

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF MEADE	)	
COUNTY SOLAR LLC FOR A CERTIFICATE	)	
OF CONSTRUCTION FOR AN	)	
APPROXIMATELY 40 MEGAWATT	)	CASE NO.
MERCHANT ELECTRIC SOLAR GENERATING	)	2020-00390
FACILITY IN MEADE COUNTY, KENTUCKY	)	
PURSUANT TO KRS 278.700 AND 807 KAR	)	
5:110	)	

ORDER

On August 26, 2021, Meade County Solar, LLC (Meade County Solar) filed a motion requesting Confidential Treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Siting Board grant confidential protection for 30 years for the four leases it provided under seal in response to the Siting Board Staff's Second Request for Information (Siting Board Staff's Second Request), Item 1.

In support of its motion, Meade County Solar argues that the leases that it has entered into with the landowners for the proposed solar project should be confidential in their entirety. The leases contain certain financial information related to lease term, rental amount, and remedies in the event of dispute, and contain specific negotiated-for commercial terms and conditions. Meade County Solar argues that this information, if disclosed to the public, could unfairly and irrevocably prejudice both Meade County Solar and its affiliates by disclosing terms that could be utilized by other potential landowners or their representatives, or similarly by industry competitors, in this or future development

projects to their substantial commercial advantage. Meade County Solar relies on KRS 61.878(l)(c)(1) that states, “Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Meade County Solar cites to *Hoy v. Kentucky Industrial Revitalization Authority*<sup>1</sup> and further argues that the leases in their entirety should be classified as confidential because they contain “information concerning the inner workings of a corporation [which] is ‘generally accepted as confidential or proprietary.’”<sup>2</sup> Notably, *Hoy* involves information submitted in an application for investment tax credits, which was exempt under another section, KRS 61.878(1)(c)(2). The language quoted by Meade County Solar refers to documents showing “a financial history of the corporation, projected cost of the project, the specific amount and timing of capital investment, copies of financial statements and a detailed description of the company's productivity, efficiency and financial stability.”<sup>3</sup> None of the information at issue in *Hoy* is contained in the leases sought to be treated as confidential material

Having considered the motion and the documents at issue, the Siting Board finds that Meade County Solar’s motion should be granted in part and denied in part. The Siting Board finds that the specific designated material set forth below in paragraphs a–e is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110(5).

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<sup>1</sup> *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995).

<sup>2</sup> *Id.* at 768.

<sup>3</sup> *Id.*

The Siting Board finds only the material terms contained in Meade County Solar's leases with participating landowners meet the criteria for confidential treatment. Material terms as defined for the purposes of this Order are:

- a. The lease amount;
- b. Terms of escalation of lease payments;
- c. Remedies available to the parties of the lease for nonperformance of the terms;
- d. Economic terms other than lease rates and related escalations such as signing payments, crop damage calculations, construction rent amounts, extension fees, and holdover rent amounts; and
- e. The structure of the lease term including the outside date for the rent commencement date.

The above-detailed material terms of the leases provided in Meade County Solar's responses to Siting Board Staff's Second Request are exempted from public disclosure because the terms are details that could permit a competitor of the Meade County Solar an unfair commercial advantage pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110(5). The remaining terms governing the leases do not meet that criteria for confidentiality because they are general contract terms, and for those non-material terms the request for confidential treatment should be denied. The Siting Board has previously held that leases in their entirety are not entitled to confidential protection because of the failure to meet the requisite standard for exemption from disclosure. Therefore, the four leases do not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:110(5).

Lastly, in keeping with standard practice, personal contact information such as phone numbers and email addresses will also be kept confidential pursuant to KRS 61.878(1)(a), and 807 KAR 5:110(5), which prohibit disclosure of information that could result in an unwarranted invasion of personal privacy if publicly disclosed.

IT IS THEREFORE ORDERED that:

1. Meade County Solar's August 26, 2021 motion for confidential treatment for the four leases is granted in part and denied in part.
2. Meade County Solar's motion for confidential treatment is granted solely for the material terms of the four leases as defined within this Order.
3. Meade County Solar's August 26, 2021 motion for confidential treatment for all remaining non-material terms of the leases is denied.
4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 30 years or until further Order of this Siting Board.
5. Use of the designated material granted confidential treatment by this Order in any Siting Board proceeding shall comply with 807 KAR 5:110(5).
6. Meade County Solar shall inform the Siting Board if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.
7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Applicant shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the

exclusions from disclosure requirements established in KRS 61.878. If Meade County Solar is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Siting Board shall deny the request for inspection.

8. The Siting Board shall not make the requested material for which confidential treatment was granted available for inspection for 20 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Applicant to seek a remedy afforded by law.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Meade County Solar objects to the Siting Board's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to 807 KAR 5:110(5). Failure to exercise either of these rights will be deemed as agreement with the Siting Board's determination of which materials should be granted confidential treatment.

11. Within 20 days of the date of service of this Order, Meade County Solar shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which Meade County Solar's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 20 days from the date of service of this Order to allow Meade County Solar to seek a remedy afforded by law.

By the Kentucky State Board on Electric  
Generation and Transmission Siting



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bridwell". The signature is written in a cursive style and is positioned above the printed name and title.

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

Case No. 2020-00390

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