

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF UNBRIDLED	)	
SOLAR, LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY 160	)	
MEGAWATT MERCHANT ELECTRIC SOLAR	)	CASE NO.
GENERATING FACILITY AND NONREGULATED	)	2020-00242
ELECTRIC TRANSMISSION LINE IN	)	
HENDERSON AND WEBSTER COUNTIES,	)	
KENTUCKY	)	

ORDER

On February 2, 2021, Unbridled Solar, LLC (Unbridled) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for five years for responses to the Siting Board Staff's First Request for Information (Staff's First Request), and for responses to questions submitted by BBC Research and Consulting (BBC) and attached to Staff's First Request as an Appendix (BBC Appendix). On April 7, 2021, Unbridled filed a petition requesting confidential protection for five years for leases filed at the request of the Siting Board. On April 19, 2021, Unbridled filed a petition requesting confidential protection for five years for responses to Siting Board Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request).

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,<sup>1</sup> which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884”.<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> KRS 61.878(1)(a) exempts information from disclosure that is personal and if disclosed would be an unwarranted invasion of privacy.<sup>5</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(i) exempts from disclosure correspondence with private individuals.<sup>6</sup>

#### FEBRUARY 2, 2021 MOTION

Unbridled made several requests for confidential protection in its February 2, 2021, motion and requested confidential protection for five years for each item. Unbridled argued that its response to Staff’s First Request, Item 7 should be granted confidential protection. This response required Unbridled to provide information about concerns of neighboring landowners of the project. Unbridled provided Exhibit J, Figure 3 which is a

---

<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>5</sup> KRS 61.878(1)(a).

<sup>6</sup> KRS 61.878(1)(i).

list of neighboring landowners and their addresses. Unbridled argued this should be confidential because it would be a violation of the landowners' privacy to disclose their names and addresses.

Unbridled also requested confidential protection for a handwritten note from a neighboring landowner to the project provided in response to Staff's First Request, Items 7 and 24. Unbridled stated this information should be confidential pursuant to KRS 61.878(1)(i) because it is correspondence with a private party and it would be an invasion of the landowner's privacy.

Unbridled requested confidential protection of its response to BBC Appendix Question 4. This response contains a transfer study done by Mesa Associates to evaluate the project. Unbridled requested this be granted confidential protection because it is normally considered confidential and proprietary and if disclosed would give an unfair advantage to competitors. Other solar development companies would have an understanding of how Unbridled evaluates projects and could use that information for their advantage.

Finally, Unbridled requested confidential protection to its response to BBC Appendix, Question 10 included in Staff's First Request. This response required Unbridled to provide legal descriptions of legal descriptions of property used in the project.

Having considered the motion and the material at issue, the Siting Board finds that Unbridled's motion should be granted in part and denied in part. The Siting Board finds that the addresses of neighboring landowners contained in response to Staff's First Request, Item 7, Exhibit J, Figure 3 meet the criteria for confidential treatment and are

exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:110, Section 5.

The Siting Board finds that the landowner's name and address on the handwritten correspondence provided in response to Staff's First Request, Items 7 and 24 meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(i) and 807 KAR 5:110, Section 5.

The Siting Board finds that the transfer study done by Mesa Associates to evaluate the project provided in response to BBC Appendix, Question 4 included in Staff's First Request meets the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

The Siting Board further finds that the request for confidential treatment is denied for the names of the landowners in Item 7, Exhibit J, Figure 3. The Siting Board has previously held that this is public information and not entitled to confidential protection. Therefore, the landowner names do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:110, Section 5.

The Siting Board finds that the request for confidential treatment is denied for the contents of the handwritten correspondence. The Siting Board has previously held that information from landowners is important to the process and the creation of a robust record in Siting Board proceedings. Therefore, the contents of the handwritten correspondence do not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(i) and 807 KAR 5:110, Section 5.

The Siting Board finds that the request for the legal descriptions of property filed in response to BBC Appendix, Question 10 included in Staff's First Request is denied. The Siting Board has previously held that information that can be found in deed books is not confidential. The only documents filed for this request are pages of the deed books. There is no reason for granting confidential protection in this proceeding for documents that are available to the general public at the Henderson and Webster County Clerk's Offices. Therefore, legal descriptions of property do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

#### APRIL 7, 2021 PETITION

Unbridled requested confidential protection of leases and purchase agreements of property to be used in the solar project. Unbridled argued this information should be confidential because it contains commercially sensitive information. Unbridled argued that if the leases and land purchase agreements were made public other competitors and potential lessors would know the price Unbridled was willing to pay placing them at a commercial disadvantage. Unbridled requested confidential protection for five years for the leases and land purchase agreements.

Having considered the petition and the material at issue, the Siting Board finds that Unbridled's petition is granted in part and denied in part. The Siting Board finds that certain designated material terms contained in Unbridled's leases are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5. Material terms are defined as including:

1. The lease amounts;
2. Escalation of lease payments;
3. Remedies available to the parties of the lease for nonperformance of the terms;
4. Economic terms other than lease terms 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.

The Siting Board further finds that the request for confidential treatment is denied for the land purchase agreements. The Siting Board has previously held that land purchase agreements are not entitled to confidential protection because these real estate transactions must be recorded. Therefore, the land purchase agreements do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

#### APRIL 19, 2021 PETITION

Unbridled made several requests for confidential protection in its April 19, 2021 petition. Unbridled requested confidential protection for five years for all of the information. Unbridled argued that the decommissioning plan provided in response to Staff's Post-Hearing Request, Item 1 should be granted confidential protection pursuant to KRS 61.878(1)(c)(1) because it is confidential and proprietary. Other solar developers could use the information without having to generate the plans themselves putting Unbridled at a competitive disadvantage.

