The Sun Shines Bright!

White Paper on Current Kentucky Solar Merchant Electric Development

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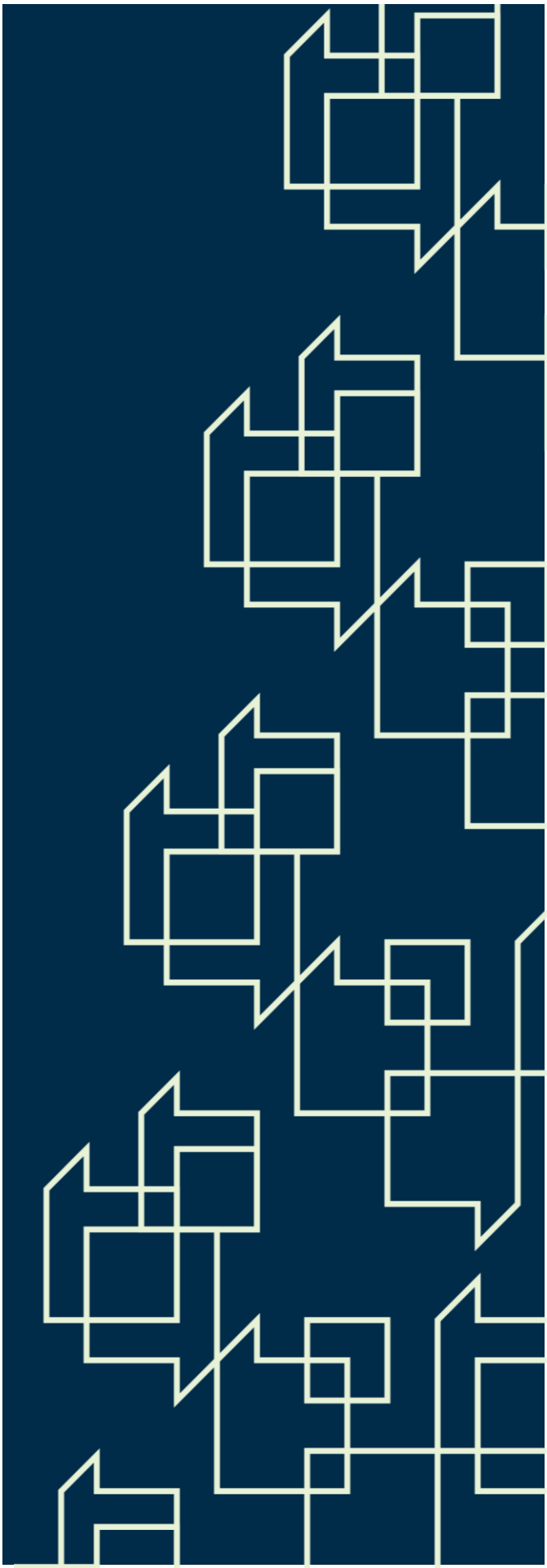
Bricker Graydon

TABLE OF CONTENTS



INTRODUCTION

In early 2023, analysts speculated that Kentucky was poised to become a national leader in new renewable energy generation. Has it? Is that coming? In some ways, yes. In others, not yet but the potential is still there.

In this update, we look at the latest in Kentucky utility-scale renewable energy development and what is likely next, including both challenges and opportunities for the industry.

We previously reported on important legal changes to the commonwealth-level permitting process in 2023 as a result of HB4, which became effective in July 2023. (See here.) No other meaningful changes in the statutory or regulatory scheme occurred in the second half of 2023 or the first quarter 2024. That stability has provided increased predictability to the process, which is desirable to developers.

