

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

In the Matter of:

ELECTRONIC APPLICATION OF WEIRS CREEK )	
SOLAR, LLC FOR A CERTIFICATE TO )	
CONSTRUCT AN APPROXIMATELY 150 )	
MEGAWATT MERCHANT SOLAR ELECTRIC )	CASE NO.
GENERATING FACILITY IN WEBSTER COUNTY )	2024-00099
AND HOPKINS COUNTY, KENTUCKY )	
PURSUANT TO KRS 278.700 AND 807 KAR )	
5:110 )	

ORDER

On August 5, 2024, Weirs Creek Solar, LLC (Weirs Creek Solar) filed a motion, 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 certain portions of leases and purchase agreements entered into by Weirs Creek Solar in connection with the proposed solar facility filed in response to Siting Board Staff’s First Request for Information (Siting Board Staff’s First Request), Item 38.

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

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

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

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)(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, Weirs Creek Solar stated that the response to Siting Board Staff’s First Request, Item 38, required Weirs Creek Solar to provide a copy of the leases or purchase agreements that Weirs Creek Solar has entered into in connection with the proposed facility. Weirs Creek Solar argued that portions of the leases and purchase agreements should be afforded confidential treatment because the documents contain proprietary information regarding pricing and if disclosed could provide a competitive advantage to competitors.

Having considered the motion and the material at issue, the Siting Board finds that material terms of the leases and purchase agreements are generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:110 Section 5, and KRS 61.878(1)(c)(1).

Material terms are defined as including;

- a. The lease or purchase amounts;

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<sup>3</sup> KRS 61.878.

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

- b. Escalation of lease payments;
- c. Remedies available to the parties of the lease for nonperformance of the terms;
- d. 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
- e. The structure of the lease term including the outside date for the rent commencement date.

The above-detailed material terms of the leases and purchase agreements provided in Weirs Creek Solar's responses to Siting Board Staff's First Request, Item 38 are exempted from public disclosure because the terms are details that could permit a competitor of Weirs Creek Solar an unfair commercial advantage pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Weirs Creek Solar's August 5, 2024 motion 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 ten years 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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Weirs Creek

Solar shall inform the Commission and file with the Commission an unredacted copy of the designated material.

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, Weirs Creek 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 Weirs Creek 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 Weirs Creek Solar to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



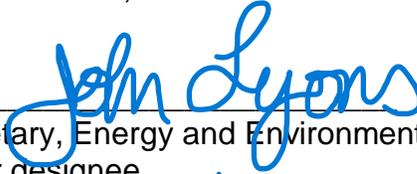
Chairman, Public Service Commission



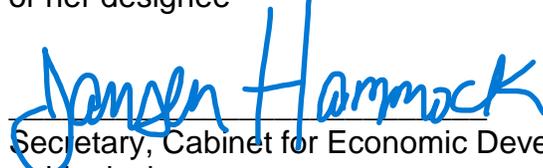
Commissioner, Public Service Commission



Commissioner, Public Service Commission



Secretary, Energy and Environment Cabinet,  
or her designee



Secretary, Cabinet for Economic Development,  
or his designee



Jack Whitfield Jr., ad hoc

by ATT  
w/ permission

ATTEST:



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



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