Unbridled requested confidential protection of its response to Staff's Post-Hearing Request, Item 5. This response required Unbridled to provide a list of property owners with addresses. Unbridled claimed this should receive confidential protection because it violates the privacy rights of the landowners.

Finally, Unbridled requested confidential protection for its response to Staff's Post-Hearing Request, Item 6 which contains JEDI workpapers. Unbridled argued this should be confidential under KRS 61.878(1)(c)(1) because it is confidential and proprietary information about the project. Unbridled claimed it would face a serious business injury if this information was publicly released and other solar developers could use the information.

Having considered the petition and the material at issue, the Siting Board finds that Unbridled's petition is granted in part and denied in part. The Siting Board finds that the cost estimates contained in Unbridled's decommissioning plan are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

The Siting Board finds that the address of landowners found in the response to Staff's Post-Hearing Request Item 5 are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

The Siting Board further finds that the request for confidential treatment is denied for remainder of the decommissioning plan. The Siting Board has previously held that decommissioning plans are not entitled to confidential protection and therefore, do not

meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

The Siting Board finds that the request for confidential treatment is denied for the names of the landowners provided in response to Staff's Post-Hearing Request Item 5. The Siting Board has previously held that this is public information and not entitled to confidential protection. Therefore, the landowner names do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:110, Section 5.

The Siting Board finds that the request for confidential treatment is denied for the JEDI workpapers because it does not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Unbridled's February 2, 2021 motion, April 7, 2021 petition, and April 19, 2021 petition for confidential treatment are granted in part and denied in part.
2. Unbridled's motion for confidential treatment for the landowner address, the name and address of the handwritten correspondence, and the transfer study in the February 2, 2021 motion is granted.
3. Unbridled's petition for confidential treatment for the material terms of leases as defined above in the April 7, 2021 petition is granted.
4. Unbridled's petition for confidential treatment for the cost estimates of decommissioning and the addresses of neighboring landowners in the April 19, 2021 petition is granted.



5. Unbridled's motion for confidential treatment for names of landowners, the contents of the correspondence, and the legal descriptions of property in the February 2, 2021 motion is denied.

6. Unbridled's petition for confidential treatment for land purchase agreements in the April 7, 2021 petition are denied.

7. Unbridled's petition for confidential treatment for the decommissioning plan other than the cost estimates, the names of neighboring landowners, and the JEDI workpapers in the April 19, 2021 petition are denied.

8. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further order of this Siting Board.

9. Use of the designated material granted confidential treatment by this Order in any Siting Board proceeding shall comply with 807 KAR 5:110, Section 5.

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

11. 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, Unbridled 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 Unbridled 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.

12. 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 Unbridled to seek a remedy afforded by law.

13. 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.

14. If Unbridled objects to the Siting Board's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to 807 KAR 5:110, Section 5(4), or judicial review of this Order pursuant to KRS 278.712(5). 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.

15. Within 30 days of the date of service of this Order, Unbridled 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.

16. The designated material for which Unbridled'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 Unbridled to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

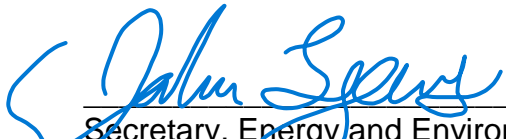


Chairman, Public Service Commission

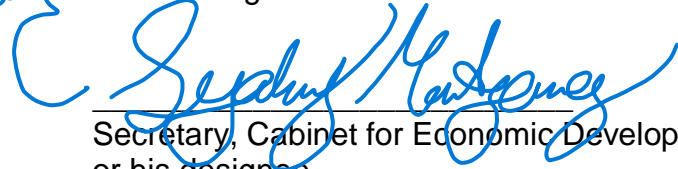
Vice Chairman, Public Service Commission

Commissioner, Public Service Commission

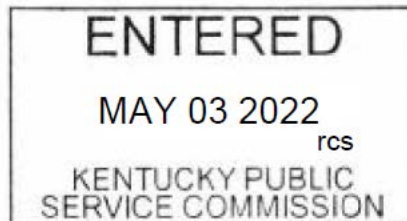
by  
KAC  
w/permission



Secretary, Energy and Environment Cabinet,  
or her designee



Secretary, Cabinet for Economic Development,  
or his designee



ATTEST:



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

\*Courtney Pelissero  
Unbridled Solar, LLC  
8400 Normandale Lake Blvd.  
Suite 1200  
Bloomington, MINNESOTA 55437

\*Honorable Jason R Bentley  
Attorney at Law  
McBrayer PLLC  
201 East Main Street  
Suite 900  
Lexington, KENTUCKY 40507

\*Kathryn A Eckert  
McBrayer PLLC  
201 East Main Street  
Suite 900  
Lexington, KENTUCKY 40507

\*Katherine Yunker  
McBrayer PLLC  
201 East Main Street  
Suite 900  
Lexington, KENTUCKY 40507

\*Unbridled Solar, LLC  
8400 Normandale Lake Blvd.  
Suite 1200  
Bloomington, MINNESOTA 55437