

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

In the Matter of:

ELECTRONIC APPLICATION OF)
HUMMINGBIRD ENERGY LLC FOR A)
CERTIFICATE OF CONSTRUCTION)
FOR AN APPROXIMATELY 200)
MEGAWATT MERCHANT ELECTRIC)
SOLAR GENERATING FACILITY AND)
NONREGULATED ELECTRIC)
TRANSMISSION LINE IN FLEMING)
COUNTY, KENTUCKY PURSUANT TO)
KRS 278.700 AND 807 KAR 5:110)

Case No. 2022-00272

MOTION FOR RECONSIDERATION

Comes now Hummingbird Energy LLC (“Hummingbird” or “Applicant”), by and through counsel, and hereby files this Motion for Reconsideration to address the term of confidentiality afforded to certain information provided by the Applicant, arising out of the Kentucky Electric Generation and Transmission Siting Board (“Siting Board” or “Board”)’s order dated September 22, 2023.

I. BACKGROUND

Hummingbird proposes to construct an approximately 200-megawatt (MW) photovoltaic merchant electric generating facility situated on land located in Fleming County, Kentucky (the “Project”). The Applicant filed an application for a certificate of construction for the Project on June 23, 2023. The Applicant submitted responses to the Siting Board’s first data request on August 18, 2023, which included submission of redacted leases, easements, and purchase agreements (together the “Site Control Documents”). Hummingbird subsequently resubmitted its redacted Site Control Documents and a Renewed Motion for Confidential Treatment on August 25, 2023, to narrow the scope of redaction within the Project’s landowner leases with landowners,

supply a previously omitted unredacted lease agreement, and revise redactions in the Project's easement agreements to clearly and uniformly indicate the redacted portions of each easement agreement.

On September 22, 2023, the Siting Board issued an order granting in part and denying in part Hummingbird's motion for confidential treatment. The order also ruled on Hummingbird's renewed motion for confidential treatment, which was cited in the order as a footnote. Therein the Siting Board granted confidentiality for personal information and material terms contained in the Site Control Documents while denying the remaining portions of the thereof, stating that the remaining portions constituted general contract language that would not convey an unfair commercial advantage to Hummingbird's competitors. The Siting Board also reduced the period of confidentiality from 40 years, as requested by Hummingbird, to 10 years without explaining its reasoning for the reduction.

Having reviewed the Board's September 22, 2023 order in detail, Hummingbird respectfully requests reconsideration of the Siting Board's order. Specifically, Hummingbird requests reconsideration for the 10-year period of confidentiality noted in the Board's order.

II. ARGUMENT

Applicant anticipates executing a power purchase agreement (PPA) for the power generated by this Project. The standard term of a PPA is a 10 to 20-year term. At the conclusion of the initial term, the PPA will either need to be renegotiated or possibly marketed to a new off-taker. The terms of the leases are directly relevant to the economic terms of any potential PPA. If the terms of the Project's leases are publicly available, the Applicant will be disadvantaged and prejudiced in its negotiations with prospective PPA partners. Thus, the lease terms need to be kept confidential for the lifetime of the Project.

III. PRAYER FOR RELIEF

Wherefore, Hummingbird Energy LLC respectfully requests that the Board:

1. grant Hummingbird's motion for reconsideration; and
2. grant Hummingbird's requested 40-year period of confidentiality.

Respectfully submitted,



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