

**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 )

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

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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 Post Hearing Request for Information, Part 1, Responses 4 and 5, respectfully states as follows:

1. Sebree II’s Application in the above-styled proceeding was filed on April 18, 2023. A hearing was held in this matter on August 17, 2023 and Siting Board Staff issued post hearing information requests to Sebree II on August 21, 2023 (“Siting Board’s Post Hearing Request”).
2. As part of Sebree II’s response to the Siting Board’s Post Hearing Request, Sebree II is filing salary information for potential positions in connection with the proposed solar facility, including current salary information for comparable positions in solar facilities in operation. Collectively this information is hereinafter referred to as the “Confidential Information.”

3. Personal salary information is personal in nature and if disclosed could violate the employees' and future employees' reasonable expectation of personal privacy with regard to this compensation.<sup>1</sup> 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 competing with Sebree II in similar projects across the Commonwealth of Kentucky. Disclosure of Sebree II's salaries, 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(1)(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 relevant portions of the responses redacted. 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"

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<sup>1</sup> *See Cape Pub 'ns.Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008) (compensation information is private in nature); *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994) ("information such as...wage rate...[is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy."); *see also*, KRS 68.878(1)(a).

basis and is not publicly available. Indeed, the Confidential Information is not appropriate for public dissemination because it includes detailed, private material about Sebree II's parent corporation's employees and potential employees of Sebree II. The employee-specific compensation information for which Sebree II seeks confidential treatment is all undoubtedly of a personal nature; moreover, to maintain the confidentiality of the relevant information is integral to Sebree II's parent corporation's interests as a potential employer of these two or three specific positions. The public disclosure of such sensitive information would constitute a clearly unwarranted invasion of personal privacy and may unfairly harm Sebree II or its parent corporation's competitive position in the marketplace. 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.

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.

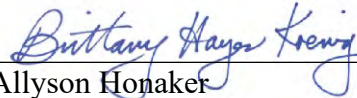
7. In accordance with the provisions of 807 KAR 5:001, Section 13(3), Sebree II respectfully requests that the Confidential Information in the responses be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will 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 Confidential Information in its Responses to the Siting Board's Post Hearing Request For Information, which is filed herewith under seal, for the periods set forth herein.

Done this 5<sup>th</sup> day of September 2023.

Respectfully submitted,



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