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Kentucky PSC Chairman Comments on Solar Development Siting Issues

Kentucky Public Service Commission Chairman Michael Schmitt provided some very candid commentary about his views on the development of solar projects in the Commonwealth at the Kentucky Chamber's 10th Annual Energy Management Conference. Chairman Schmitt also serves as the chair of the Kentucky Electric Generation and Transmission Siting Board (the "Siting Board").

For background, every merchant electric generating facility (including solar facilities) that will be capable of generating 10 megawatts of electricity or more are required to obtain a construction certificate from the Siting Board prior to commencing construction of that facility. Kentucky statutes set forth the key factors the Siting Board should consider in its determination to grant a construction certificate. Even so, the Siting Board has wide latitude to investigate various aspects of the proposed project and to condition its approval on any number of activities. With 23 applications for solar facilities now pending before the Siting Board, Chairman Schmitt has formed very strong opinions on several issues pertaining to solar development within the Commonwealth.

At the conference on May 14, 2021, Chairman Schmitt focused on several key factors that projects must address:

Establishing reasonable setbacks

The Chairman indicated that the Kentucky General Assembly should consider revising the Siting Board statutes to more appropriately address solar versus coal plant development, including establishing clear guidance on setbacks. He even went so far as to definitively state his belief that "200 feet is too close" for a development setback.

Mitigating construction noise

Consistent with his position in recent evidentiary hearings, the Chairman reiterated significant concerns about the impact of

construction noise on nearby noise receptors (such as churches, schools, and homes). He raised the perceived plight of nearby residents having to endure three to four months of jackhammering (referring to pile driving activities), but without receiving any of the financial benefits afforded to those leasing the property to developers. The Siting Board will almost certainly impose time and distance restrictions on this part of the construction activity, and the Chairman's comments indicate that additional noise mitigation may be required for future cases.

Providing economic benefits through local property tax payments

The Chairman questioned the ability of local PVAs to adequately assess the value of the land on which the projects are located and expressed concern about the local government receiving any benefits from the significant capital expenditures on these projects. The property tax treatment of these facilities is complicated, especially with the "public service company" structure, and developers are working to ensure local governments do realize property tax increases primarily through the use of Industrial Revenue Bonds and PILOT agreements.

Hiring local workers

The Chairman questioned the true impact of construction and operations jobs, speculating that the majority of the construction jobs are filled by out-of-town specialists and not by local residents. Developers should consider addressing this in their economic development reports filed as part of the Siting Board application.

Decommissioning the facility after the useful life of the project

In another call for legislative action, the Chairman expressed concern about developers being able to restore the project site at the end of its useful life without the support of a bond or other collateral to guarantee funds for the decommissioning. He thought the local or state government should be the beneficiary of those bonds and be responsible for overseeing the decommissioning. Developers should be prepared to address this part of the project

life cycle in their application.

Requiring evidentiary hearings

Chairman Schmitt indicated that he expects every case to have an evidentiary hearing for two reasons – to extend the date by which the Siting Board must rule on the construction certificate by 60 days and to explore the details on how the developer will address these issues.

Frost Brown Todd's [renewable energy industry team](#) is monitoring these issues raised by the Chairman, especially any activity related to potential legislative action, as well as monitoring the current Siting Board docket to assist clients with applications for construction certificates across Kentucky.

If you have any specific questions about solar development in Kentucky, please contact [Brian Zoeller](#) or [Greg Dutton](#) with Frost Brown Todd's [Energy](#) industry team.

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