

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

In the Matter of:

**In the Matter of the Application of Dogwood Corners)
LLC for a Certificate of Construction for an)
Approximately 125 Megawatt Merchant Electric Solar) Case No. 2023-00246
Generating Facility in Christian County, Kentucky)
Pursuant to KRS 278.700 and 807 KAR 5:10)**

PETITION FOR CONFIDENTIAL TREATMENT

Dogwood Corners LLC (“Dogwood Corners”), by counsel, moves the Kentucky Siting Board on Electric Generation and Transmission Siting (the “Siting Board”) for an order granting confidential treatment to certain information and documents filed the response to the Siting Board’s First Request for Information. Specifically, Dogwood Corners requests confidential treatment for information contained in documents responsive to Items 1 and 2. In support of this motion, Dogwood Corners states as follows:

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission 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” in accordance with the Kentucky Open Records Act, KRS 61.878. 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. In particular, 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.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995). The information and documents referenced below are all confidential and proprietary and the disclosure of which would present an unfair commercial disadvantage to Dogwood Corners.

Through Item 1, the Siting Board seeks copies of leases or purchase agreements, including options, (collectively “Leases”) that Dogwood Corners has executed in development of this project. Previously, the Siting Board has held that material terms of lease agreements are confidential. In *Sebree Solar, LLC*, Case No. 2021-00072 at 3-4 (Ky. KSB Feb. 7, 2022), the Siting Board defined material terms as:

(1) the lease amount; (2) terms of escalation of lease payments; (3) remedies available to the parties of the lease for nonperformance of the terms; (4) economic terms other than lease rates 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.

See also AEUG Fleming Solar, Case No. 2020-00206 (Ky. KSB July 30, 2021).

The material terms contained in the Leases contain proprietary commercial information relating to pricing and other sensitive information that if made publicly available would work a significant competitive disadvantage against Dogwood Corners. Dogwood Corners is providing

the Siting Board copies of the Leases with redacted material terms and also is providing the Siting Board unredacted copies of the Leases filed under seal.

In conjunction with Item 2 of the Request for Information, Dogwood Corners requests confidential treatment for the template that it uses to negotiate with a non-participating, adjacent landowner (the “Participation Agreement”). Public disclosure of this template would provide non-participating property owners a competitive advantage over Dogwood Corners as it attempts to negotiate reasonable terms. In addition, as any future negotiation may be different than one before it, disclosure of the Participation Agreement could result in future expectations from non-participating landowners even though there are changed circumstances. The Siting Board has previously granted confidential treatment for entire agreements of this nature. *See Pine Grove Solar LLC*, Case No. 2022-00262 (Ky. KSB Apr. 14, 2023).

For the foregoing reasons for an indefinite amount of time, Dogwood Corners respectfully requests confidential treatment of certain material terms of the leases and the entirety of Participation Agreement template.

Respectfully submitted,



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