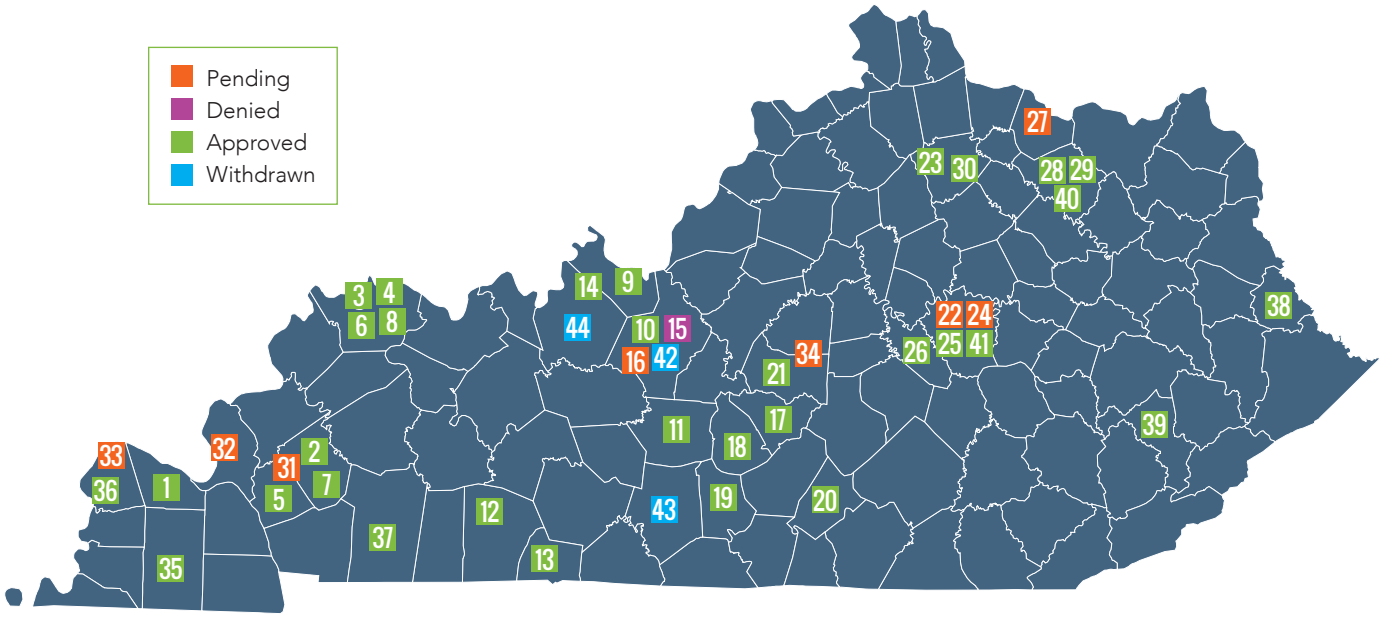
That said, queue and supply chain issues remain but are gradually improving, and those loosening logjams should also fuel more bullish readiness for developers—and financiers alike—to seek approval and move construction forward in Kentucky in the remainder of 2024 and forward.

As of the time of this publication, proceedings for approval of 43 utility-scale solar projects (ranging from 40 to 250 MW) have been commenced before the Board over the last four years since the Kentucky utility-scale solar growth pattern began. The Board has permitted 2.715 gigawatts (GW) of generating capacity, with more expected based upon several near-complete proceedings.

Kentucky Utility Scale Solar Proceedings

Current as of April 1, 2024

	NAME	COUNTY	MWs
1	McCracken County Solar	McCracken	60
2	Caldwell Solar	Caldwell	200
3	Henderson County Solar	Henderson	50
4	Unbridled Solar	Henderson	160
5	Ashwood Solar I	Lyon	86
6	Sebree Solar	Henderson	250
7	Golden Solar	Caldwell	100
8	Sebree Solar II	Henderson	150
9	Meade County Solar	Meade	40
10	Rhudes Creek Solar	Hardin	100
11	Thoroughbred Solar	Hart	50
12	Russellville Solar	Logan	173
13	Horus Kentucky	Simpson	69.3
14	Green River Solar	Breckinridge/Meade	200
15	Telesto Energy	Hardin	110
16	Stonefield Solar	Hardin	120
17	Flat Run Solar	Taylor	55
18	Horseshoe Bend Solar	Green	60
19	Glover Creek Solar	Metcalfe	55
20	Mt. Olive Creek Solar	Russell	60
21	Northern Bobwhite Solar	Marion	96
22	AEUG Richmond Solar	Madison	225
23	Bluebird Solar	Harrison	100
24	AEUG Boonesborough Solar	Madison	65
25	AEUG Madison Solar	Madison	100
26	Turkey Creek Solar	Garrard	50
27	AEUG Mason Solar	Mason	250
28	Fleming Solar	Fleming	80
29	AEUG Fleming Solar	Fleming	188
30	Blue Moon Energy	Harrison	70
31	Pleasant Valley Solar Farm	Lyon and Caldwell	125
32	Mantle Rock Solar	Livingston	65
33	GGSO (Gage Solar)	Ballard	20
34	FRON bn (Frontier Solar)	Marion and Washington	120
35	Banjo Creek Solar	Graves	120
36	Song Sparrow Solar	Ballard	104
37	Dogwood Corners	Christian	125
38	Martin County Solar Project	Martin	200
39	Bright Mountain Solar	Perry	80
40	Hummingbird Energy	Fleming	200
41	Pine Grove Solar	Madison	50
42	Hardin Solar	Hardin	85
43	Woodpecker Solar LLC	Barren	120
44	Clover Creek Solar Project LLC	Breckinridge	100



