.2 at 153.

¹¹⁰ Application, paragraph 17.

¹¹¹ *Hardin Solar, LLC, et al. v. The Hardin County Planning and Development Commission, et al.*, Hardin Circuit Court Case No. 22-CI-00197 (issued June 23, 2022).

¹¹² Application, paragraph 18.

¹¹³ Telesto's KRS 278.704(4) Motion for Deviation from Setback Requirements (filed Aug. 8, 2022).

On August 8, 2022, Telesto filed notice that it was withdrawing the motion for a deviation from the setback requirements.¹¹⁴ Telesto stated that the project is within a jurisdiction that currently has local planning and zoning; therefore, the Siting Board could not modify the setbacks.¹¹⁵ Telesto stated at some point after the conclusion of this matter, it will start the process to have the property where the project is located annexed into the city of Elizabethtown.¹¹⁶ If the properties are annexed, the land would be zoned Regional Industrial (I-2) and a solar facility would be a permitted use.¹¹⁷ The city of Elizabethtown's I-2 Zone setbacks are 150-foot front-yard setback, 100-foot side-yard setback, and 100-foot rear-yard setback.¹¹⁸ At the hearing, Telesto confirmed that annexation into Elizabethtown is still being planned, but the process has not been started. Telesto also stated that even after the annexation process is started the city could ultimately deny the request.¹¹⁹

Telesto indicated that the other potential option it is considering is having the properties re-zoned by Hardin County to the Heavy Industrial (I-2) zone.¹²⁰ Telesto stated that in Hardin County's I-2 Zone, manufacturing is a permitted use, and no CUP would be necessary for the Project.¹²¹ The I-2 Zone has a minimum 50-foot front-yard setback, 20-

¹¹⁴ Withdraw of Motion to Deviate and Notice of Zoning Status (filed Oct. 10, 2022) (Withdraw of Motion to Deviate).

¹¹⁵ Withdraw of Motion to Deviate at 1.

¹¹⁶ Withdraw of Motion to Deviate at 2.

¹¹⁷ Withdraw of Motion to Deviate at 2–3.

¹¹⁸ Withdraw of Motion to Deviate at 3

¹¹⁹ HVT at 09:45:16–09:46:53.

¹²⁰ Telesto's KRS 278.704(4) Motion for Deviation from Setback Requirements at 2.

¹²¹ Post-Hearing Brief at 3.

foot side-yard setback, and 35-foot rear-yard setback.¹²² Telesto believes that the solar facility would classify as a manufacturing facility based upon its reading of opinions from the Kentucky Office of the Attorney General regarding the taxation of solar property.¹²³

Telesto argued that at some point in the future the project will be in compliance with the local planning and zoning requirements when the property is annexed or rezoned, so the Siting Board should find the project meets the requirements of KRS 278.706(2)(d) and KRS 278.710(1)(e).¹²⁴ However, this is not what KRS 278.706(2)(d) and KRS 278.710(1)(e) require. The statutes require that the project, at the time of the application, be in compliance with local planning and zoning. Hardin County Ordinance Section 15-2 was invalidated on June 23, 2022. The application was not filed until June 27, 2022.

Telesto asserted that the Siting Board cannot deny an application for a construction certificate because the project does not have local approvals.¹²⁵ Telesto stated that other projects have been granted construction certificates before local approvals were granted.¹²⁶ The Siting Board notes that the difference in those projects and this case, is that those projects were moving through the local approval process when the construction certificate was issued by the Siting Board and the local law envisioned and permitted the type of project. Said differently, those projects were approvable by the local entities; this project is not. Currently, there is no local approval process for this project in Hardin County nor has Telesto initiated rezoning or annexation applications,

¹²² Post-Hearing Brief at 3.

¹²³ Post-Hearing Brief at 3.

¹²⁴ Post-Hearing Brief at 3.

¹²⁵ Post-Hearing Brief at 5.

¹²⁶ Post-Hearing Brief at 6–8.

either of which is a change in the local law, not an adherence to currently standing law. KRS 278.710(1)(e) requires the Siting Board to take into consideration whether the project was in compliance with local planning and zoning when the application was filed. For the above reasons, the Siting Board finds this project was not in compliance with local planning and zoning and therefore, does not meet the requirements of KRS 278.710(1)(e).

Impact on Transmission System

The Project is located within the territory of PJM Interconnection LLC (PJM). Telesto made an application to interconnect the project to the 138 kV Central Hardin Substation.¹²⁷ PJM has conducted a feasibility study and a system impact study.¹²⁸ The Project is still undergoing a facilities study with PJM and an affected systems study with LG&E.¹²⁹ Merchant upgrades have been requested for the project and are expected to be constructed before the project is operational.¹³⁰

Based upon the case record, the Siting Board finds that Telesto has satisfied the requirements of KRS 278.710(f) and the additional load imposed on the electricity transmission system, created by the generation of electricity at the Telesto facility will not adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission. This finding is based upon Telesto's commitment to the interconnection process and protocols consistent with KRS 278.212.

