

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF HUMMINGBIRD )	
ENERGY, LLC FOR A CERTIFICATE OF )	
CONSTRUCTION FOR AN APPROXIMATELY 200 )	
MEGAWATT MERCHANT ELECTRIC SOLAR )	CASE NO.
GENERATING FACILITY AND NONREGULATED )	2022-00272
ELECTRIC TRANSMISSION LINE IN FLEMING )	
COUNTY, KENTUCKY PURSUANT TO KRS )	
278.700 AND 807 KAR 5:110 )	

ORDER

On August 18, 2023,<sup>1</sup> Hummingbird Energy, LLC (Hummingbird Solar) filed a motion for confidential treatment, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1), requesting that the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) grant confidential treatment for 40 years for its response to Siting Board Staff's First Request for Information (Staff's First Request), Item 1. The response contained leases and purchase agreements that have been entered into in connection with the proposed solar project.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,<sup>2</sup> which requires that all public records "be open for inspection by any person, except as otherwise

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<sup>1</sup> On August 25, 2023, Hummingbird Solar filed a renewed motion for confidential treatment for the same for the same information.

<sup>2</sup> KRS 61.870 through 61.884.

provided by KRS 61.870 to KRS 61.884.”<sup>3</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>4</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>5</sup> 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, Hummingbird Solar stated that the response to Siting Board Staff’s First Request, Item 1 required Hummingbird Solar to provide a copy of the leases or purchase agreements that Hummingbird Solar has entered into in connection with the proposed solar facility. Hummingbird Solar argued that personal information such as phone numbers and email address be held confidential because the individuals are not a party to the case, and it would be an invasion of the privacy for the information to be disclosed. Hummingbird Solar also argued that the payments made to landowners should be held confidential because the leases and purchase agreements contain information that could give competitors and unfair advantage if disclosed.

Having considered the motion and the material at issue, the Siting Board finds that Hummingbird Solar’s motion should be granted in part and denied in part. The Siting Board finds that certain designated material terms contained in Hummingbird Energy

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<sup>3</sup> KRS 61.872(1).

<sup>4</sup> KRS 61.878.

<sup>5</sup> 807 KAR 5:110, Section 5(2)(d).

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

The Siting Board further finds that the request for confidential treatment is denied for the remaining portions of the leases because they are general contract language that would not give a competitor of Hummingbird Solar an unfair commercial advantage. Therefore, the remaining terms 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.

The Siting Board further finds that the disclosure of phone numbers and email addresses of the property owners would be an unwarranted invasion of personal privacy and are KRS 61.878(1)(a) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Hummingbird Solar's motion for confidential treatment is granted in part and denied in part.

2. Hummingbird Solar's motion for confidential treatment for the material terms of leases provided in response to Siting Board Staff's First Request, Item 1 is granted.

3. Hummingbird Solar's motion for confidential treatment for the remaining portions of the leases is denied.

4. Hummingbird Solar's motion for confidential treatment for the email addresses and phone numbers of the property owners in the leases is granted.

5. 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.

6. 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.

7. Hummingbird 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.

8. 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, Hummingbird 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 Hummingbird

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.

9. 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 Hummingbird Solar to seek a remedy afforded by law.

10. 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.

11. If Hummingbird 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.

12. Within 30 days of the date of service of this Order, Hummingbird 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.

13. The designated material for which Hummingbird Solar 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 Hummingbird Solar to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

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Chairman, Public Service Commission

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Vice Chairman, Public Service Commission

*Handwritten signature in blue ink*

Commissioner, Public Service Commission

*by KAC w/ permission*

*Handwritten signature in blue ink*

Secretary, Energy and Environment Cabinet,  
or her designee

*Handwritten signature in blue ink*

Secretary, Cabinet for Economic Development,  
or his designee

ATTEST:

*Handwritten signature in blue ink: Linda C. Bidwell*

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

ENTERED  
SEP 22 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

\*Jon Sims  
Fleming County Judge  
100 Court Square  
Flemingsburg, KENTUCKY 41041

\*Gregory T Dutton  
Frost Brown Todd, LLC  
400 West Market Street  
32nd Floor  
Louisville, KENTUCKY 40202-3363

\*John C. Price  
Resident Representative  
183 Joshua St.  
Flemingsburg, KENTUCKY 41041

\*Pierce T. Stevenson  
Frost, Brown, Todd, LLC  
250 West Main Street  
Suite 2800  
Lexington, KENTUCKY 40507