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Current Factors Affecting Utility-Scale Renewable Development in Kentucky

A variety of factors are currently driving the pace and locations of utility-scale solar development in Kentucky. Some key factors have not changed since our previous publications; others are emerging:

- **Redeployment of Reclaimed Coal Mine Land and Other Favorable Sites:**

Kentucky energy policy has recognized and focused on thoughtful redeployment of resources unique to the Commonwealth. The Kentucky Environmental and Energy Cabinet has invested substantial resources and expertise into developing a toolkit, called the "Hub," for utility scale solar generation development, with an emphasis on advanced GIS capabilities to aid in identifying desirable development sites, including but not limited to on reclaimed minefield sites. See https://kentucky-solar-toolkit-kygis.hub.arcgis.com/ and https://solar-siting-potential-in-kentucky-kygis.hub.arcgis.com/.

Chief among these for utility-scale solar development are tracts of reclaimed surface mine land. For example, on March 13, 2024, the Board approved the Bright Mountain Solar project in Perry County. The site is ideal in many ways: it is a mountaintop, well-reclaimed mine site that is not only large but level, has relatively few immediate neighbors, and—perhaps most important—is located in a county that has embraced new economic development opportunities. This approval follows the Martin County Solar project—now in construction—which also utilized former mine tracts to position lasting renewable generation.

In addition, brightfields—defined by the U.S. Department of Energy as solar projects on brownfields (i.e. contaminated land or closed landfills)—continue to be attractive opportunities for solar developers to diversify their development pipeline beyond traditional rooftop and greenfield locations. The number of potential locations for solar development on brightfields/brownfields is enormous. As of 2023, the U.S. EPA and National Renewable Energy Lab had pre-screened almost 200,000 of the over 450,000 brownfields and contaminated lands nationally for possible renewable energy development. Brownfield sites often have the right combination of characteristics—infrastructure, proximity to load centers, and low lease costs—needed to build successful projects.

Additionally, some of these sites have unique attributes that can lower development costs and shorten development timeframes. Many of these properties can offer developers a unique value proposition for renewable energy deployment (e.g., clear ownership and site control, completed site cleanup, and a motivated "offtaker" for the energy generated), and the ability to:

- Leverage existing infrastructure;
- Offer streamlined permitting and zoning;
- Reduce land costs and provide tax incentives;
- Gain community support through land revitalization efforts; and/or
- Protect open space.

But, while brightfields/brownfields offer unique opportunities, they also pose challenges. These locations are often contaminated or Superfund sites, requiring remediation and permitting with environmental regulators at the federal and state level. By way of further example, extensive, below-surface work at former landfill sites would often be prohibited. At sites such as these, to maintain the integrity of the landfill cap, developers may utilize a ballasted solar racking system in which the panels and supports rest on concrete blocks, rather than driven steel posts.

Recognizing the potential value and win-win opportunity of brightfield/brownfield development, Kentucky has created a program specific to their development. More information on the Kentucky Brownfield Redevelopment Program, can be found here.

In addition to these unique sites, greenfield development remains central to development strategy. Much of Kentucky is rural, with flat land located close to transmission lines available for development. Although not without some opposition, farmers continue to be interested in solar as an additional way to earn long-term income from their land, and Kentucky has a strong tradition of respecting private property rights.

This variety of site types offers many potential win-win development opportunities for responsible use and reuse of land.

- **Relatedly, location in both PJM and MISO, and near available transmission capacity:**

Kentucky sits both in the PJM interconnection transmission system, the world's largest electricity market, and in the MISO regional transmission interconnect. Solar generation facilities in Kentucky can supply projects throughout the PJM and MISO. In some cases, Kentucky projects can also help to fulfill other states' renewable energy requirements. Here, however, delays due to queue reform in the PJM have resulted in some slowdown of new project applications in 2023, but recent FERC measures are helping to clear the backlog. In the first quarter of 2024, two new utility-scale solar project proceedings have been commenced before the Board.

