

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

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| In the Matter of: |) | |
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| In the Matter of the Application of Summer Shade Solar, LLC for a Certificate of Construction for an approximately 106-Megawatt Merchant Electric Solar Generating Facility in Metcalfe County, Kentucky pursuant to KRS 278.700, et seq., and 807 KAR 5:110 |) | Case No. 2025-00064 |

MOTION FOR CONFIDENTIAL TREATMENT

Summer Shade Solar, LLC (“Summer Shade”), 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 with the Response to the Siting Board’s First Request for Information, Item 2. Specifically, Summer Shade requests confidential treatment of information contained in documents responsive to Items 1, 2, and 94. In support of this motion, Summer Shade 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 Serv., Inc. v. Commonwealth*, 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 Summer Shade.

In response to Item 1 of the First Request for Information, Summer Shade is providing a copy of an executed lease that Summer Shade has executed in development of this project. Previously, the Siting Board has held that material terms of lease agreements are confidential. In *In re Sebree Solar, LLC*, Case No. 2021-00072 at 3-4 (K.S.B. 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 re AEUG Fleming Solar, LLC*, Case No. 2020-00206 (K.S.B. 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 Summer Shade. Summer Shade 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.

Additionally, Summer Shade requests confidential treatment for the contract that it entered with an adjacent landowner (the “Mutual Cooperation Agreement”), which is being provided in response to Item 2 of the First Request for Information and discussed in the narrative response to Item 94. In addition to having contractual terms similar to those determined to be exempt from

public disclosure under KRS 61.878(1)(c)(1) as described above because public disclosure would create a competitive disadvantage for Summer Shade, the Kentucky Open Records Act safeguards records with information “of a personal nature” that would “constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(a). The Mutual Cooperation Agreement is a unique contractual arrangement that Summer Shade entered with the owners of the adjacent, non-participating parcel. As the signatory landowners are not participating in the Summer Shade project, they are not engaging in activity that the Siting Board or the Public Service Commission regulates. Thus, the non-participating landowners have not affirmatively acted to place themselves under the jurisdiction of the Siting Board. Summer Shade and the signatories have exercised their right to enter a contract, which constitutes the formation of an agreed upon relationship that is private and is 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). The landowners who signed the Mutual Cooperation Agreement merely entered a private contractual agreement, separate from the Summer Shade project, as part of their fundamental right to contract in privacy. Disclosure of the contents of this agreement would inhibit both Summer Shade and the non-participating landowners' right to contract in private.

Additionally, Summer Shade and the landowners contemplated that the Mutual Cooperation Agreement would remain confidential. Paragraph 4 of the Agreement specifically states that the landowners to the contract will treat the contents of the Agreement confidentially. Publication of the terms of the contract would inherently trample the parties' right to contract without providing any benefit to the public through the disclosure of the material terms of the contract.

The Siting Board has granted confidential treatment for the entirety of a similar agreement in *Pine Grove Solar, LLC*, Case No. 2022-00262 (K.S.B. Apr. 14, 2023).

For the foregoing reasons and for an indefinite amount of time, Summer Shade respectfully requests confidential treatment of the Leases, Mutual Cooperation Agreement, and narrative discussion related to the Mutual Cooperation Agreement.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC



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