

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

In the Matter of:

ELECTRONIC APPLICATION OF LOST CITY)	
RENEWABLES LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY)	CASE NO.
250 MEGAWATT MERCHANT ELECTRIC SOLAR)	2024-00406
GENERATING FACILITY IN MUHLENBERG)	
COUNTY, KENTUCKY PURSUANT TO)	
KRS 278.710 AND 807 KAR 5:110)	

ORDER

This matter is before the Siting Board upon a motion for rehearing (Motion) filed on August 20, 2025, by 18 local landowners (Intervenors) for reconsideration of the Siting Board's July 28, 2025 final Order (Final Order) that conditionally approved a certificate for Lost City Renewables LLC (Lost City Renewables) to construct an approximately 250-megawatt (MW) merchant solar generating facility in Muhlenberg County. Lost City Renewables filed a response to Intervenors' motion for rehearing (Response) on August 27, 2025.

DISCUSSION AND FINDINGS

Signatures of Certain Siting Board Members

In their motion for rehearing, Intervenors argued that there were issues with the Final Order approval process concerning the two ad hoc members of the Siting Board, Muhlenberg County Judge Executive Mack McGehee and David Theodore Jessup, Jr.¹

¹ Intervenors' Motion for Rehearing (Motion) (filed Aug. 20, 2025) at 2.

Namely, Intervenor's argue that Mr. Jessup's signature line was improperly left off of the Final Order and that Judge Executive McGehee's signature was improperly included on the Final Order, referencing communications with Judge Executive McGehee concerning the Siting Board's approval process.² The communications with Judge Executive McGehee referenced by Intervenor's did not appear as an attachment to the Motion and is absent from the record.

Based upon the Motion, the Response, and the Final Order, and being otherwise sufficiently advised, the Siting Board denies Intervenor's Motion as it pertains to the approval procedure of the Final Order. While two members of the Siting Board are now dissenting from this Order, and Intervenor's alleged issues related to their approval or the absence of their signature line, the Final Order reflected support from five of the seven other members on the Siting Board, and as indicated by this Order, the Final Order continues to maintain the support of five of the seven members on the Siting Board. Therefore, even granting Intervenor's assertions, the signatures of the ad hoc members do not impact the approval of the Order by the majority of the Siting Board.

Setback from Residential Neighborhoods

KRS 278.704(2) requires that all proposed structures or facilities used for generation of electricity be at least "two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility." KRS 278.704(4) provides that "[t]he 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

² Motion at 2.

278.716.” Pursuant to KRS 278.704(4), the Siting Board granted a deviation from KRS 278.704(2)’s 2,000-foot residential neighborhood setback, generally reducing the distance to 1,000 feet, as measured by the distance from the nearest non-participating residential structure within the residential neighborhoods.

Intervenors argued that Lost City Renewables did not properly support its request for a deviation with evidence and that the Siting Board erred in its granting Lost City Renewables a deviation from KRS 278.704.³ Intervenors further argued that the Siting Board did not fully address or support a finding that the deviation satisfied the purpose of KRS 278.704(4), stating that the Siting Board’s analysis was “only one sentence long.”⁴

In its Response, Lost City Renewables stated that the Siting Board discussed the goals of the statutes mentioned in the deviation, and that the Siting Board indicated that the goals of KRS 224.10-280, KRS 278.216, and KRS 278.700 to 278.716, which look at the effects of the generation on nearby properties and the environmental effect of the generation, are the most relevant to the determination. Lost City Renewables indicated that the Siting Board specifically addressed those goals as it assessed the evidence in the record relating to any potential effects of generation on nearby properties and the environment. Lost City Renewables argued that the Siting Board weighed all of the facts in reaching its decision regarding the deviation from the setbacks.⁵

Based upon the Motion, the Response, and the Final Order, and being otherwise sufficiently advised, the Siting Board denies Intervenors Motion as to its challenge to the

³ Motion at 3.

⁴ Motion at 4.

⁵ Lost City Renewables Response to Intervenors’ Motion for Rehearing (Response) (filed August 27, 2025) at 2-9.

Siting Board's granting of a deviation from the residential neighborhood setback outlined in KRS 278.704(2). As was stated in the Final Order⁶, KRS 278.010 is the general definitions statute for KRS Chapter 278, KRS 278.212 pertains to the allocation of costs for transmission upgrades for interconnection by merchant generators, KRS 278.214 governs the order in which service should be interrupted in the event of an emergency and generally requires that service be interrupted to customers outside of a utility's certified territory before it is interrupted inside a utility's certified territory, and KRS 278.218 governs transfers in utility property, such that the setback requirements would have limited effect on the goals of those statutes. The remaining statutes, KRS 224.10-280, KRS 278.216, and KRS 278.700 to 278.716, look at the effects of the generation on nearby properties and the environmental effect of the generation. The Final Order addresses the purpose of these relevant statutes at length. Notably, KRS 278.700-716 is the Siting Board's enacting statute and is therefore referenced frequently throughout the Final Order, with entire sections devoted to the application's compatibility with the statutory purposes of KRS 278.700-716. The Siting Board's analysis of the application's effect on nearby properties and the environmental impact was addressed extensively. The granting of a deviation pursuant to KRS 278.704(4) was therefore properly supported with available evidence in the record.