- **Inflation Reduction Act (IRA) driving clean energy development:**

The IRA of 2022 provided for unprecedented investment in the renewable energy sector. Bricker Graydon's robust **IRA Resource Center** provides **details** about how these incentives can and are specifically driving clean energy investment, including in Kentucky.

- **Corporate demand:**

This factor is still key. Much of the current project demand is still being driven by the private sector, as internal and external forces are pushing companies to focus on sustainability, including the development of new renewable energy generation projects. For example, in 2023 Kentucky recently saw investments totaling $9 billion for electric vehicle battery manufacturing and recycling facilities. Ford and SK Innovation announced the construction of twin battery manufacturing plants in Hardin County, Kentucky. Envision AESC also announced construction of a battery manufacturing plant in Warren County, Kentucky, which will be entirely powered by renewable energy. To round out Kentucky's new battery manufacturing market, Ascend Elements announced an electric vehicle battery recycling facility in Christian County, Kentucky. These new developments boost Kentucky's economy and provide an opportunity for renewable energy partnership.

- **Access to transmission capacity:**

As discussed above, Kentucky's legacy industrial and fossil generation sectors required significant transmission. As Kentucky's industry and traditional generation sector transitions, more transmission capacity has become available. In 2020, Kentucky led the country in retirements of coal-fired electric plants, with many in the process of being retired at present. However, the Kentucky legislature also appears to be balancing interests, as it enacted a controversial law, which became effective on March 24, 2023, creating a rebuttable presumption against retirement of fossil fuel electric generation facilities.

- **Local government demand:**

Also still applicable from our last report is Kentucky governmental entities' movement toward renewable generation and creating additional local demand. In early 2020, Louisville became the first city in Kentucky to commit to attaining a goal of powering 100% of the city's municipal operations with renewable energy by 2035. Frankfort likewise adopted goals requiring 100% clean renewable energy for city operations by 2023, and for city government and community wide by 2030. Numerous other municipalities have followed as a matter of policy, and are now in execution phased toward these goals.

- **Process predictability:**

While Kentucky faced a surge of utility-scale solar permit applications over the last few years that required rapid governmental ramp-up for processing, investigation, and decision, the outcome is a thoughtful and predictable process, providing stakeholders with comfort as to the timing and outcomes they can expect in seeking approvals. To that end, several of the measures contained in 2023's HB4 added stability to the process for developers and communities alike. For example, construction certificates were made valid for 3 years, rather than 2, adding flexibility. It also empowers the Energy and Environment Cabinet to ensure compliance with certificate conditions and establishes civil penalties not to exceed $2,500 per day for violations. Further, it provides specific and enhanced decommissioning and bonding requirements provide certainty to developers, landowners, and communities that future generations are protected from unfavorable consequences at the end of a project's useful life.

- **Workforce availability and commitment:**

Finally, as approved projects have been moving into and through construction, strong partnerships between local labor organizations and the industry have been

developing throughout the Commonwealth. The outreach by unions, combined with job fairs and desire for well-paying employment, have resulted in symbiotic economic benefits for projects and Kentuckians alike.

- **Is utility-scale wind coming?**

Some studies have demonstrated that Kentucky has sufficient wind resources to support utility-scale development in wind-powered utility-scale electric generation. To date, no utility-scale wind electric generation proceedings have been commenced. But that may change soon. Late last year Louisville Gas & Electric (LG&E) and Kentucky Utilities (KU) have constructed and as soon as March 2024 will be actively testing Kentucky's first utility-scale wind turbine. The turbine is located on the site of a coal-fired power plant in Mercer County, which also houses existing gas, solar, and hydroelectric facilities. This development is exciting not only for wind-generated energy independently, but also because wind and solar facilities (along with other types of generation facilities) are being successfully co-located at sites throughout the country.

Review of the Electric Generation and Transmission Siting Board Process

Before construction can begin on any large-scale solar facility or nonregulated transmission line within the Commonwealth of Kentucky, approval and a Certificate of Construction (Certificate) must be obtained from the Board, a subdivision within the PSC. The Board consists of the three members of the PSC, the secretary of the Energy and Environmental Cabinet or a designee, the secretary of the Economic Development Cabinet or a designee, and two local members appointed by the governor to serve for each project, one of who is the County Judge Executive or their designee, and the other a local resident.

