

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY

Minutes of the 4th Meeting of the 2021 Interim

September 15, 2021

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Natural Resources and Energy was held jointly with the Interim Joint Committee on Agriculture on Wednesday, September 15, 2021, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Jim Gooch Jr., Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators Jared Carpenter, C.B. Embry Jr., Denise Harper Angel, John Schickel, Adrienne Southworth, Johnnie Turner, Robin L. Webb, Whitney Westerfield, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, Randy Bridges, McKenzie Cantrell, Myron Dossett, Ryan Dotson, Patrick Flannery, Chris Fugate, DJ Johnson, Norma Kirk-McCormick, Mary Lou Marzian, Suzanne Miles, Melinda Gibbons Prunty, Attica Scott, Bill Wesley, and Richard White.

Guests: Rebecca Goodman, Secretary, Energy and Environment Cabinet (EEC); Kenya Stump, Executive Director, Office of Energy Policy, EEC; Kent Chandler, Chair, Public Service Commission; Dr. Alison Davis, H.B. Price Professor, Department of Agricultural Economics, University of Kentucky; Tom FitzGerald, Executive Director, Kentucky Resources Council; Shellie Hampton, Legislative Director, Kentucky Association of Counties; Will Mayer, Executive Director, Clark Coalition; Julie Burton, Vice President, Citizens Voice of Mason County, Inc; Mark Walter, Director of Legislative and Regulatory Affairs, Savion, LLC; Emily Williams, Director of Development for Kentucky, Geenex Solar; and Betsy Engelking, VP of Policy and Strategy, National Grid Renewables.

LRC Staff: Stefan Kasacavage, Janine Coy, Kelly Ludwig, Nathan Smith, Susan Spoonamore, and Rachel Hartley.

Large Scale Solar and Land Use

Secretary Rebecca Goodman stated the cost of installing solar has declined, which has made solar competitive as an energy resource. Kentucky has many features that make solar feasible including: access to two wholesale electricity markets, PJM Interconnection and Midcontinent Independent System Operator (MISO), and land areas with favorable

characteristics that are near robust and reliable transmission infrastructure. There is increased interest for solar energy production because there is corporate demand for renewable energy.

Local communities can control the development of solar projects through local planning and zoning ordinances. Agricultural land can be maintained along with solar development, and installing a solar project is a decision made between the landowning farmer and the developer.

Kenya Stump stated the Kentucky Office of Energy Policy (OEP) is Kentucky's non-regulatory state energy policy program. It was established by the General Assembly during the 2018 legislative session through a reorganization of the Department for Energy Development and Independence. The OEP is designated as the state authority on energy policy issues affecting the citizens of the Commonwealth.

Solar siting in Kentucky is a local land use planning decision. Kentucky has an established process through the Kentucky Electric Generation and Transmission Siting Board for review of any independent solar project meeting the definition of a merchant generating facility. The OEP remains resource-neutral and provides information to all stakeholders for informed decision making.

In Kentucky renewable generating technologies accounted for approximately eight percent of the total net electricity generation in 2020. The largest share comes from the hydroelectric resources.

Currently, there are 28 merchant solar projects pending with the Kentucky Electric Generation and Transmission Siting Board. The projects represent 3,267 megawatts of proposed capacity and will use 30,000 acres. In general, one megawatt of installed solar requires 10 acres. Out of 25 million total acres in Kentucky, approximately 12 million acres is used for agriculture. The proposed 30,000 acres represents 0.23 percent of the agricultural land.

The National Laboratories of the United States Department of Energy uses models to predict future solar use. The impact of agricultural land use by 2040 is projected to be one percent. The most aggressive modeling for solar use projects three percent use of agricultural land, which would represent 55 percent of Kentucky's net electricity generation.

In response to Senator Wheeler, Ms. Stump stated there are no state incentives for solar, but there are federal tax credits. There would be an expanded workforce for construction at the onset of the project, but only three to six workers are required to operate the solar arrays once constructed.

In response to Representative Bowling, Ms. Stump stated any large scale utility project that would have ratepayer impact would be evaluated by the Public Service Commission (PSC). There is increased solar development because the cost has declined to be cost competitive with coal and natural gas resources. Solar cannot replace baseload resources unless solar is paired with a storage technology.

