

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

In the Matter of:

ELECTRONIC APPLICATION OF BLUEBIRD	)	
SOLAR LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY	)	CASE NO.
100 MEGAWATT MERCHANT ELECTRIC	)	2021-00141
SOLAR GENERATING FACILITY IN HARRISON	)	
COUNTY, KENTUCKY PURSUANT TO KRS	)	
278.700 AND 807 KAR 5:110	)	

ORDER

On June 16, 2022, Bluebird Solar LLC (Bluebird Solar) filed a petition, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for an indefinite period for its response to Siting Board Staff's Post-Hearing Request for Information (Staff's Post Hearing Request) Item 1.

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 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

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

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

<sup>3</sup> KRS 61.878.

exemptions is applicable.<sup>4</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.”

### DISCUSSION AND FINDINGS

In support of its petition, Bluebird Solar argued that the response to Staff’s Post-Hearing Request Item 1 required it to provide a power purchase agreement it had negotiated. Bluebird Solar maintained that if the terms of this agreement were disclosed it would be placed at an unfair commercial disadvantage because other companies would know the contract terms. Additionally, Bluebird Solar stated that a section of the power purchase agreement contains a confidentiality clause requiring that the terms of the agreement would not be made public.

Having considered the petition and the material at issue, the Siting Board finds that the response to Staff’s Post-Hearing Request Item 1 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).

IT IS THEREFORE ORDERED that:

1. Bluebird Solar’s petition for confidential treatment is granted.
2. 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.

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

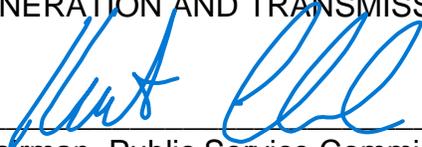
3. Use of the designated material granted confidential treatment by this Order in any Siting Board proceeding shall comply with 807 KAR 5:110, Section 5.

4. Bluebird Solar 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.

5. 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, Bluebird 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 Bluebird 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.

6. 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 Bluebird Solar to seek a remedy afforded by law.

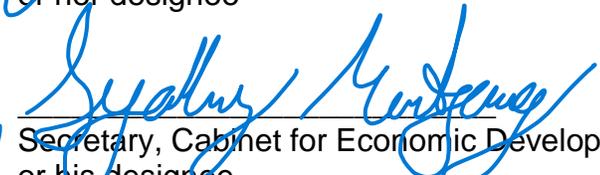
KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

  
\_\_\_\_\_  
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



ATTEST:

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

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