

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

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF BLUEBIRD</b>	)	
<b>SOLAR LLC FOR A CERTIFICATE OF</b>	)	
<b>CONSTRUCTION FOR AN APPROXIMATELY 100</b>	)	<b>CASE NO.</b>
<b>MEGAWATT MERCHANT ELECTRIC SOLAR</b>	)	<b>2021-00141</b>
<b>GENERATING FACILITY IN HARRISON COUNTY,</b>	)	
<b>KENTUCKY PURSUANT TO KRS 278.700 AND KAR</b>	)	
<b>5:110</b>	)	

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

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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 an organizational chart submitted in in conjunction with its Motion for Declaratory Order, or in the Alternative, for Approval of Transactions. Specifically, Bluebird requests confidential treatment for specific information related to its corporate structure and its tax equity financing, 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).

KRS 61.878.878(1)(c)(1) requires consideration of three elements: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records.

The information for which confidential treatment meets the first element above because it is being confidentially disclosed to the Siting Board to explain the underlying corporate transactions. Similarly, it meets the second element above because BayWa r.e. AG and its subsidiaries maintain the corporate structure confidential by not publicly disclosing it.

As to the third element above, it is important to recognize that it represents the corporate structure of an unregulated entity with unregulated affiliates. Public disclosure of the corporate

structure would release sensitive, proprietary information into the competitive sphere that would work a commercial disadvantage against the company. This is particularly true as the information being shared with the Siting Board is illustrative of the competitive financing structure involved with Bluebird's project. This information would further provide a glimpse into the internal workings of BayWa r.e. AG—again, an unregulated corporation—and the organizational best practices to be gleaned from its structure and hierarchy.

This type of private corporate information has been deemed to be afforded confidential treatment by courts. For example, in *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that certain documents “concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary’” and, thus, subject to the exemption found in KRS 61.878(1)(c)(1).

Similarly, Commission precedent instructs that the requested information is sensitive and proprietary, and it is not subject to public disclosure. For example, in *Columbia Gas of Kentucky, Inc.*, Case No. 2021-00183, 2021 WL 4657674 (Oct. 4, 2021), the Commission agreed that a corporate organizational chart was entitled to confidential treatment. More recently, the Commission agreed to confidential treatment of Algonquin Power & Utilities Corp.'s organizational chart with the exception of parts of the corporate organization (i.e., Liberty Utilities Finance GP1) that was involved in the involved in the proposed acquisition of a Commission-regulated utility. See *Joint Application of American Electric Company, Inc., Kentucky Power Company, and Liberty Utilities*, Case No. 20121-00481 at 3 (Ky. PSC May 13, 2022). BayWa r.e. AG is in a similar position of Algonquin, as they are both unregulated entities, and even Bluebird's operations are not regulated in the same manner as the regulated utility—Kentucky Power Company—in that matter.

For the foregoing reasons, Bluebird respectfully requests confidential treatment of the organizational charts and description of the transactions addressed in the Motion for Declaratory Order, or in the Alternative, for Approval of Transactions. If the Siting Board disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect Bluebird's due process rights and (b) to supply the Siting Board with a complete record to enable it to reach a decision with regard to this matter.

RESPECTFULLY SUBMITTED,

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