

**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)**

**SONG SPARROW SOLAR LLC'S
SECOND PETITION FOR CONFIDENTIAL TREATMENT**

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 documentation filed in response to the Siting Board’s Second Request for Information. Specifically, Song Sparrow Solar requests confidential treatment for pages of the Vermeer PD10 pile driver operator’s permit that is responsive to Item 4. 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 documentation referenced below appears to be confidential and proprietary and the disclosure of which would present an unfair commercial disadvantage to Vermeer.

Through Item 4, the Siting Board seeks the operator’s manual for a pile driver referenced in the noise report filed with Song Sparrow Solar’s application. Song Sparrow Solar is providing certain pages (the cover page, first page of the Introduction, relevant page identifying sound levels, and the last page) of the February 21, 2023 operator’s manual for the Vermeer PD10 pile driver. It does not appear that the requested information is publicly available from Vermeer. Rather, Vermeer will provide manuals to owners of the equipment. Accordingly, and out of an abundance of caution, Song Sparrow Solar is requesting confidential treatment of the filed documents, in order to protect the interests of Vermeer.

The identified information in the operator’s manual may contain proprietary commercial information that if made publicly available could present competitive disadvantage to Vermeer. For the foregoing reasons, Song Sparrow Solar respectfully requests confidential treatment of the filed pages of the operator’s manual for an indefinite amount of time.

RESPECTFULLY SUBMITTED,

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