Links to application forms are below:

- Application for Merchant Generating Electric Facility
- Application for Transmission Line

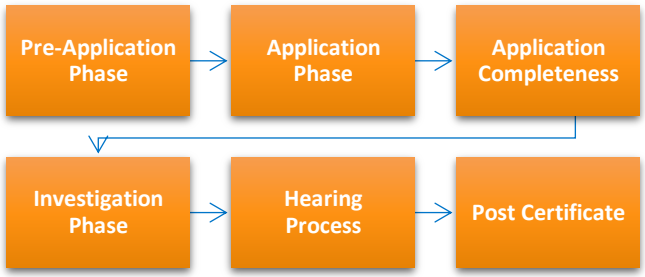
The Board has a comprehensive, multi-phase process for siting solar facilities that fall within the definition of a "merchant electric generating facility" or "certain nonregulated electric transmission line" pursuant to Kentucky Revised Statutes (KRS) § 278.700. Solar powered electric generating facilities fall within this definition if they are "capable of operating at an aggregate capacity of 10 megawatts or more; and sell the electricity they produce on the wholesale market, at rates and charges not regulated by the [PSC]." KRS § 278.700(2). Transmission lines fit the definition if they are under 138 kilovolts (kV) or, if 138 kV or more, are under one mile. An applicant may seek a construction certificate for both a generation facility and a nonregulated transmission line in one application, or separately, at its option.

To date the Board has approved 2.652 GW of utility-scale solar generation capacity.

The Process

Broadly, the Board process consists of five distinct phases that generally take 9-12 months to complete, absent rehearing or appeals:

1) Pre-application
2) Application
3) Application completeness
4) Investigation
5) Hearing process and decision
6) Post certificate



Pre-application Phase

Per KRS § 278.704(6), the PSC, or any city or county governmental entity where the project is located, may request that project representatives hold a public meeting, which must take place in the county in which the project is located. The meeting shall be held not more than 30 days from the date of the request. The

purpose of the meeting is to fully inform landowners and other interested parties of the full extent of the project being considered, including the project timeline. Accordingly, one or more representatives of the entity with full knowledge of all aspects of the project shall be present and shall answer questions from the public. Project representatives are obligated to issue public notice of the meeting in conformance with KRS § 278.704(8), which includes direct notice to adjoining landowners. On or before the date of the public meeting, project representatives shall provide notice of all research, testing, or any other activities being planned or considered to the Kentucky Energy and Environment Cabinet, PSC, Kentucky Transportation Cabinet, Attorney General, and Office of the Governor.

Because the County Judge Executive (or their delegee) is a participating member of the Board by statute, early conversations and development of local relationships to provide information about the project and potentially address concerns is quite important to the process. Additionally, in areas with applicable local zoning requirements, those take priority over state prescribed requirements, particularly concerning setbacks and the like. Under HB 4, local governments also have primacy on decommissioning and bonding.

And as a practical matter, prior to submitting an application to obtain a construction certificate from the Board for a solar generating facility, the project representatives must certify notice and service of the application on local prescribed government officials. Each project must also:

- Confirm and illustrate the project's conformance to all setback requirements as noted in KRS § 278.704(3), or as dictated by local planning and zoning laws.[1] Of note, Kentucky has a significant statutory setback requirement of 2,000 feet from areas defined as "residential neighborhoods" and from schools, hospitals, and nursing home facilities. Variances and waivers from this setback requirement can be sought through passage of a local zoning ordinance providing for other setback distances (or adherence to existing local zoning ordinances), or by a request for waiver filed with the Board in connection with the Application. These approaches can help to tailor appropriate setback distances based upon the particular circumstances of each project.
- Produce public notice of the project, in conformance with KRS § 278.706(c), which will be issued to adjoining landowners and the general public within 30 days of the application filing.
- Confirm and illustrate the project's compliance with all local ordinance and regulations (planning and zoning, noise ordinance, business requirements, etc.).
- Conduct and produce: (i) a study detailing the projected effect on electricity transmission within the State; (ii) an economic impact study; and (iii) a site assessment or NEPA compliance certification.
- Demonstrate all mandatory and voluntary public involvement program activities, which may include: evidence of public meetings and coordinating public notices, use of media outlets (radio, television, newspaper) to disseminate information relating to the project to the general public, direct mailers, fliers, newsletters, additional public meetings, establishment of a community advisory group, and any other efforts to obtain local involvement in the siting process.

