

**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 90)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2021-00141
GENERATING FACILITY IN HARRISON COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND KAR)	
5:110)	

**BLUEBIRD SOLAR LLC'S
MOTION FOR CONFIDENTIAL TREATMENT**

Bluebird Solar LLC (“Bluebird”), by counsel moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”) for an order granting confidential treatment to certain information and documents filed the response to the Siting Board’s First Request for Information. Specifically, Bluebird requests confidential treatment for information contained in documents responsive to Item 14. In support of this motion, Bluebird states as follows:

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) exempts from disclosure:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995). The information and documents referenced below are all confidential and proprietary and the disclosure of which would present an unfair commercial disadvantage to Bluebird.

Item 14 requests copies of leases or purchase agreements, including options, separate agreements or deeds, that Bluebird has entered in connection with the footprint of the solar facility (collectively the “Leases”). The Siting Board has previously held material terms of lease agreements to be confidential, defining material terms as:

(1) the lease amount; (2) terms of escalation of lease payments; (3) remedies available to the parties of the lease for nonperformance of the terms; (4) economic terms other than lease rates and related escalations such as signing payments, crop damage calculations, construction rent amounts, extension fees, and holdover rent amounts; and (5) the structure of the lease term including the outside date for the rent commencement date.

In the Matter of: Electronic Application of Sebree Solar, LLC for a Certificate to Construct an Approximately 250 Megawatt Merchant Solar Electric Generating Facility and an Approximately

4.5 Mile Nonregulated Electric Transmission Line in Henderson County, Kentucky and Webster County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110, No. 2021-00072 at 3-4 (Feb. 7, 2022), see also In the Matter of: Electronic Application of AEUG Fleming Solar, LLC for a Certificate of Construction for an Approximately 188 Megawatt Merchant Electric Solar Generating Facility in Fleming County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110, No. 2020-00206 (July 30, 2021).

The material terms of the Leases have sensitive, proprietary commercial information concerning pricing and other terms and conditions that would be detrimental to Bluebird in future business dealings and would cause Bluebird a significant competitive disadvantage. Bluebird is providing the Commission copies of the Leases with redacted material terms and is also providing the Commission unredacted copies of the Leases filed under seal.

For the foregoing reasons for an indefinite amount of time, Bluebird respectfully requests confidential treatment of the Leases in perpetuity.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC



James W. Gardner
M. Todd Osterloh
333 West Vine Street, Suite 1500
Lexington, KY 40507
Phone: (859) 255-8581
E-mail: jgardner@sturgillturner.com
E-mail: tosterloh@sturgillturner.com
Counsel for Bluebird Solar LLC