

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

**In the Matter of:**

**In the Matter of the Electronic Application of Song )  
Sparrow Solar LLC for a Certificate of Construction )  
for an Approximately 104 Megawatt Merchant Electric ) Case No. 2023-00256  
Generating Facility in Ballard County, Kentucky )  
Pursuant to KRS 278.700 and 807 KAR 5:110 )**

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**SONG SPARROW SOLAR LLC’S PETITION FOR CONFIDENTIAL TREATMENT**

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Song Sparrow Solar, LLC (“Song Sparrow Solar”), 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, Song Sparrow Solar requests confidential treatment for information contained in documents responsive to Item 1. In support of this motion, Song Sparrow Solar 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 Song Sparrow Solar.

Through Item 1, the Siting Board seeks copies of leases or purchase agreements, including options, (collectively “Leases”) that Song Sparrow Solar has executed in development of this project. Previously, the Siting Board has held that material terms of lease agreements are confidential. In *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 5:110*, No. 2021-00072 at 3-4 (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 In the Matter of: Electronic Application of AEUG Fleming Solar, LLC for a Certificate of Construction for an Approximately 188 Megawatt Merchant Electric Solar Generating Facility in Fleming County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110, No. 2020-00206 (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 Song Sparrow Solar. Song Sparrow Solar 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.

For the foregoing reasons for an indefinite amount of time, Song Sparrow Solar respectfully requests confidential treatment of the Leases.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC



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