

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

SECOND MOTION FOR CONFIDENTIAL TREATMENT

Comes now Hummingbird Energy LLC (“Hummingbird” or “Applicant”), by and through counsel, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, and hereby files this Second Motion for Confidential Treatment for certain information filed in response to the Kentucky Electric Generation and Transmission Siting Board (“Siting Board”)’s order dated September 22, 2023.

Hummingbird previously filed a motion for confidential treatment on August 18, 2023, in response to request number 1 of the Siting Board’s First Request for Information. Specifically, the Applicant requested confidentiality for personal information and financial information contained in the leases, easements, and purchase agreements (together, the “Site Control Documents”) entered into in connection with its proposed solar facility (the “Project”), including the agreements for each Project parcel. The Applicant provided unredacted copies of its Site Control Documents under seal with the Siting Board in tandem with its redacted documents filed publicly.

Hummingbird subsequently filed a renewed motion for confidential treatment on August 25, 2023, as part of its Supplemental Responses to the Siting Board’s First Request for Information

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.

Hummingbird has since updated its prior redactions to further narrow its scope of redacted provisions therein to comply with the Siting Board's September 22, 2023 order, and now seeks to enter those updated redacted copies in the administrative record.

Hummingbird hereby reasserts its request for confidential treatment and seeks protection of personal information and financial information contained in the Site Control Documents pursuant to 807 KAR 5:001, Section 4(10)(a)(7) and KRS 61.878(1)(c)(1), respectively.

The Applicant seeks protection of phone numbers and email addresses for landowners that have executed Site Control Documents with Hummingbird. Per 807 KAR 5:001, Section 4(10)(a)(7), the address, phone number, or email address of an individual who is not a party and has not requested to be a party should be redacted and kept confidential. Hummingbird has redacted the phone number and email address for the landowners, but not the physical address.

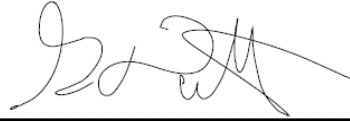
The physical addresses have already been made public through the nature of requesting siting approval.

Hummingbird is also requesting confidential protection of the financial information contained in the Site Control Documents, specifically the payments made to landowners and treatment of taxes related to the transaction. Per KRS 61.878(1)(c)(1) records confidentially disclosed to the Siting Board that are generally recognized as confidential or proprietary, which if disclosed would permit an unfair competitive advantage, should be deemed as confidential and protected from public disclosure. If the payments made to landowners were divulged, it would place Hummingbird at a competitive disadvantage.

Per 807 KAR 5:001, Section 13(2)(a)(2), Hummingbird requests that this information be kept confidential for a period of forty (40) years, the anticipated lifetime of the Project, from the date of the order granting this motion. 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.

Wherefore, Hummingbird Energy LLC respectfully requests the above referenced information be granted the appropriate status and protections due such confidential information.

Respectfully submitted,



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