

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF NORTHERN)	
BOBWHITE SOLAR LLC FOR A CERTIFICATE)	
OF CONSTRUCTION FOR AN)	
APPROXIMATELY 96 MEGAWATT)	CASE NO.
MERCHANT SOLAR ELECTRIC GENERATING)	2020-00208
FACILITY IN MARION COUNTY, KENTUCKY)	
PURSUANT TO KRS 278.700 AND 807 KAR)	
5:110)	

ORDER

On February 15, 2021, Northern Bobwhite Solar LLC (Northern Bobwhite) filed a motion, pursuant to 807 KAR 5:110, Section 5, requesting confidential protection for an indefinite period for Exhibit K¹ produced in response to Siting Board Staff's First Request for Information, Item 2(b), as well as confidential protection for the life of the solar project for Exhibit W² produced in response to Siting Board Staff's First Request for Information, Harvey Economics' Item XI.B.5 and Exhibit X³ produced in response to Siting Board Staff's First Request for Information, and Harvey Economics' Item XI.B.6.

In support of its February 15, 2021 motion, Northern Bobwhite argues that Exhibit K contains copies of leases and easement agreements that Northern Bobwhite

¹ Northern Bobwhite's Responses to Siting Board Staff and Harvey Economics' First Request for Information, Exhibit K at 38.

², Northern Bobwhite's Responses to Siting Board Staff and Harvey Economics' First Request for Information, Exhibit W at 227.

³ Northern Bobwhite's Responses to Siting Board Staff and Harvey Economics' First Request for Information, Exhibit X at 228.

has entered into with the landowners for the solar project, and that these leases and easement agreements contain highly sensitive information that should be kept confidential. Northern Bobwhite contends that it would be placed at a significant competitive disadvantage if these leases and easement agreements were publicly disclosed because other renewable energy developers and other potential lessors would learn the terms and conditions in the leases and easement agreements, putting Northern Bobwhite at a competitive disadvantage on future projects.

Additionally, in support of its February 15, 2021 motion, Northern Bobwhite argues that Exhibit W and Exhibit X include information regarding potential future salaries of Northern Bobwhite employees and anticipated annual operations and maintenance expenses for the solar project. Northern Bobwhite contends that public disclosure regarding detailed information regarding the cost of this solar project would put Northern Bobwhite at a significant competitive disadvantage. Specifically, Northern Bobwhite's concern is that if potential contractors and service providers were to access this detailed information, these potential contractors and service providers could use the information as a guide to increasing bids for services.

Having considered the motions and the material at issue, the Siting Board finds that Northern Bobwhite's motion should be granted in part and denied in part. The Siting Board finds that for Exhibit K provided in Northern Bobwhite's responses to Siting Board Staff's First Request for Information, and the copies of leases and easement agreements contained therein, only the material terms of the leases and easement agreements meet the criteria for confidential treatment. Material terms as defined for the purposes of this Order include the lease amount, escalation of lease payments, and remedies available to

the parties of the lease for nonperformance of the terms. Ultimately, the above detailed material terms of the leases and easement agreements provided in Northern Bobwhite's responses to Siting Board Staff's First Request for Information, are exempted from public disclosure because the material terms are those which would permit a competitor of Northern Bobwhite an unfair commercial advantage pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110, Section 5. The remaining terms governing the leases do not meet that criteria for confidentiality because they are general contract language that would not permit a competitor of Northern Bobwhite an unfair commercial advantage, and for those non-material terms the request for confidential treatment should be denied. Lastly, in keeping with standard practice, personal contact information such as phone numbers and email addresses will also be kept confidential pursuant to KRS 61.878(1)(a), and 807 KAR 5:110, Section 5.

The Siting Board finds that for Exhibit W and Exhibit X provided in Northern Bobwhite's responses to Staff's First Request for Information should be granted confidential treatment, as contained in both Exhibit W and Exhibit X is information typically held to be confidential. First, the information contained in both exhibits regarding salaries of potential future non-managerial employees is of a personal nature for those future employees and the public disclosure of that information would constitute a clearly unwarranted invasion of personal privacy for said future employee. Second, the information regarding anticipated annual operations and maintenance expenses for the solar project contained in both exhibits would permit an unfair commercial advantage to competitors of Northern Bobwhite or its parent company on future projects if publicly

disclosed. Accordingly, this information is exempted from public disclosure pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), and 807 KAR 5:110, Section 5.

Ad hoc appointees to the Siting Board, Judge Executive David Daugherty and Ms. Connie Rakes, did not participate in the decision of this Order.

IT IS THEREFORE ORDERED that:

1. Northern Bobwhite's February 15, 2021 motion for confidential treatment for is granted in part and denied in part.

2. Northern Bobwhite's February 15, 2021 motion for confidential treatment for the copies of leases and easement agreements contained in Exhibit K of its responses to Siting Board Staff's First Request for Information is granted solely for the material terms of the lease as defined within this Order and for personal contact information of the parties contained in the leases.

3. Northern Bobwhite's February 15, 2021 motion for confidential treatment for all non-material terms of the leases and easement agreements contained in its responses to Siting Board Staff's First Request for Information is denied.

4. Northern Bobwhite's February 15, 2021 motion for confidential treatment for the potential future salaries of Northern Bobwhite employees and anticipated annual operations and maintenance expenses for the solar project contained in its responses to Siting Board Staff's First Request for Information is granted.

5. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Siting Board.

6. Use of the designated material granted confidential treatment by this Order in any Siting Board proceeding shall comply with 807 KAR 5:001, Section 13(9).

7. Northern Bobwhite shall inform the Siting Board if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

8. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Northern Bobwhite is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Siting Board shall deny the request for inspection.

9. The Siting Board shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Northern Bobwhite to seek a remedy afforded by law.

10. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

11. If Northern Bobwhite objects to the Siting Board's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410.

Failure to exercise either of these statutory rights will be deemed as agreement with the Siting Board's determination of which materials should be granted confidential treatment.

12. Within 30 days of the date of service of this Order, Northern Bobwhite shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. The designated material for which Northern Bobwhite's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Northern Bobwhite to seek a remedy afforded by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Kentucky State Board on Electric
Generation and Transmission Siting



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bidwell". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director
Public Service Commission
on behalf of the Kentucky State
Board on Electric Generation
and Transmission Siting

Case No. 2020-00208

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