Interpretation of KRS 278.704(2)

KRS 278.704(2) contains a provision that reads: "For purposes of applications for site compatibility certificates pursuant to KRS 278.216, only . . . the proposed structure or facility to be actually used for solar or wind generation shall be required to be at least

⁶ Final Order (Ky. Siting Board July 28, 2025) at 27.

one thousand (1,000) feet from the property boundary of any adjoining property owner” In their Motion, Intervenor argue that the language in the statute is “inherently ambiguous.”⁷ Intervenor state that KRS 278.704 covers merchant generation facilities, and that if the legislature intended for the relevant portion of KRS 278.704(2) to apply only to site compatibility certificates, the language would have been better included in KRS 278.216, which controls site compatibility certificates.⁸

Based upon the Motion, the Response, and the Final Order, and being otherwise sufficiently advised, the Siting Board denies Intervenor’s Motion concerning the 1,000 foot setback applicable to site compatibility certificates in KRS 278.704(2). In interpreting statutes, the goal is to carry out the intent of the legislature.⁹ Statutes are to be given a literal interpretation unless they are ambiguous.¹⁰ We should look to “the common meaning of the particular words chosen, which meaning is often determined by reference to dictionary definitions.”¹¹ However, dictionary definitions are not necessarily conclusive and legislative intent is the guiding principle.¹²

Here, the relevant portion of KRS 278.704(2) reads, “**For purposes of applications for site compatibility certificates pursuant to KRS 278.216**, only. . . the proposed structure or facility to be actually used for solar or wind generation shall be

⁷ Motion at 5.

⁸ Motion at 5.

⁹ *Mr. Roof of Louisville, LLC*, 681 S.W.3d at 121 (Ky. 2023); *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002); *see also* KRS 446.080(1)(“All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature.”)

¹⁰ *Commonwealth v. Plowman*, 86 S.W.3d at 49.

¹¹ *Jefferson Cnty. Bd. of Educ. v. Fell*, 391 S.W.3d 713, 719 (Ky. 2012) *citing* KRS 446.080(4).

¹² *Commonwealth v. Plowman*, 86 S.W.3d at 49.

required to be at least one thousand (1,000) feet from the property boundary of any adjoining property owner” (emphasis added). KRS 278.216 controls applications for site compatibility certificates filed by public utilities regulated by the Public Service Commission, not merchant generating facilities. Thus, by prefacing the relevant setback requirement with a statement indicating that that it was “[f]or purposes of applications for site compatibility certificates pursuant to KRS 278.216,” the legislature indicated it intended for the language only apply to such applications.

Intervenors argue that the location of the provision establishing the 1,000-foot setback in KRS 278.704(2) creates ambiguity and indicates its applicability to merchant generating facilities requesting a construction certificate from the Siting Board notwithstanding the language indicating it is applicable to applications for site compatibility certificates made pursuant to KRS 278.216. However, it is not the place of the Siting Board to find ambiguity based on the location of the provision where the plain language of the provision is clear. Moreover, KRS 278.216 references provisions in KRS 278.700 to KRS 278.716 and plainly indicates that portions of those statutes are applicable to applications for site compatibility certificates made pursuant to KRS 278.216, such that it is actually logical that the legislature would have included requirements specific to regulated utilities’ applications for site compatibility certificates in KRS 278.700 to KRS 278.716. Thus, the language establishing a 1,000-foot setback in KRS 278.704(2) relied on by Intervenors is not applicable to Lost City Renewables, and therefore, the Siting Board finds that Intervenors’ request for rehearing based on that setback requirement should be denied.

The Siting Board does note, however, that per Lost City Renewables' application, the nearest planned solar panel to a residence is 339-feet away.¹³ The Siting Board approved the application based on Lost City Renewables' proposed application and plan. Thus, as indicated in the Final Order, except where the Siting Board determined that stricter setback requirements should be applicable, the Siting Board expects Lost City Renewables to place panels, inverters, and substation equipment at distances that are at least as far from residences as the distances in its proposed plans, meaning that, in addition to the setback requirements for residential neighborhoods discussed in the Final Order, Lost City Renewables should not place panels, inverters, and substation equipment closer than 339 feet to any non-participating residential structure based on its own plans.¹⁴

However, in reviewing the setback requirements in the Final Order, the Siting Board recognizes that language in the Final Order may cause confusion regarding the applicable setback requirements. Specifically, Appendix A to the Final Order indicated that panels, inverters, and substation equipment should be placed at distances from noise receptors that are consistent with the distances to which Lost City Renewables has committed in its maps and site plans, which would include the placement at least 339 feet from residences, and then the Appendix stated that: "The Siting Board finds it necessary to implement a setback from residences of 100 feet from any panel or string inverter." Similarly, Appendix A stated that "Lost City Renewables shall apply the requisite setbacks from residential neighborhoods identified in this Order," and then stated that "Lost City

¹³ Application, Site Assessment Report (SAR), Appendix B, Preliminary Site Layout at 10.