The project also conducts a number of environmental, cultural, visual, decommissioning, and other studies to determine the overall impact of the project on the landscape and the public. These studies are summarized within and submitted along with the application. The application requirements are outlined in KRS § 278.706, and applications should be organized by mirroring this chapter of regulations.

For transmission lines, the project must submit the information required in KRS § 278.714, which includes a full description of the proposed route, including a map showing the location and proposed structures

[1] See below for more information on Local Zoning and the PSC.

supporting it, proposed rights-of-way, existing property lines and names of owners, and distances from identified locations such as residences and parks if within 1,000 feet. It must also include a full description of the proposed line and appurtenances, including initial and design voltages and capacities, length, terminal points, and substation connections. The application must also certify that the transmission line and appurtenances will be constructed and maintained consistent with the National Electric Safety Code.

Application Phase

In addition to presenting the information summarized above, a key component of the generation facility application is the required Site Assessment Report (SAR). By statute, the completed SAR must contain the following primary components:

1) A description of the proposed facility that shall include a proposed site development plan that includes:
   - Surrounding land uses for residential, commercial, agricultural, and recreational purposes;
   - The legal boundaries of the proposed site;
   - Proposed access control to the site;
   - The location of facility buildings, transmission lines, and other structures;
   - Location and use of access ways, internal roads, and railways;
   - Existing or proposed utilities to service the facility;
   - Compliance with applicable setback requirements as provided under KRS § 278.704(2), (3), (4), or (5); and
   - Evaluation of the noise levels expected to be produced by the facility;
2) An evaluation of the compatibility of the facility with scenic surroundings;
3) The 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 facility;
4) Evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; and
5) The impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility.

The SAR shall also suggest any mitigating measures to be implemented by the applicant to minimize or avoid adverse effects identified in the Report. Orders granting certificates in 2021-2024 have provided guidance on the Board's typical mitigating measures. It is a best practice to demonstrate compliance with these measures in the application to the extent possible.

In addition to these required components, the Board's inquiries to date during investigations, hearings, and in post-hearing data requests demonstrate it is interested in projects reporting on a number of other considerations in addition to those strictly required by statute in the Report. These include, for example, whether the project has a decommissioning plan for managing components at the end of the project's useful life, how the project plans to address nearby abandoned oil and gas wells, and visual screening and vegetation management plans. Again, minimizing such inquires by providing information in the application to address these requests when possible is a best practice.

In some situations, it is also necessary for a project to seek deviation from applicable setback requirements. In those instances, if filed timely along with the application, the motion will be considered with the application and is often a key focus of the Board's investigation.

Application Completeness

After the application is submitted to the Board, its staff conducts a review to determine that the application is complete. This is a preliminary review to ensure that the application contains enough information for the staff to conduct its investigation. If so, the Board will either issue a "no deficiency letter" in which the Board deems the application complete, or it will reject the application as incomplete. If rejected as incomplete,

the applicant will receive information about any deficiencies and have an opportunity to correct them.

Once the no deficiency letter issues, the Board initiates its formal investigation of the application.

Investigation Phase

During this phase, which lasts around 60-90 days, the Board conducts a thorough investigation of the application. This investigation usually includes informal or formal questions and data requests, as well as engagement of Board consultants to assist with and opine on the application.

Additionally, the Board and its counsel and consultant(s) may conduct a visit of the proposed project site, during which they may ask additional questions and take photographs for the Consultant's Report. The Board may issue several rounds of data requests to the project, which will inform the Consultant in preparing their report.

At the end of this process, the Board and/or its consultants file a report of their investigation, which includes proposed mitigating measures for the project, if approved. An applicant may generally approve of these conditions, or it may seek to demonstrate through the remaining process why certain recommended conditions should be eliminated or modified in the Board's final order.

Hearing Process

The Board process allows for intervention by interested parties, including the opportunity to conduct discovery. Such requests to intervene must be submitted within 30 days after the application is found to be complete.

The Board process contemplates two hearings. The first is a local public hearing, which is required and is the opportunity for non-intervening parties to share their opinions about the project. The second is the adjudicatory hearing before the Board, in which witness testimony and argument is presented for or against the application. This includes an opportunity for the applicant to present evidence to the Board regarding any mitigation measures. Technically, the adjudicatory hearing is only held if requested by a party or set by the Board, but as a practical matter, all applications to come before the Board to date have included an adjudicatory hearing in the process. If the application is contested, a written briefing may be included as part of the hearing process.