Merchant Solar Siting and the Electric Generation and Transmission Siting Board

Kent Chandler stated the PSC is a three-person panel that regulates the rates and service of nonmunicipal utilities across the Commonwealth, except electric providers that receive power from the Tennessee Valley Authority.

Merchant generation is a generation facility that is not owned by a utility. A siting board is created each time a merchant generator proposes to build a facility and applies for a construction certificate. The county or counties where the facility will be located dictate some of the members on the siting board for that project. The siting board review focuses on such factors as noise, visual impacts, economic impacts, and the potential impact on transmission lines. There are always five permanent members of any siting board including: the three members of the PSC, the secretary of the EEC or designee, and the secretary of the Cabinet for Economic Development or designee. There are also two local members, with one appointed by the Governor.

Mr. Chandler provided a brief overview of the siting board process and made recommendations for statutory changes including the need for an applicant to provide an explicit decommissioning plan to be approved by the siting board.

In response to Representative Gooch, Mr. Chandler stated the PSC is only involved in the siting process for merchant solar.

In response to Senator Hornback, Mr. Chandler stated individual projects are owned by Limited Liability Corporations (LLCs). It is important to know who owns the LLCs to know if they have a good environmental history and if they satisfy legal standards. Senator Hornback stated the taxpayers should not pay for decommissioning, instead it should be paid for by the LLCs.

Relationship Between Local Planning and Zoning and the State Solar Siting Process

Tom FitzGerald stated public involvement in the siting process is very important. The public needs to understand plans that are developed in their communities and the companies involved.

There was a need to find the best practices for zoning around the country and adapting them for Kentucky. The first issue for consideration is setbacks, which local

communities can determine through zoning and planning ordinances. Setbacks should apply to property lines, and not just the neighborhood as a whole. The second issue is the threshold for siting board jurisdiction should be lowered from 10 megawatt projects or greater because on average, 5-10 acres is used to produce one megawatt. The third issue is a construction certificate is required only when a facility is commenced to be constructed. A property can be damaged even before construction begins. Local communities should consider defining what activities are allowed on a property where a solar array has been proposed. The fourth issue is public notice should be required before property acquisition. The last issue is there is no clarity in the siting board statute as to whether local zoning approval or a construction certificate is needed first.

Adequate funding of decommissioning plans is essential. The landowner should not have to enforce any lease agreement against an LLC at the end of the solar array's useful life. A bond should be sufficient to assure that if the LLC defaults, then a third party could perform the decommissioning.

Shellie Hampton stated there has been increased interest in some counties about leasing or purchasing property for solar energy generation. There are 57 counties that have some form of planning and zoning. The Kentucky Association of Counties provides information to members regarding solar projects and helps to educate them on current law. County level decision making is critical.

Consideration for Future Utility Scale Solar Farm Developments

Dr. Alison Davis, H.B. Price Professor, Department of Agricultural Economics, University of Kentucky, stated that she had facilitated numerous land use discussions regarding the optional placement of utility-scale solar farms in and around residential, commercial agriculture, and industrial. She said that Kentucky was not yet a significant player in utility-scale solar farming. However there are several other states that have been involved with solar farming for several years, which means that Kentucky and local communities will be able to review their policies and comprehensive plans in order to make sound decisions. Dr. Davis stated that it is important that individual farmers, communities, and local leaders prioritize lands of marginal use for utility-scale solar farming instead of using prime farm land. Other considerations should include having lease contracts reviewed by a lawyer familiar with industry practices and requiring that contracts contain stipulations that the lands be preserved. In addition, for farmers over 60, it is critical to make decisions regarding succession plans. Local communities should proactively adopt policies within its planning and zoning ordinances. The more community leaders and developers understand local values and policies, the easier it will be to develop a project that is acceptable to the community. There are positive and negative consequences with utility-scale solar farming, and these land use decisions should be given careful consideration.

In response to Senator Hornback, Dr. Davis said that there has been some conversation about using the PACE program or a PDR program to help with retaining farmland.

