

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

In the Matter of:

ELECTRONIC APPLICATION OF SEBREE)	
SOLAR II, LLC FOR A CERTIFICATE TO)	
CONSTRUCT AN APPROXIMATELY 150)	CASE NO.
MEGAWATT MERCHANT SOLAR ELECTRIC)	2022-00131
GENERATING FACILITY IN HENDERSON)	
COUNTY, KENTUCKY PURSUANT TO KRS)	
278.700 AND 807 KAR 5:110)	

ORDER

On June 16, 2023, Sebree Solar II, LLC (Sebree Solar II) filed a motion for confidential treatment, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1), requesting that the Siting Board grant confidential treatment for ten years for leases and purchase agreements that have been entered into in connection with the proposed solar project, which was filed in response to Siting Board Staff’s First Request for Information (Siting Board Staff’s First Request), Item 1.

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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the 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, Sebree Solar II stated that the response to Siting Board Staff’s First Request, Item 1 required Sebree Solar II to provide a copy of the leases or purchase agreements that Sebree Solar II has entered into in connection with the proposed solar facility. Sebree Solar II argued that the leases and purchases agreements should be afforded confidential treatment because the documents contain proprietary information regarding pricing. Sebree Solar II also argued if disclosed it could give competitive advantage to other solar developers because they would know the price Sebree Solar II is willing to pay for land.

Having considered the motion and the material at issue, the Siting Board finds that Sebree Solar II’s motion is granted in part and denied in part. The Siting Board finds that certain designated material terms contained in Sebree Solar II’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).

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 Sebree Solar II 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.

IT IS THEREFORE ORDERED that:

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

2. Sebree Solar II'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. Sebree Solar II's motion for confidential treatment for the remaining portions of the leases is denied.

4. 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.

5. 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.

6. Sebree Solar II 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.

7. 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, Sebree Solar II 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 Sebree Solar II 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.

8. 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 Sebree Solar II to seek a remedy afforded by law.

9. 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.

10. If Sebree Solar II 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

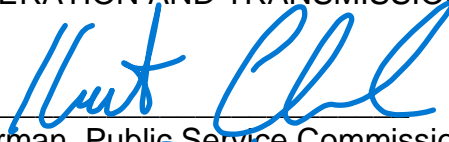
agreement with the Siting Board's determination of which materials should be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Sebree Solar II 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.

12. The designated material for which Sebree Solar II'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 Sebree Solar II to seek a remedy afforded by law.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



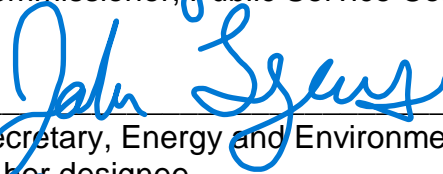
Chairman, Public Service Commission



Vice Chairman, Public Service Commission



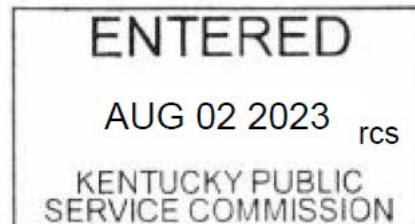
Commissioner, Public Service Commission



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

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