The applicant determines which witnesses to present for Board questioning at the hearing. These witnesses usually include a project representative who is highly versed on the company and the project, as well as a lead environmental consultant. Beyond those witnesses, the applicant can determine which areas of inquiry are likely or of particular interest and make witnesses available to address any such concerns.

The members of the Board and the Board's counsel can ask as many questions as appropriate to obtain information they feel is relevant to whether to grant the certificate. Counsel for the applicant can ask clarifying or supplemental questions as needed.

In contested proceedings, the applicant may submit a post-hearing brief, which typically addresses either comments made by local resident opponents to a project or asserts its rationale and supporting data for modifications of the mitigating measures proposed by the Board's consultant.

At times, the Board finds it needs additional information after the hearing, or to respond to questions asked but not able to be fully answered at the hearing. In those instances, the Board issues post-hearing requests to the applicant.

At the end of this process, the Board hopefully approves the project and issues an order approving the project and granting a certificate. By statute in Kentucky, the Board has 120 days—or 180 days if an adjudicatory hearing is held (which to date they always are)—to issue its decision on the application.

Post Certificate

A Board decision approving the project will include a set of conditions for the project's construction and operation, including decommissioning at the end of the project life.

Over time, the Board's conditions and mitigating measures have evolved to provide consistency in the Board's expectations. A review of these conditions and how they have evolved over time provides valuable insight so that the application itself can be prepared to meet the Board's expectations, as well as identify areas in which the Board may focus depending on unique aspects of the project site.

Within 30 days after the Board's decision, any party to the proceeding may seek reconsideration of the outcome or of any certain condition(s). And KRS § 278.712(5) then permits an administrative appeal by any party following the final decision of the Board to the Circuit Court in the county in which the facility is proposed to be constructed.

Once the certificate is issued, projects will typically commence the financing process and then initiate construction.

As newly lengthened by HB 4, once issued, a Certificate is valid for three years, and construction must commence within that time.

Moreover, as also established in HB 4, the Kentucky Energy and Environment Cabinet has been authorized to monitor and enforce the project's certificate conditions once the project has completed construction.

Review of Local Permitting, Zoning, and The PSC

The Kentucky merchant generating facility permitting scheme incorporates coordination with local governments into the state-level process. To that end, local government regulations (where they exist) have primacy over state setback and decommissioning requirements, applications, and site assessment reports. And as part of the state siting process, KRS § 278.706(2)(d) requires project representatives to certify that the project is compliant with all local ordinances and regulations. Additionally, project representatives must certify that the project adheres to applicable setback requirements, either imposed at the state or local level. The Board will give deference to local zoning and land-use regulations, as it pertains to setback requirements.

In one instance, the Board denied a project's application due to the failure to comply with local approvals. Specifically, the Board noted that the project, at the time of the application, must be in compliance with local planning and zoning. The project attempted to argue that the Board cannot deny an application for a construction certificate because the project does not have local approvals in hand, citing the Board's previous certificates issued before local approvals were granted. However, the Board distinguished these cases, noting that in those cases, the projects were moving through the local approval process when the construction certificate was issued by the Board and that "the local law envisioned and permitted the type of project." To the Board, the critical characteristic was that "those projects were approvable by the local entities," whereas for the project it denied, "there is no local approval process" that would enable compliance with existing local planning and zoning requirements.

The authority to enact land use and zoning regulations has been delegated by statute to counties and local governments.[2] In particular, cities and counties may enact local ordinances to facilitate planning and zoning regulation, and establish the coordinating structure and authority of a planning and zoning commission. Zoning regulation can be implemented at either the city or county levels, and can vary substantially from location to location.

Although many Kentucky communities have no zoning laws, those that enact zoning or other kinds of growth management regulations must first satisfy the following administrative prerequisites:

- **Planning Unit:** The jurisdictional borders of the area to be governed by such locally-enacted land use and zoning regulations, or the "Planning Unit," must be clearly defined. Three categories of Planning Units may be selected: (i) a county or city, acting independently (Independent Planning Unit), (ii) a county and the cities within its jurisdictional limits (Joint Planning Unit), or (iii) a regional group of counties and the cities within their collective jurisdictional limits (Regional Planning Unit).
- **Planning Commission:** The Planning Unit must create a Planning Commission, consisting of 5 to 20 members, to execute various administrative powers in conjunction with regulating land use, including the review and approval (after public hearing) of amendments to any zoning

[2] KRS, Chapter 100.

regulation or zoning map within the Planning Unit.

