

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 September 5, 2023, Sebree Solar II, LLC (Sebree Solar II) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for ten years to its responses to Siting Board Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Items 4 and 5.

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

In response to Staff’s Post-Hearing Request, Item 4, Sebree Solar II provided expected salary information for employees in the operation phase of the project. In response to Staff’s Post-Hearing Request, Item 5 Sebree Solar II provide salary information for employees of NextEra Energy that work on other operational solar facilities. In support of its motion, Sebree Solar II argued that information should be granted confidential treatment because salary information is personal in nature and if disclosed would violate the current employees and future employees’ reasonable expectation of privacy. Sebree Solar II further argued that if the information is disclosed it would permit an unfair commercial advantage to competitors.

Having considered the motion and the material at issue, the Siting Board finds that Sebree Solar II’s responses to Staff’s Post-Hearing Request, Items 4 and 5 do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1) or KRS 61.878(1)(a). Regarding Sebree Solar II’s response to Staff’s Post Hearing Request, Item 4, the

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ KRS 61.878(1)(a).

information provided only contains estimates of salary information, with no personal information, and with no confirmation as to when these estimates will still be current if the project becomes operational. Therefore, there would be no commercial disadvantage to Sebree Solar II. Additionally, the economic impact of the project is one of the criteria the Siting Board must evaluate in the grant of a certificate of construction and the potential salaries of employees in the operational phase of the project important in that evaluation.

Regarding Sebree Solar II's response to Staff's Post Hearing Request, Item 5, the information was provided in a way that does not disclose any personal information. The document states the position and an estimated or average salary, without a means to identify specific employees in these positions. Additionally, given the generalized nature of the designated material, Sebree Solar II failed to meet its burden that the estimated and average salaries could be used by competitors to cause economic harm to Sebree Solar II.

IT IS THEREFORE ORDERED that:

1. Sebree Solar II's motion for confidential treatment is denied.
2. 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.
3. If Sebree Solar II objects to the Siting Board's determination that the requested material is not 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

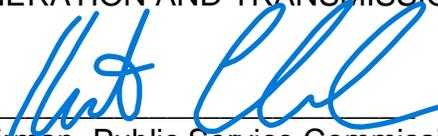
agreement with the Siting Board's determination of which materials should be granted confidential treatment.

4. 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.

5. 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 in 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

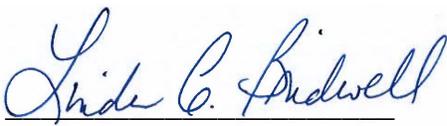

Commissioner, Public Service Commission



Secretary, Energy and Environment Cabinet,
or her designee


Secretary, Cabinet for Economic Development,
or his designee

ATTEST:


Executive Director
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*on behalf of the Kentucky State
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