

COMMONWEALTH OF KENTUCKY

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

IN THE MATTER OF:

THE ELECTRONIC APPLICATION OF)
SEBREE SOLAR II, LLC FOR A CERTIFICATE)
TO CONSTRUCT AN APPROXIMATELY 150)
MEGAWATT MERCHANT SOLAR ELECTRIC) CASE NO. 2022-00131
GENERATING FACILITY IN)
HENDERSON COUNTY, KENTUCKY AND)
WEBSTER COUNTY, KENTUCKY PURSUANT)
TO KRS 278.700 AND 807 KAR 5:110)

-

**SEBREE SOLAR II LLC'S
MOTION FOR CONFIDENTIAL TREATMENT**

Comes now Sebree Solar II LLC (“Sebree II”), by 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 First Request for Information, respectfully states as follows:

1. Sebree II’s Application in the above-styled proceeding was filed on April 18, 2023. Siting Board Staff issued data requests to Sebree II on May 31, 2023 (“Siting Board’s First Request”).
2. As part of Sebree II’s response to the Siting Board’s First Request, Sebree II is filing copies of leases and purchase agreements that have been entered into in connection with the proposed solar facility. Collectively these documents are hereinafter referred to as the “Confidential Information.”

3. The Confidential Information has sensitive, proprietary commercial information concerning pricing and other terms and conditions that could be detrimental to Sebree II in future negotiations if made public. Such disclosure would also give a considerable advantage to other companies who are currently negotiating with landowners across the Commonwealth of Kentucky for similar leasing arrangements. Disclosure of Sebree II's lease provisions, pricing and terms and conditions would severely prejudice its ability to do business within the Commonwealth of Kentucky on a level playing field with competitors. Therefore the Confidential Information should be kept confidential pursuant to KRS 61.878(l)(c)(1), which states, "[r]ecords 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 permit an unfair commercial advantage to competitors of the entity that disclosed the records."

4. The Confidential Information is being provided in a form with significant portions of the leases redacted, in compliance with prior Siting Board orders in similar proceedings. An unredacted copy of the Confidential Information is being provided to the Siting Board under seal.

5. The Kentucky Open Records Act 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). Furthermore, the Confidential Information is retained by Sebree II on a "need-to-know" basis and is not publicly available. Indeed, the lessors who are signatories to these leases have a contractual obligation to keep the terms of the leases confidential. Because the Confidential Information is critical to Sebree II's effective execution of business decisions and strategy it satisfies both the statutory and common law standards for being afforded confidential treatment.

The leases would also qualify as trade secrets under Kentucky law. The Commission has afforded confidential treatment to this information in prior proceedings.¹

6. In accordance with the provisions of 807 KAR 5:001, Section 13(2), Sebree II is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of Sebree II's responses.

7. In accordance with the provisions of 807 KAR 5:001, Section 13(3), Sebree II respectfully requests that the Confidential Information in the responses be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to impair the interests of Sebree II if publicly disclosed. Sebree II reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so in the future.

WHEREFORE, on the basis of the foregoing, Sebree II 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 periods set forth herein.

¹ See, *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 5:5110*, Case No. 2021-00072, Order (Ky. Siting Board, Feb. 7, 2022).

Done this 16th day of June 2023.

Respectfully submitted,



L. Allyson Honaker
Brittany Hayes Koenig
HONAKER LAW OFFICE PLLC
1795 Alysheba Way, Suite 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
brittany@hloky.com

Counsel for Sebree Solar II LLC