

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

In the Matter of:

ELECTRONIC APPLICATION OF)	
THOROUGHbred SOLAR, LLC FOR)	
CERTIFICATE OF CONSTRUCTION FOR AN)	CASE NO.
APPROXIMATELY 50 MEGAWATT MERCHANT)	2022-00115
ELECTRIC SOLAR GENERATING FACILITY IN)	
HART COUNTY, KENTUCKY PURSUANT TO)	
KRS 278.700 AND 807 KAR 5:110)	

ORDER

On December 5, 2022, Thoroughbred Solar, LLC (Thoroughbred Solar) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for its responses to Siting Board Staff’s First Request for Information (Staff’s First Request), Items 1, 30, and 50.

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.”

DISCUSSION AND FINDINGS

Thoroughbred Solar argued that Staff’s First Request, Item 1 required it to provide the leases for the property to be used for the project. Thoroughbred Solar argued this information should be held confidential because if disclosed competitors in the solar industry would know the amount Thoroughbred Solar is prepared to pay for leases and could use that information to the disadvantage of Thoroughbred Solar. Thoroughbred Solar requested indefinite confidential protection for its response.

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

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ KRS 61.878(1)(a).

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 Thoroughbred 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.

Thoroughbred Solar argued its response to Staff's First Request, Item 30 required it to provide copies of communications with the public about the project. Thoroughbred Solar argued this should be confidential because it would be an invasion of privacy because Thoroughbred Solar did not tell the public the information would be disclosed. Thoroughbred Solar requested indefinite confidential protection for its response.

Having considered the motion and the material at issue, the Siting Board finds that Thoroughbred Solar's motion should be granted in part and denied in part. The Siting Board finds the names, addresses, phone numbers, and e-mail addresses in the response to Staff's First Request, Item 30 are records that meet the criteria for confidential

treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:110, Section 5.

The Siting Board further finds that the request for confidential treatment is denied for the contents of the communications provided in the response to Staff's First Request, Item 30. The Siting Board has previously held that correspondence with community members are not entitled to confidential protection because these communications are important indications of the developer's responsiveness to local concerns and issues with the project. There is no indication that without the names and contact information the contents of the communication would create an invasion of personal privacy. Therefore, the content of the communications do not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:110, Section 5.

Finally, Thoroughbred Solar argued its response to Staff's First Request, Item 50 required it to provide an estimate of the capital costs of the project. Thoroughbred Solar argued this information should be granted confidential protection because this information could create an unfair commercial advantage to competitors and potential vendors for the project. Thoroughbred Solar requested indefinite confidential protection for its response.

The Siting Board finds that the designated material contained in the response to Staff's First Request, Item 50 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.

IT IS THEREFORE ORDERED that:

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

2. Thoroughbred Solar's motion for confidential treatment is granted for the personal identifying information provided in the response to Staff's First Request for Information, Item 30.

3. Thoroughbred Solar's motion for confidential treatment is granted for the capital costs of the project provided in the response to Staff's First Request for Information, Item 50.

4. Thoroughbred Solar's motion for confidential treatment for the remaining terms of the leases in the response to Staff's First Request, Item 1 and the contents of the correspondence with community members in the response to Staff's First Request, Item 30 are denied.

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. Thoroughbred Solar shall inform the Siting Board if the designated material granted confidential treatment 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, Thoroughbred 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 Thoroughbred 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 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 Thoroughbred 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 Thoroughbred 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.

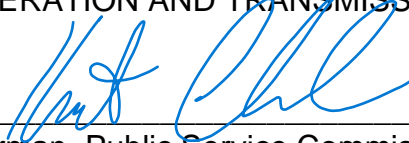
12. Within 30 days of the date of service of this Order, Thoroughbred Solar shall file a revised version of the designated material for which confidential treatment was

denied, reflecting as unredacted the information that has been denied confidential treatment.

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

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



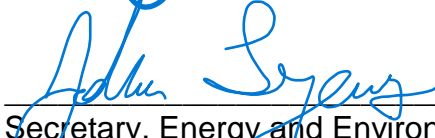
Chairman, Public Service Commission

Vice Chairman, Public Service Commission

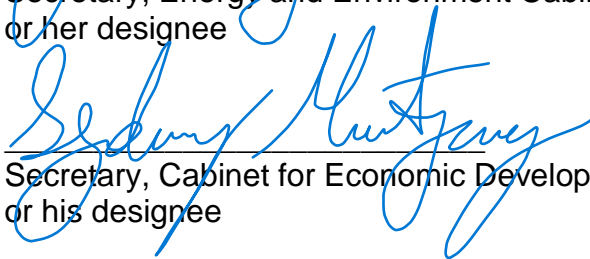


Commissioner, Public Service Commission

by KAC
w/permission



Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee



ATTEST:



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

*Robert Sims
189 Redwood Way
Mumfordsville, KENTUCKY 42765

*Dylan F. Borchers
Bricker & Eckler
100 South Third Street
Columbus, OHIO 43215

*Greg Nichols
Administrative Officer
PO Box 490
Munfordsville, KENTUCKY 42765

*Sommer L. Sheely
Bricker & Eckler
100 South Third Street
Columbus, OHIO 43215