

COMMONWEALTH OF KENTUCKY

**BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING**

In the Matter of:

THE ELECTRONIC APPLICATION OF HENDERSON)	
COUNTY SOLAR LLC FOR A CERTIFICATE)	
OF CONSTRUCTION FOR AN APPROXIMATELY)	
50 MEGAWATT MERCHANT ELECTRIC SOLAR)	CASE NO.
GENERATING FACILITY IN HENDERSON CO.)	2020-00391
KENTUCKY PURSUANT TO KRS 278.700 AND)	
807 KAR 5:110)	

**HENDERSON COUNTY SOLAR LLC's
MOTION FOR CONFIDENTIAL TREATMENT**

Comes now Henderson County Solar LLC (“Henderson County Solar”), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its Motion requesting that the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) afford confidential treatment to certain information filed in its Responses to Siting Board Staff’s Post-Hearing Request for Information (“Request” or “Requests”) in the above-captioned proceeding, respectfully states as follows:

1. Henderson County Solar’s Application in the above-styled proceeding was deemed filed on June 29, 2021.
2. On October 27, 2021 Siting Board Staff propounded a Post-Hearing Request for Information to Henderson County Solar.
3. Request No. 4 of the Request for Information states as follows:

Henderson Solar shall provide the leases with the participating landowners that underlie the Henderson Solar application. If there are any successors or assignment of the leases, Henderson Solar shall provide those documents as well.

4. In response to Request No. 4 Henderson County Solar is filing seven leases in their entirety under seal since, by this Motion, Henderson County Solar is seeking their confidential treatment. These leases are hereinafter collectively referred to as the “Confidential Information.”

5. Because the Confidential Information is so pervasive it is impractical for Henderson County Solar to file a redacted version of each lease into the public record due to the fact that virtually every provision contains confidential and proprietary information, resulting in a redacted version that would be essentially unreadable. Therefore, Henderson County Solar is requesting confidential treatment for the each of the seven leases in their entireties pursuant to 807 KAR 5:001, Section 13(2)(a)3.b. In accordance with the provisions of 807 KAR 5:001, Section 13(2), Henderson County Solar is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of Henderson County Solar’s response to Request No. 4.

6. The Confidential Information is retained by Henderson County Solar on a “need-to-know” basis and is not publicly available. The Confidential Information is comprised of commercial contracts between private individual landowners, as Lessors, and Henderson County Solar, as Lessee, which contain personal and proprietary information such as ownership status, residential address, personal contact and other private information. The Confidential Information also contains certain financial information related to lease term, rental amount, and remedies in the event of dispute, all of which are self-evidently confidential. Indeed, the Commission’s own privacy regulation, 807 KAR 5:001, Section 4(10), and KRS 61.878(1)(a), require that such information be filed on a confidential basis. Moreover, the Confidential Information contains

specific negotiated-for commercial terms and conditions, which if disclosed to the public in any manner, could unfairly and irrevocably prejudice both Henderson County Solar and its affiliates by disclosing terms which could be utilized by other potential landowners or their representatives, or similarly by industry competitors, in this or future development projects to their substantial commercial advantage. KRS 61.878(1)(c)1 clearly provides that such information is excluded from release to the public.

7. The Kentucky Open Records Act generally exempts the Confidential Information from public disclosure. *See* KRS 61.878(1). Moreover, the Kentucky Supreme Court has stated, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’” *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the Confidential Information is critical to Henderson County Solar’s effective execution of business decisions and strategy, it satisfies both the statutory and common law standards for being afforded confidential treatment.

8. There are no intervenors in this case. Therefore, a discussion of providing the Confidential Information pursuant to a duly executed confidentiality agreement is not applicable here.

13. In accordance with the provisions of 807 KAR 5:001, Section 13(3), Henderson County Solar respectfully requests that the Confidential Information be withheld from public disclosure for a period of thirty (30) years which coincides with the time period Henderson County Solar believes is the reasonable commercial life of the proposed project.

WHEREFORE, on the basis of the foregoing, Henderson County Solar respectfully requests the Commission to enter an Order granting this Motion for Confidential Treatment and to

so afford such protection from public disclosure to the unredacted copies of Confidential Information, which is filed herewith under seal, for the period set forth herein.

This 9th day of November, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on November 9, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be filed.

Mark David Goss

Counsel for Henderson County Solar LLC