- **Comprehensive Plan:** The Planning Commission must create a Comprehensive Plan for the Planning Unit. The Comprehensive Plan serves as the "blueprint" or "road map" for all zoning processes and regulations in the Planning Unit. The Comprehensive Plan guides future development and includes a zoning plan for orderly growth and protection of land values, which property owners and investors should be able to rely on in making investments in real estate.

- **Board of Adjustment:** The Planning Unit must also create a Board of Adjustment, comprised of 3 to 7 members, that may, among other things, grant conditional use permits, variances, allow changes from one nonconforming use to another, and hear administrative appeals.

Accordingly, developers must be mindful of applicable municipal zoning codes and classifications for each property located within the project site. In addition to land use and zoning requirements, local compliance also requires the developer's awareness of and adherence to (*if applicable*):

- local noise control regulations;
- business operation regulations;
- local waste and disposal regulations; and
- local environmental regulations.

In September 2020, the Kentucky Resources Council developed a Model Solar Zoning Ordinance (Model Ordinance) to assist localities in adopting provisions to regulate the siting of solar energy facilities within their communities. The Model Ordinance is based upon a review of best practices from across the United States and is tailored to meet the unique needs of Kentucky, with the goal of encouraging appropriate siting of solar facilities and protection of the correlative rights of landowners to the use and enjoyment of their lands. The ordinance offers a "menu" of options in certain areas, to allow local officials in conjunction with county residents, to select the options that best meet their needs.

Coordination With Other Authorities, Stakeholders, and the Community

In addition to (and also required by) the Board requirements, solar projects are subject to environmental permitting and coordination requirements with numerous state and federal agencies, including but not limited to the Kentucky Energy and Environment Cabinet, Transportation Cabinet, Department for Environmental Protection, and Department of Revenue. For example, a project may require a stormwater construction general permit, wetlands-related permits, endangered species and cultural resources surveys, or some combination of these.

In combination with local official engagement, early engagement, clear communication, and careful drafting of agreements with local landowners can help to garner support for projects and avoid conflicts down the line. Project owners should consider coordinating with county commissioners, school districts, local economic development organizations, the Kentucky Cabinet for Economic Development, the Kentucky Energy and Environment Cabinet, and other local stakeholders.

Tax Considerations

Solar project financing and local economic development go hand-in-hand. Utility scale renewable energy projects and incentives.

Commercial scale solar arrays are classified as "Public Service Companies," titled as Electric Power Companies, and are subject to central taxation by the Kentucky Department of Revenue as directed by KRS § 136.120. In 2020, the Kentucky legislature amended KRS § 103.200(1)(a) to include "solar generated electricity" as an activity, business, or industry that qualifies for the use of industrial revenue bonds. An Industrial Revenue Bond (IRB) is an economic development tool that is used by state and local governments throughout Kentucky to help finance industrial development, as defined by KRS § 103.200. That development includes merchant solar electric facilities.

There are two components to the payments that a property subject to an IRB can make: one is a payment for state taxes, and the other is a payment for all types of local taxes. So, in other words, a Kentucky IRB can be issued by a county and seek both local exemptions and a state-level exemption. Often, when utility-scale solar developers engage in an IRB process with a local government entity, the parties enter into a 'payment in lieu of taxes' (PILOT) agreement, wherein the parties negotiate a tax payment intended to replace a portion of the local tax revenue that is forfeited through the local government's participation in the IRB process.

Bond funds may be used to finance total project costs, including engineering, site preparations, land, buildings, machinery and equipment, and bond issuance costs. Generally, the government entity serves as a conduit to provide participating developers with favorable borrowing terms, including a low interest rate and extended repayment schedule. Additionally, the portion of the project financed through the IRB may be exempted from the payment of local property taxes pursuant to KRS § 132.200(7). The property may also be eligible to be taxed at a reduced rate of $.015 per $100 of leasehold value if such reduction receives the prior written approval by the Kentucky Economic Development Finance Authority (KEDFA) as required by KRS § 103.210 and KRS § 132.020.

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