Industrial Solar on Farm Land

Will Mayer, is the Executive Director, of the Clark Coalition, which is a land use advocacy organization promoting smart growth, sustainable economic development, and governmental transparency in Clark County. The coalition was formed in May 2020, to address the complex industrial solar issues facing the community. He said that there are over 100 proposed industrial-scale solar developments throughout Kentucky totaling 25 to 60 million solar panels. Mr. Mayer stated that there is a significant lack of understanding solar development, federal tax policy, and the siting framework. He said that most solar ordinances and laws in Kentucky are being changed by aggressive out-of-state and foreign developers which allow the majority of benefits to accrue to the developers, while the costs are borne by Kentuckians. Some of the complex issues include the environmental, economic, fiscal, property value impacts, as well as the effect on the quality of life in the community. If handled correctly, industrial solar could present an opportunity. If not, then there would be a threat to existing industries, property owners, and local and state government entities. He said the state's role should include regulating decommissioning and reclamation, ensuring adequate bond requirements, and providing sufficient code and environmental regulation enforcement. Local communities should maintain local control of siting decisions and develop a comprehensive plan to include preserving high value farmland. He said the agricultural fiscal impact for Clark County is approximately \$197,034,444.

Julie Burton, Vice President, Citizens Voice of Mason County, said that their group has been meeting to discuss agricultural solar issues and appreciated the information presented today.

Comments from Solar Providers

Mark Walter, Director of Legislative and Regulatory Affairs, Savion, LLC, said that Savion was a utility scale solar and energy storage development company that does not own or operate the assets. Savion works to get all the local agreements in place with communities to do the interconnection work with the utility. When the project is ready to be constructed, it is sold to someone else who will own and operate the solar utility. Mr. Walter said that Savion has over 900 megawatts in development in Kentucky, which equates to approximately \$1.2 billion in capital investments to be made within the next three to five years. He said that Savion is a member of the Mid-Atlanta Renewable Energy Coalition (MAREC) whose mission is to improve and enhance the opportunities for renewable energy. According to information collected by MAREC, the percentage of prime farmland that could realistically be used in Kentucky for solar is 0.2 percent.

Mr. Walter explained that the Martin County project is close to having a local hearing with the siting board, and then a decision will be made in November. Once approved, construction will begin by 2022. He also noted that the project is sited on a re-claimed surface coal mine. Savion will pay the Martin County community \$300,000 a year for thirty years under the agreement.

Mr. Walter stated that Savion leads the way in decommissioning standards for solar facilities. He said that SB 760 recently passed in Texas and is the top of the line standard for decommissioning. He said the bill also created standards for the salvage value that can or cannot be counted. He noted that Savion's decommissioning standards are tied to the lease – not the permit or the owner.

Emily Williams, Director of Development for Kentucky, Geenex Solar, explained that solar provides the cheapest levelized cost of electricity and that is why more utilities are mixing renewables in their portfolio. Communities benefit from the economic impact and high paying jobs that come with building solar projects. She said the reason that certain sites were more suitable for solar projects is because of their proximity to transmission assets and capacity availability. She said that Geenex hosts events in order to educate folks on solar and the use of their land. In response to an earlier question, she stated that the Commonwealth of Kentucky's Constitution prohibits a locality from offering a direct tax abatement. It has to go through the industrial revenue bond process. Industrial revenue bonds not general obligation bonds, meaning that a county would not be responsible for the bond.

Betsy Engelking, VP of Policy and Strategy, National Grid Renewables (NGR), stated that NGR is a leading North American independent developer and operator of utility-scale renewable energy and battery storage products. NGR was founded by a farmer who thought some deals being offered to him and other farmers by developers to put wind turbines on farmland in Minnesota were not good for the farmer. She said that NGR consults with farmers, invests in the community, and creates a charitable fund for 20 years as the project operates. She stated that developers are private investors that bring investments into a state and make agreements with homeowners who want solar farms. She said that decommissioning bonds were more like an insurance policy that is paid to make sure that the money is there to take everything out of the ground at the end of a project. NGR feels that a lot of the development in the renewable industry is about helping farmers to preserve their farms.

In response to Senator Hornback, Ms. Engelking stated that every form of energy generation receives some kind of a federal subsidy.

There being no further business, the meeting was adjourned.