

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)	CASE NO.
100 MEGAWATT MERCHANT ELECTRIC SOLAR)	2020-00243
GENERATING FACILITY IN CALDWELL)	
COUNTY, KENTUCKY)	

ORDER

On October 14, 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 the names and contact information of neighboring landowners who engaged in written communications with Golden Solar after public information meetings. Golden Solar also requested confidential protection for all of the content of these written communications. Golden Solar requested that the Siting Board grant confidential treatment to the designated material for five years.

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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

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 that if disclosed, would create an invasion of personal privacy.⁵ KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.⁶

DISCUSSION AND FINDINGS

In support of its petition, Golden Solar argued the personal identifying information in the written communications should be granted confidential protection because it would be an unwanted invasion of personal privacy for the names, addresses, and other identifying information to be disclosed. Golden Solar also argued that the content of these written communications should be exempt from public disclosure pursuant to KRS 61.878(1)(i) because the written communications are preliminary correspondence. Golden Solar argued that the disclosure of the e-mails by neighboring landowners would have a chilling effect on landowners providing their feedback and may subject those landowners to potential harassment.

Having considered the petition and the material at issue, the Siting Board finds that Golden Solar's petition should be granted in part and denied in part. The Siting Board finds that the names, addresses, phone numbers, and e-mail addresses in the designated material for which Golden Solar requested confidential treatment meet the criteria for

³ KRS 61.878.

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(i).

confidential treatment and are exempted from public disclosure pursuant to KRS 61.8781(a) and 807 KAR 5:110, Section 5.

The Siting Board further finds that the request for confidential treatment should be denied as to the content of the written communications. The Siting Board has previously held that written correspondence received from members of the local community are not entitled to confidential protection, because these communications are important indications of the developer's responsiveness to local concerns about the project.⁷ There is also no evidence that disclosure of the written communications with the names, addresses, phone numbers, and e-mail addresses redacted will create an invasion of personal privacy. Therefore, the contents of the correspondence do not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a), KRS 61.878(1)(i), 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 is granted with respect to the names, addresses, phone numbers, and e-mail addresses in the written communications.

⁷ Case No. 2020-00242, *Electronic Application of Unbridled Solar, LLC for a Certificate of Construction for an Approximately 160 Megawatt Merchant Electric Solar Generating Facility and Nonregulated Electric Transmission Line in Henderson and Webster Counties, Kentucky* (Ky. PSC May 3, 2022), Order at 4.

3. Golden Solar's petition for confidential treatment is denied with respect to the contents of the written communications other than the names, addresses, phone numbers, and e-mail addresses.

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 from the date of filing of Golden Solar's application or until further order of the 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, 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



Chairman, Public Service Commission

Vice Chairman, Public Service Commission




Commissioner, Public Service Commission

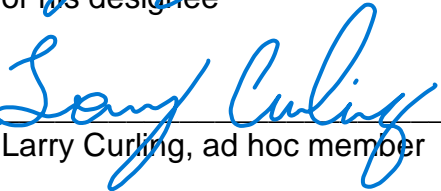


Secretary, Energy and Environment Cabinet,
or her designee

*by KAC
w/ permission*




Secretary, Cabinet for Economic Development,
or his designee



Larry Curling, ad hoc member

ATTEST:



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



*Courtney Pelissero
Attorney
National Grid Renewables
8400 Normandale Lake Blvd.
Suite 1200
Bloomington, MINNESOTA 55437

*Dixie G Cherry
Resident Representative
101 Queen Ann Court
Princeton, KENTUCKY 42445

*Honorable Jason R Bentley
Attorney at Law
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Kathryn A Eckert
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Katherine Yunker
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Larry Curling
Caldwell County Judge Executive
100 East Market Street
Princeton, KENTUCKY 42445

*Melissa Schmit
Attorney
National Grid Renewables
8400 Normandale Lake Blvd.
Suite 1200
Bloomington, MINNESOTA 55437