

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

In the Matter of:)
)
APPLICATION OF RUSSELLVILLE SOLAR LLC)
FOR CERTIFICATE OF CONSTRUCTION FOR: AN)
APPROXIMATELY 173-MEGAWATT MERCHANT) **Case No. 2021-00235**
ELECTRIC SOLAR GENERATING FACILITY IN)
LOGAN COUNTY, KENTUCKY PURSUANT TO)
KRS 278.700, ET SEQ., AND 807 KAR 5:110)

THIRD PETITION FOR CONFIDENTIALITY

Russellville Solar LLC (“Russellville Solar”), by counsel, and pursuant to 807 KAR 5:110, Section 5, respectfully requests the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) to grant confidential protection to certain information filed in response to Item 1 of the Siting Board Staff’s First Request for Information. In support of this motion, Russellville Solar states as follows:

Item 1 of the Siting Board Staff’s First Request for Information seeks lease agreements in connection with the footprint of the project of the proposed solar facility. Portions of these lease agreements are proprietary information the disclosure of which would provide a competitive advantage to other individuals and entities.

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Siting Board 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” under the Kentucky Open Records Act. 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. 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.” 97-ORD-66 at 10 (Ky. OAG Apr. 22, 2008).

The Siting Board has routinely held that the following material information is entitled to confidential treatment based on KRS 61.878(1)(c)(1) :¹

1. The lease amounts;
2. Escalation of lease payments;
3. Remedies available to the parties of the lease for nonperformance of the terms;
4. 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
5. The structure of the lease term including the outside date for the rent commencement date.

Consistent with these rulings, Russellville Solar seeks confidential treatment of the redacted information contained in the publicly filed leases, which includes the amount of lease payments, terms related to the posting of security, and details related to the structure of the lease term.

¹ *See, e.g., AEUG Madison Solar, LLC*, Case No. 2020-00219 (KSB Apr. 14, 2022).

Accordingly, Russellville Solar respectfully requests that the above-referenced information contained in the leases be provided confidential treatment.

Respectfully submitted,



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