

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

In the Matter of:

ELECTRONIC APPLICATION OF DOGWOOD)	
CORNERS LLC FOR CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 125)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2023-00246
GENERATING FACILITY IN CHRISTIAN)	
COUNTY, KENTUCKY PURSUANT TO KRS)	
278.700 AND 807 KAR 5:110)	

ORDER

On November 3, 2023, Dogwood Corners LLC, (Dogwood Corners) filed a petition for confidential treatment, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(a) and KRS 61.878(1) (c)(1), requesting that the Siting Board grant confidential treatment for an indefinite period for its responses to Siting Board Staff’s First Request for Information (Staff’s First Request), Item 1 and Item 2.

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)(a) grants confidential protection of information 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.” KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.⁶

DISCUSSION AND FINDINGS

In support of its petition, Dogwood Corners stated its response to Staff’s First Request, Item 1, required Dogwood Corners to provide a copy of the leases or purchase agreements that Dogwood Corners entered into in connection with the proposed facility. Dogwood Corners stated the Siting Board precedent permits confidential treatment for material terms of lease agreements. Dogwood Corners also argued that the leases and purchase agreements should be afforded confidential treatment because if disclosed could provide a competitive advantage to competitors. Dogwood Corners also requested confidential treatment for its response to Staff’s First Request, Item 2 which contains a Participation Agreement with a non-participating adjacent landowner. Dogwood Corners argued disclosure of this agreement could provide a competitive advantage to non-participating landowners because they would know payments and expect similar when not necessarily similarly situated.

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(i).

Having considered the petition and the material at issue, the Siting Board finds that Dogwood Corners' petition should be granted in part and denied in part. The Siting Board finds that certain designated material terms contained in Dogwood Corners' 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 Dogwood Corners 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 Participation Agreement contained in the response to Staff's First Request, Item 2 is generally recognized as confidential or

proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1). Public disclosure of the Participation Agreement would provide non-participating property owners a competitive advantage.

IT IS THEREFORE ORDERED that:

1. Dogwood Corners' petition for confidential treatment is granted in part and denied in part.

2. Dogwood Corners' petition for confidential treatment for the material terms of leases provided in response to Staff's First Request, Item 1 is granted.

3. Dogwood Corners' petition for confidential treatment for the remaining portions of the leases is denied.

4. Dogwood Corners' petition for confidential treatment for the Participation Agreement provided in response to Staff's First Request, Item 2 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 an indefinite period 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. Dogwood Corners 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, Dogwood Corners 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 Dogwood Corners 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 Dogwood Corners to seek a remedy afforded by law.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

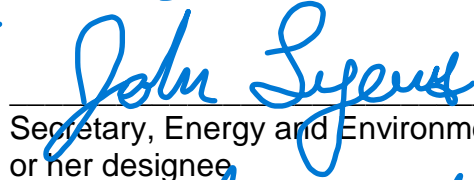


Vice Chairman, Public Service Commission



Commissioner, Public Service Commission

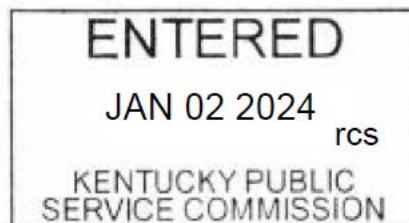
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w/permission



Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee



ATTEST:



Executive Director
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on behalf of the Kentucky State
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