

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF SONG	)	
SPARROW SOLAR LLC FOR CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY 104	)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR	)	2023-00256
GENERATING FACILITY IN BALLARD COUNTY,	)	
KENTUCKY PURSUANT TO KRS 278.700 AND	)	
807 KAR 5:110	)	

ORDER

On February 2, 2024, Song Sparrow Solar LLC (Song Sparrow Solar) filed a petition 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 an indefinite period for material terms in a purchase power agreement (PPA), that was filed in response to Siting Board Staff's Post Hearing Request for Information (Siting Board Staff's Post Hearing Request), Item 3.

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

---

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

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

<sup>3</sup> KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the 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 motion, Song Sparrow Solar stated that the response to Siting Board Staff’s Post Hearing Request, Item 3 required Song Sparrow Solar to provide a copy of the power purchase agreements (PPA) that Song Sparrow Solar entered into in connection with the proposed facility. Song Sparrow argued that the PPA should be afforded confidential treatment because, if disclosed, it would provide a competitive advantage to competitors. Song Sparrow Solar also argued that KRS 278.710 does not require the Siting Board to consider if the solar facility has a PPA<sup>5</sup>. KRS 278.020 and KRS 278.300, on the other hand, require PPA’s prior commission approval.<sup>6</sup>

Having considered the motion and the material at issue, the Siting Board finds that material terms of the PPA, are 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).

---

<sup>4</sup> 807 KAR 5:110, Section 5(2)(d).

<sup>5</sup> Song Sparrow Solar’s Petition for Confidential Treatment (filed Feb. 2, 2024) at 2-4.

<sup>6</sup> Song Sparrow Solar’s Petition for Confidential Treatment at 2-4.

IT IS THEREFORE ORDERED that:

1. Song Sparrow Solar's petition for confidential treatment for the material terms of the PPA provided in response to Siting Board Staff's First Request, Item 3 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.

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. Song Sparrow 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, Song Sparrow 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 Song Sparrow 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 Song Sparrow Solar to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

Bob Chiles

Chairman, Public Service Commission

Ally

Vice Chairman, Public Service Commission

Mary Pat Regan

Commissioner, Public Service Commission

John Sevens

Secretary, Energy and Environment Cabinet,  
or her designee

Sydney Mantzour

Secretary, Cabinet for Economic Development,  
or his designee

Todd Cooper

Todd Cooper, ad hoc

Terry Simmons

Terry Simmons, ad hoc

by KTC  
w/permission

ATTEST:

Linda C. Bidwell

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



\*Todd Cooper  
Ballard County Courthouse Annex  
437 Ohio Street  
Wickliffe, KENTUCKY 42087

\*James W Gardner  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

\*Rebecca C. Price  
Sturgill, Turner, Barker & Moloney  
155 East Main Street  
Lexington, KENTUCKY 40507

\*Terry Simmons  
1502 Hinkleville Road  
La Center, KENTUCKY 42056

\*M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507