

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

In the Matter of:

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| ELECTRONIC APPLICATION OF BLUE MOON |) | |
| ENERGY LLC FOR A CERTIFICATE OF |) | |
| CONSTRUCTION FOR AN APPROXIMATELY 70 |) | CASE NO. |
| MEGAWATT MERCHANT ELECTRIC SOLAR |) | 2021-00414 |
| GENERATING FACILITY AND NONREGULATED |) | |
| ELECTRIC TRANSMISSION LINE IN HARRISON |) | |
| COUNTY, KENTUCKY PURSUANT TO KRS |) | |
| 278.700 AND 807 KAR 5:110 |) | |

ORDER

On April 21, 2022, Blue Moon Energy, LLC (Blue Moon Energy) filed an amended motion,¹ pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for 40 years to the responses made to Item 7 of the Siting Board Staff's First Request for Information filed March 25, 2022 (Staff's First Request).² The motion is directed specifically at the leases and options Blue Moon Energy entered into with landowners for the proposed project.

In support of its motion, Blue Moon Energy argued that certain parts of the leases and options it has produced contain personal information of nonparties, such as emails and telephone numbers, which Blue Moon Energy asserted should be afforded protection under 807 KAR 5:001, Section 4(10)(a)(7).

¹ Blue Moon Energy's Amended Motion for Confidential Treatment (filed Apr. 21, 2022). The original motion was filed on April 13, 2022, but was superseded by the filing of the amended motion correcting it.

² The motion incorrectly refers to the date of these requests as March 31, 2022.

Further, Blue Moon Energy argued that certain terms contained in the leases and options are protected from disclosure under 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1). Blue Moon Energy states that it would be at a competitive disadvantage if the terms were made public. Blue Moon Energy refers to the terms related to “the lease amount, escalation of lease payments, termination rights, handling of taxes, remedies available to the parties of the lease for nonperformance of the terms, and other critical terms.”³ Blue Moon Energy argued that these leases and options are confidential and proprietary materials that should be afforded protection.

Having considered the motion and the documents at issue, the Siting Board finds that material terms of the leases are generally recognized as confidential or proprietary, and that public access to those would result in a competitive disadvantage for Blue Moon Energy. The options and leases supplied in response to Staff’s First Request, Item 7, contain information that meets the criteria for confidential treatment and the material terms in those are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5. This is 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 rates and related escalations such as signing payments, crop damage calculations, construction rent amounts, extension fees, and holdover rent amounts;

³ Blue Moon Energy’s Amended Motion for Confidential Treatment at 2.

5. Treatment of taxes related to the transaction; and

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

The Siting Board finds that the above-defined material terms of the leases and options provided in Blue Moon Energy's response to Staff's First Request, Item 7, are exempted from public disclosure because the terms contain details that could permit a competitor of Blue Moon Energy an unfair commercial advantage as provided in KRS 61.878(1)(c)(1), and 807 KAR 5:110, Section 5. Further, the Siting Board finds that the remaining portions of the leases and options are not entitled to be afforded confidential treatment.

In addition, individuals have a right of personal privacy in relation to their contact information. KRS 61.878(1)(a) exempts from public disclosure "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." For this reason, the Siting Board finds that the personal contact information in the leases and options, such as phone numbers, personal addresses that are not the same as the address of the subject property, and email addresses, will also be kept confidential pursuant to KRS 61.878(1)(a) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Blue Moon Energy's motion for confidential treatment is granted as to the material terms and as to any personal information in the leases and options with property owners that is not found in the property records of Harrison County, Kentucky.

2. Blue Moon Energy's motion is denied to the extent it seeks confidential treatment of any other terms of the leases and options it has produced.

3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection 40 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. Blue Moon Energy 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, Blue Moon Energy 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 Blue Moon Energy 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 Blue Moon Energy to seek a remedy afforded by law.

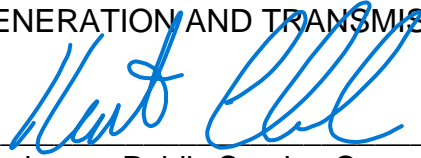
8. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

9. If Blue Moon Energy 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, Blue Moon Energy 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 Blue Moon Energy'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 Blue Moon Energy to seek a remedy afforded by law.

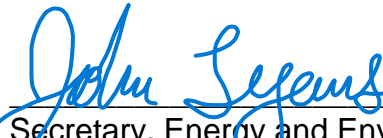
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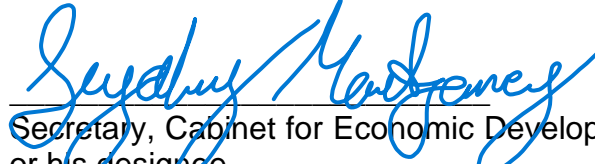
Chairman, Public Service Commission

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
MAY 09 2022
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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on behalf of the Kentucky State
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and Transmission Siting

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