

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

In the Matter of:

ELECTRONIC APPLICATION OF GREEN RIVER)	
SOLAR, LLC FOR A CERTIFICATE TO)	
CONSTRUCT AN APPROXIMATELY 200-)	
MEGAWATT MERCHANT SOLAR ELECTRIC)	
GENERATING FACILITY IN BRECKINRIDGE)	CASE NO.
COUNTY AND MEADE COUNTY, KENTUCKY)	2020-00387
PURSUANT TO KRS 278.700 AND 807 KAR)	
5:110)	

ORDER

On August 27, 2021, Green River Solar, LLC (Green River Solar) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for ten years for the responses to Siting Board Staff's First Request for Information (Staff's First Request) Items 3(b) and 24(b).

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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

exemptions is applicable.⁴ 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 motion, Green River Solar stated that the response to Staff’s First Request, Item 3(b), required it to provide the easements that have been negotiated with landowners that are not part of the project. Green River Solar’s response to Staff’s First Request, Item 24(b), required Green River Solar to provide the leases for the property to be used in the solar project. Green River Solar argued that the easement agreements and leases contain information about pricing and other terms that if were made public would place Green River Solar at a competitive disadvantage. Others would know the pricing of Green River Solar’s property agreements and could use that to the detriment of Green River Solar.

Having considered the motion and the material at issue, the Siting Board finds that the material terms of leases contained in the response to Staff’s First Request Item 24(b) are generally recognized as confidential or proprietary; and therefore, 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;

⁴ 807 KAR 5:001, Section 13(2)(c).

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

The Siting Board finds the remaining portions of the leases are not entitled to confidential treatment.

The Siting Board further finds that the request for confidential treatment of the easement agreements provided in response to Staff's First Request, Item 3(b), is denied. The easement agreements, including the monetary terms, will be recorded so there is nothing gained by granting confidential protection in this proceeding. Therefore, the easements do not meet the criteria for confidential treatment and are not exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Green River Solar's motion for confidential treatment for the material terms of leases provided in response to Staff's First Request Item 24(b) is granted.

2. Green River Solar's motion for confidential treatment for the easements provided in response to Staff's First Request Item 3(b) is denied.

3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further order of this Siting Board.

4. 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.

5. Green River Solar shall inform the Siting Board if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

6. 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, Green River 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 Green River 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.

7. The Siting Board shall not make the requested material 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 Green River Solar to seek a remedy afforded by law.

8. 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.

9. If Green River 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.

10. Within 30 days of the date of service of this Order, Green River 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.

11. The designated material for which Green River 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 Green River 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

by KAC
w/permission




Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee

ENTERED
JUN 20 2022 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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

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