¹²⁷ Application, paragraph 20(a).

¹²⁸ See Application, Exhibit L.1 and Exhibit L.2. for the full transmission studies produced by PJM.

¹²⁹ Application, paragraph 20(a).

¹³⁰ Application, paragraph 20(a).

Compliance with Setback Requirements

KRS 278.704(2) requires a 1,000-foot setback from the property boundary of any adjoining property and a 2,000-foot setback from any residential neighborhood, school, hospital, or nursing home facility.¹³¹ Telesto argued that because Hardin County has local ordinances governing setbacks for certain zones, KRS 278.704(2) does not apply, the Siting Board cannot modify the setback requirements, and the local setbacks are not subject to a request for deviation.¹³² Telesto reasoned, that at some point, it will pursue rezoning the property to the Hardin County I-2 zone and the project will be in compliance with those setbacks.

The Siting Board finds there are not applicable local setbacks to this project, and therefore, Telesto cannot be in compliance with local setbacks. This is the exact situation KRS 278.704(4) envisions when allowing a request for deviation from the statutory setback requirement in KRS 278.704(2). However, Telesto withdrew the motion to deviate from the setback requirements and reiterated that the Hardin County I-2 Zone setbacks should apply.¹³³ The Siting Board cannot find that Telesto is in compliance with local setback requirements as required by KRS 278.710(g) because the property is not zoned I-2 and those setbacks do not apply to this project. The Siting Board also cannot find that a deviation of the setback requirements in KRS 278.704(2) is appropriate because Telesto withdrew the motion.

¹³¹ KRS 278.704(2).

¹³² Withdraw of Motion to Deviate at 3.

¹³³ See Withdraw of Motion to Deviate at 3 and Telesto's Post-Hearing Brief.

History of Environmental Compliance

No information appears in the record of any environmental violations by the applicant. Telesto states that neither it nor anyone with an ownership interest has violated any environmental laws, rules, or administrative regulations that resulted in a criminal conviction or a fine greater than \$5,000. Based on the record, Telesto is not the subject of any pending judicial or administrative actions.¹³⁴

Decommissioning

Telesto submitted a decommissioning plan as part of the application.¹³⁵ The applicable property leases contain covenants to the property owners regarding decommissioning.¹³⁶ Telesto committed to remove all project components regardless of the depth.¹³⁷ Based upon the case record, the Siting Board finds that Telesto has presented a satisfactory decommissioning plan with the commitment to remove all project components above and below ground regardless of depth.

CONCLUSION

After carefully considering the criteria outlined in KRS Chapter 278, the Siting Board finds that Telesto has not presented sufficient evidence to support the issuance of a Construction Certificate to construct the proposed merchant solar facility. Specifically, the Siting Board finds Telesto has not complied with the requirements of KRS 278.710(1)(e), KRS 278.710(1)(g), and KRS 278.708(3)(a)(4).

¹³⁴ Application, paragraph 21.

¹³⁵ Application, Exhibit N.

¹³⁶ Telesto's Response to Staff's First Request, Item 47.

¹³⁷ HVT Testimony at 09:47:10.

IT IS THEREFORE ORDERED that:

1. Telesto's application for a Certificate of Construction to construct an approximately 110 MW merchant solar electric generating facility in Hardin County, Kentucky, is denied.
2. This case is closed and removed from the Siting Board's docket.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

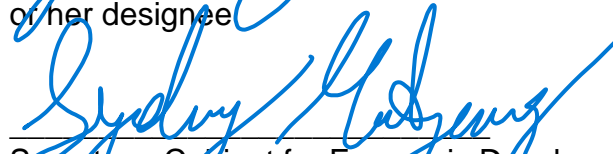

Chairman, Public Service Commission


Vice Chairman, Public Service Commission


Commissioner, Public Service Commission

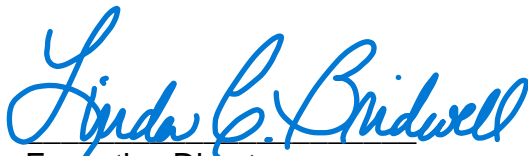
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w/permission


Secretary, Energy and Environment Cabinet,
or her designee


Secretary, Cabinet for Economic Development,
or his designee


Mark Hinton, ad hoc member

ATTEST:


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Public Service Commission
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