

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

In the Matter of:

Electronic Application of Kentucky Municipal Energy Agency for a Certificate of Construction for an Approximately 75-Megawatt Merchant Electric Generating KYMEA Energy Center I and Transmission Line in Madisonville, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110)
)
) **Case No. 2024-00290**
)
)

PETITION FOR CONFIDENTIAL TREATMENT

The Kentucky Municipal Energy Agency (“KYMEA”), 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 filed in the Supplemental Response to Item 2 of the response to the Siting Board’s First Request for Information (“Supplemental Response”). Specifically, KYMEA requests confidential treatment for some information contained in KYMEA’s Supplemental Response, which is also detailed in this Petition for Confidential Treatment. In support of this motion, KYMEA 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 their disclosure would present an unfair commercial disadvantage to KYMEA.

Through Item 2, the Siting Board sought information on “any contracts for which Kentucky Municipal Energy has paid, has negotiated to pay, or any compensation paid to non-participating landowners, whether cash or otherwise, near the project” including the terms of the agreements and identification of the involved properties based on distance from the project. As KYMEA stated in its Supplemental Response, it has engaged in discussions with Robert Cunningham and Donna and Sharon Hendricks, non-participating landowners of the two closest properties with residential structures, regarding any potential concerns about the project’s noise and visual impact during construction and operation. KYMEA has not yet executed written agreements regarding mitigation with non-participating landowners, but the landowners support the project and commit to working with KYMEA.

[REDACTED]

Siting Board precedent supports the confidential treatment of the content of these ongoing discussions. For example, in *Pine Grove Solar, LLC*, Case No. 2022-00262 (KSB Apr. 14, 2023), the Siting Board granted confidential treatment for an agreement that was submitted by a developer in response to a request that was very similar to the request of KYMEA in Item 2.

Additionally, KYMEA requests confidential treatment for the ongoing mitigation discussions with the non-participating, adjacent landowners because KRS 61.878(1)(c)(1) safeguards records with information “of a personal nature” that would “constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(a). KYMEA’s negotiations with landowners neither participating in the project nor affirmatively placing themselves under the Siting Board’s jurisdiction. KYMEA and the non-participating landowners have exercised their right to engage in private discussions that are not compulsorily disclosed to the public.

Kentucky courts have long recognized the right to an individual's privacy. This right has been described as "the right to live one's life in seclusion without being subjected to unwarranted and undesired publicity," *Jones v. Herald Post Co.*, 18 S.W.2d 972, 973 (Ky. 1929) and "the right to be let alone . . . or the right to live without unwarranted interference by the public about matters with which the public is not necessarily concerned." *Brents v. Morgan*, 299 S.W.967, 969-70 (Ky. 1927). The *Brents* Court continued its analysis with the following citation:

The right of privacy is incident to the person and not to property. Its foundation is in the conception of an inviolate personality and personal immunity. It is considered as a natural and an absolute or pure right springing from the instincts of nature. It is of that class of rights which every human being had in his natural state and which he did not surrender by becoming a member of organized society. The fundamental rights of personal security and personal liberty include the right of privacy, the right to be let alone. The right of personal security embraces the right to the enjoyment of life which means more than the mere right to breathe. The right to enjoy life is a right to enjoy life in the way most agreeable and pleasant, and the right of privacy is nothing more than a right to live in a particular way.

Brents, 299 S.W. 967 at 971 (citing 8 21 R. C. L. par. 3, p. 1197). Any private agreement, separate from the project, is part of KYMEA's, Robert Cunningham's, and Donna and Sharon Hendricks' right to negotiate in private. Any tangential agreements KYMEA may enter with the non-participating landowners has no bearing on the development of the project as they relate to activities separate from the generation of electricity from the project. Disclosure of any such agreement would inhibit both KYMEA's and the non-participating landowners' right to negotiate in private and would not benefit the public.

For the foregoing reasons for an indefinite amount of time, KYMEA respectfully requests confidential treatment of the Supplemental Response and the iteration of the contents of the Supplemental Response in this Petition.

Respectfully submitted,



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