¹⁴ See Final Order (Ky. Siting Board July 28, 2025) at 30-31, Appendix A, paragraph 16 at 4.

Renewables shall not place solar panels or string inverters, if used, closer than 150 feet from a residence . . .” The 100-foot setback was intended to be a catch-all residential setback for residences to which other further setbacks would not apply, but the Siting Board recognizes its inclusion creates confusion, because it will never apply given the 1000-foot setback from residences in a residential neighborhood, as discussed in the Final Order, and the fact that the plans did not include placing generating equipment within 339 feet of any residence, including those outside of a residential neighborhood. Residences were also inadvertently included as part of the 150-foot catchall setback, which again would never apply based on the plans and the statutory setbacks, with the deviations granted in the Final Order. Thus, to alleviate confusion regarding the application of the setbacks from residences, the Siting Board affirmatively states that a 1000-foot setback from residences in the residential neighborhoods should apply as discussed in more detail in the Final Order, and further states that Lost City Renewables should not place panels, inverters, and substation equipment within 339 feet of any non-participating residential structure. Further, the Siting Board finds that Appendix A to the Final Order should be amended to eliminate the language referring to the 100-foot and 150-foot setback for residential structures to alleviate any confusion regarding the applicable setback requirements.

IT IS THEREFORE ORDERED that:

1. Intervenor’s motion for rehearing is denied.
2. The second sentence of paragraph 16 of Appendix A to the Final Order be and is hereby deleted.

3. The fifth sentence of paragraph 16 of Appendix A to the Final Order be and is hereby amended to remove “residence,” as set forth below:

Nevertheless, Lost City Renewables shall not place solar panels or string inverters, if used, closer than 150 feet from a ~~residence~~, church, or school, 25 feet from non-participating adjoining parcels, or 50 feet from adjacent roadways.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission



Commissioner, Public Service Commission



Commissioner, Public Service Commission



Secretary, Energy and Environment Cabinet,
or her designee

by AH
w/ permission



Secretary, Cabinet for Economic Development,
or his designee

Judge Executive Mack McGehee, ad hoc member

David Theodore Jessup Jr., ad hoc member

Judge Executive Mack McGehee and
David Theodore Jessup Jr., ad hoc members
Dissenting

ATTEST:



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



DISSENTING OPINION OF JUDGE EXECUTIVE MACK MCGEHEE AND DAVID
THEODORE JESSUP JR., AD HOC MEMBERS IN CASE NO. 2024-00406

We write separately from the majority of the Siting Board, because we believe that a rehearing should be granted and Lost City Renewables LLC's (Lost City Renewables) application for a certificate of construction for an approximately 250-megawatt electric solar generating facility in Muhlenberg County, Kentucky should be denied.

Muhlenberg County is an agricultural community with plentiful arable farmland. This farmland should remain agriculturally productive and not be taken out of service to accommodate a solar generating facility. Such solar generating facilities should be sited on former coal mines where their impact on the land and surrounding communities will be more limited. We should be doing everything we can to encourage agricultural production on our land, not taking more acreage out of production for the sake of a multi-decade solar generating facility.

After hearing from residents, we also do not believe that the mitigation measures go far enough to protect against changes to the scenic surroundings, property values, and land use, particularly the mitigation measures related to setbacks from residential structures located outside of residential neighborhoods. The majority indicated in its rehearing order that it will require Lost City Renewables to locate generating equipment at least 339 feet from the nearest non-participating residential structure located outside of a residential neighborhood. However, after hearing from residents, we believe that locating portions of generating equipment as close as 339 feet to the nearest non-participating residential structure outside of a residential neighborhood is still too close to protect property values and the character of the surrounding area.

As representatives of Muhlenberg County, it is our job to ensure that the community has a voice in these proceedings. The overwhelmingly negative reaction in the local community requires us to reject Lost City Renewables' application and protect the agricultural character of the county.

For these reasons, we dissent from the majority's Order denying rehearing.

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

Mack McGehee

Judge Executive Mack McGehee, ad hoc member

D. T. Jessup, Jr.

David Theodore Jessup Jr., ad hoc member

*by AT.
w/ permission*

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