

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

In the Matter of:

ELECTRONIC APPLICATION OF)	
CLOVER CREEK SOLAR PROJECT LLC)	
D/B/A NEW FRONTIERS SOLAR PARK)	
FOR A CERTIFICATE OF CONSTRUCTION)	
FOR AN APPROXIMATELY 100)	
MEGAWATT MERCHANT ELECTRIC)	Case No. 2024-00253
SOLAR GENERATING FACILITY AND)	
NONREGULATED ELECTRIC)	
TRANSMISSION LINE IN BRECKINRIDGE)	
COUNTY, KENTUCKY PURSUANT TO)	
KRS 278.700 AND 807 KAR 5:110)	

PETITION FOR CONFIDENTIAL TREATMENT

Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park (the “Applicant” or “New Frontiers”) respectfully submits this Petition pursuant to 807 KAR 5:110 § 5, 807 KAR 5:001 § 13, and KRS 61.878(1)(c)(1) for confidential treatment of certain information responsive to the Kentucky Electric Generation and Transmission Siting Board (“Siting Board” or “Board”) Staff’s Post-Hearing Request for Information filed March 25, 2025. In support of this Petition, New Frontiers states as follows.

807 KAR 5:110 § 5 provides the procedure by which certain information filed with the Siting Board shall be treated as confidential. 807 KAR 5:110 § 5(2)(a)(1) provides that the party seeking confidentiality must “establish each basis upon which the petitioner believes the material should be treated as confidential” in accordance with KRS 61.870 to 61.884, the Kentucky Open Records Act (KORA).

KORA excludes certain records from public disclosure. Specifically, 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 permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]”

This exception is to protect the records of private entities which are required to disclose confidential or proprietary records to a public agency if disclosure of those records would place the private entities at a competitive disadvantage.¹

The document for which this Petition seeks confidential treatment falls squarely within this exception and should thus be granted confidential treatment in full. The Siting Board’s post-hearing request number 5 requires New Frontiers to produce its executed power purchase agreement (PPA). The PPA was always intended to remain confidential, as demonstrated by the document itself which includes detailed confidentiality provisions. The PPA is not publicly available and is not disseminated even within New Frontiers, except to those employees and professionals with an explicit business need to know and act on the information contained therein.

The PPA contains confidential and commercially sensitive terms agreed upon by the contracting parties, disclosure of which would economically harm New Frontiers. The PPA itself is highly sensitive and complex and is the result of extensive negotiations between New Frontiers and the offtaker for the power sold pursuant to the agreement. Commercially sensitive terms contained in the PPA include but are not limited to terms such as calculation of the contract price, treatment of renewable energy credits and facility attributes, availability requirements, termination rights, and a variety of other highly sensitive provisions, each of which are negotiated independently by the contracting parties. Disclosure of the PPA would place New Frontiers at a competitive disadvantage, as divulging the PPA would allow competitors to access sensitive information of the parties including economic status, investment strategies, corporate assets

¹ Ky. OAG 97- ORD-66 at 10 (Apr. 17, 1997).

structures, negotiation terms, and other information concerning the inner workings of these private entities. Similarly, disclosure of these terms threatens New Frontiers' position in all future power purchase agreement negotiations since potential counterparties and competing developers would have knowledge of prior terms to which New Frontiers has agreed. Thus, disclosure of the PPA would not only divulge sensitive economic information but also undercut New Frontiers' ability to negotiate future PPAs. This type of commercial agreement falls squarely within the KORA exception for confidential treatment and should therefore be granted this treatment in full.

If the Siting Board's tentative assessment is that any of the information identified herein is not exempt from disclosure as confidential commercial information, it must hold an evidentiary hearing to protect Applicant's due process rights and permit an opportunity to supply the Siting Board with a complete record to enable it to reach a decision with regard to this confidentiality request.

In compliance with 807 KAR 5:110 § 5(2)(b) and 807 KAR 5:001 §13(2)(a)(3)(b), New Frontiers is filing with the Siting Board one copy of the above-referenced attachment unredacted and entirely under seal as it is seeking confidential treatment for the whole of the document for those reasons discussed above. The unredacted copies are filed under seal pursuant to the instructions regarding confidential filings in the March 24, 2020 Order issued in KY. PSC Case No. 2020-00085.

807 KAR 5:001, § 13(2)(a)(2) provides that a request for confidential treatment state the time period for the material to be treated as confidential and the reasons therefor. Given the confidential and proprietary nature of the information contained in the PPA, and the competitive nature of the solar industry, New Frontiers requests that the Board grant confidential treatment of

the PPA indefinitely. The Siting Board has granted complete and indefinite confidential treatment for a similarly situated applicant and respectfully requests the same for New Frontiers' PPA.²

WHEREFORE, Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park respectfully requests that the Siting Board grant confidential treatment of the information described herein, filed entirely under seal concurrently with the publicly-filed Response to the Siting Board's Post-Hearing Request for Information.

Respectfully submitted,

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² See Order dated July 1, 2022, *In the Matter of the Electronic Application of Bluebird Solar LLC for a Certificate of Construction for an Approximately 100 Megawatt Merchant Electric Solar Generating Facility in Harrison County, Kentucky Pursuant to KRS 278.700 and KAR 5:110*, Case No. 2021-00141.