

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

In the Matter of:

ELECTRONIC APPLICATION OF AEUG	)	
MADISON SOLAR, LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY	)	CASE NO.
100-MEGAWATT MERCHANT ELECTRIC SOLAR	)	2020-00219
GENERATING FACILITY IN MADISON COUNTY,	)	
KENTUCKY PURSUANT TO KRS 278.700 AND	)	
807 KAR 5:110	)	

ORDER

On February 9, 2021, AEUG Madison Solar, LLC (AEUG Madison) filed a petition, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for an indefinite period for its responses to Siting Board Staff’s First Request for Information, Item 16 (Staff’s First Request). On April 11, 2021, AEUG Madison filed a petition requesting confidential protection for an indefinite period for leases filed at the request of the Siting Board. On May 14, 2021, AEUG Madison filed a petition requesting confidential protection for an indefinite period for its responses to Siting Board Staff’s Post-Hearing Request for Information, Item 2 (Staff’s Post-Hearing Request).

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,<sup>1</sup> which requires that all public records “be open for inspection by any person, except as otherwise

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<sup>1</sup> KRS 61.870 through 61.884.

provided by KRS 61.870 to KRS 61.884.”<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.<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.” KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.<sup>6</sup>

#### FEBRUARY 9, 2021 PETITION

In support of its February 9, 2021 petition, AEUG Madison argued that its response to Staff’s First Request, Item 16 contains a breakdown of estimated costs of the project including contingencies. AEUG Madison stated this information should be held confidential pursuant to KRS 61.878(1)(c)(1) because cost estimates are generally held confidential and proprietary. If competitors or suppliers were able to know the estimates of the project, bids could be manipulated harming AEUG Madison’s financial position. AEUG Madison requested indefinite confidential protection for the response.

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<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>5</sup> KRS 61.878(1)(a).

<sup>6</sup> KRS 61.878(1)(i).

### APRIL 11, 2021 PETITION

AEUG Madison requested confidential protection of leases of property to be used in the solar project. AEUG Madison argued this information should be held confidential because it contains highly sensitive information. AEUG Madison claimed that if the leases were exposed, other competitors and potential lessors would know the price AEUG Madison is willing to spend leasing property. This would create an unfair commercial advantage for the other developers and potential lessors. AEUG Madison requested indefinite confidential protection for the leases.

### MAY 14, 2021 PETITION

AEUG Madison requested confidential protection for information provided in response to Staff's Post-Hearing Request, Item 2. This response required AEUG Madison to provide a draft of the landscaping screening plan. AEUG Madison stated this information should be granted confidential protection because it is a preliminary plan that is exempt from disclosure under KRS 61.878(1)(i). AEUG Madison also argued this information is confidential and proprietary and if disclosed could create an unfair commercial advantage to other solar developers. AEUG Madison requested indefinite confidential protection for these documents.

### DISCUSSION

Having considered the petitions and the material at issue, the Siting Board finds that AEUG Madison's petitions are granted in part and denied in part. The Siting Board finds that the designated material contained in AEUG Madison's February 9, 2021 petition 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.

The Siting Board finds confidential protection for leases contained in the April 11, 2021 petition is granted in part and denied in part. The Siting Board finds that certain designated material terms contained in AEUG Madison'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;
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 vegetative screen plans in the May 14, 2021 petition. The petition did not state the harm in public disclosure, merely that the information is proprietary and that there is correspondence in the documents. Therefore, the vegetative screening plan does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) or KRS 61.878(1)(i) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. AEUG Madison's petitions for confidential treatment are granted in part and denied in part.

2. AEUG Madison's February 9, 2021 petition for confidential treatment for cost estimates of the project is granted.

3. AEUG Madison's April 11, 2021 petition for confidential treatment is granted as to material terms of leases as defined above and for any additional personal information that is contained in the leases.

4. AEUG Madison's May 14, 2021 petition for confidential treatment for draft vegetative screen plans is 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. AEUG Madison 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, AEUG Madison 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 AEUG Madison

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 AEUG Madison 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 AEUG Madison 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, AEUG Madison 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 AEUG Madison'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 AEUG Madison to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

  
\_\_\_\_\_  
Chairman, Public Service Commission

  
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Vice Chairman, Public Service Commission

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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  
APR 14 2022 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

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

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