

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

In the Matter of:

ELECTRONIC APPLICATION OF GOLDEN)	
SOLAR, LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 100)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2020-00243
GENERATING FACILITY IN CALDWELL)	
COUNTY, KENTUCKY)	

ORDER

On August 24, 2022, Golden Solar, LLC (Golden Solar) filed a petition, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for five years for documents contained in the application.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁴ KRS 61.878(1)(a) grants confidential protection of information

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

⁴ 807 KAR 5:110, Section 5(2)(d).

that if disclosed would create an invasion of personal privacy.⁵ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

DISCUSSION AND FINDINGS

In support of its petition, Golden Solar argued that the material terms of the leases provided in Exhibit I of the application should be granted confidential protection because the leases contain information that if disclosed would create an unfair advantage to competitors in negotiating lease agreements.

Having considered the petition and the material at issue, the Siting Board finds that Golden Solar’s petition for confidential treatment for the material terms of the leases provided in Exhibit I of the application are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5. Material terms are defined as including:

1. The lease amounts;
2. Escalation of lease payments;
3. Remedies available to the parties of the lease for nonperformance of the terms;
4. Economic terms other than lease terms and related escalations such as signing payments, crop damage calculations, construction rent amounts, extension fees, and holdover rent amounts; and

⁵ KRS 61.878(1)(a).

5. The structure of the lease term including the outside date for the rent commencement date.

Golden Solar also requested that the Phase I Environmental Site Assessment (ESA) provided as Exhibit H, Attachment H of the application and the Karst Survey provided as Exhibit H, Attachment I of the application be granted confidential protection based on KRS 61.878(1)(c)(1). Golden Solar argued these two documents contain commercially sensitive information and provide insight into the inner workings of Golden Solar. Golden Solar also argued that if there is public disclosure of the ESA and the Karst Survey potential competitors will have an unfair commercial advantage. Golden Solar argued that the documents are trade secrets that should be exempt from disclosure.

Having considered the petition and the material at issue, the Siting Board finds that Golden Solar's petition for confidential treatment of the Phase I ESA and Karst Survey is denied. The Phase I ESA and Karst Survey are generated by consultants and do not contain any specific information regarding how Golden Solar evaluates projects or contain any trade secrets. The Siting Board further notes that these studies are routinely submitted in applications to the Siting Board and have never been accorded confidential treatment. Therefore, the Phase I ESA provided as Exhibit H, Attachment H of the application and the Karst Survey provided as Exhibit H, Attachment I of the application do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Golden Solar's petition for confidential treatment is granted in part and denied in part.

2. Golden Solar's petition for confidential treatment for the material terms of leases, as defined above, provided in Exhibit I of the application is granted.

3. Golden Solar's petition for confidential treatment for the Phase I Environmental Site Assessment provided as Exhibit H, Attachment H of the application and the Karst Survey provided as Exhibit H, Attachment I of the application 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 five 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, Section 5.

6. Golden 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, Golden Solar 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 Golden 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 30 days from the date of

service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Golden Solar 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 Golden 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, Section 5(4), or judicial review of this Order pursuant to KRS 278.712(5). Failure to exercise either of these statutory rights will be deemed as agreement with the Siting Board's determination of which materials should be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Golden 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 Golden Solar's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Golden Solar to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

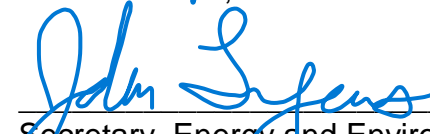


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Vice Chairman, Public Service Commission



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Secretary, Energy and Environment Cabinet,
or her designee

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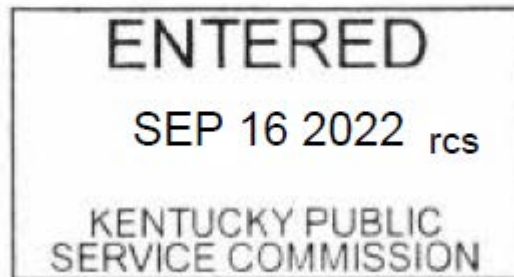


Larry Curling, ad hoc member

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