

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF FLAT RUN)	
SOLAR, LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 55)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2020-00272
GENERATING FACILITY IN TAYLOR COUNTY,)	
KENTUCKY, PURSUANT TO KRS 278.700 AND)	
807 KAR 5:110)	

ORDER

On May 27, 2021, Flat Run Solar, LLC (Flat Run Solar) filed a petition, pursuant to 807 KAR 5:001, Section 4(10)(a)(7), and KRS 61.878(1)(c)(1), requesting that the Siting Board grant confidential protection for an indefinite period of time for certain information contained in its responses to Siting Board Staff’s First Request for Information (Siting Board Staff’s First Request), in particular, Items 4(c) and 14(b).

In support of its May 27, 2021 motion, Flat Run Solar asserts its responses to Siting Board Staff’s First Request, Items 4(c) and 14(b) contain copies of leases that Flat Run Solar has entered into with property owners in connection with the proposed solar facility site. Flat Run Solar makes a general argument that public disclosure of the leases would permit a “significant competitive disadvantage” by allowing competitors and other potential lessors would learn the terms and conditions in the leases.

Having considered the motion and the material at issue, the Siting Board finds that Flat Run Solar’s motion should be granted in part and denied in part. The Siting Board finds that for lease agreements submitted in response to Siting Board Staff’s First

Request, Items 4(c) and 14(b), 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 Flat Run Solar's responses to Siting Board Staff's First Request, are exempted from public disclosure because the material terms are those which would permit a competitor of Flat Run Solar 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 Flat Run Solar 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.

IT IS THEREFORE ORDERED that:

1. Flat Run Solar's May 27, 2021 petition for confidential treatment is granted in part and denied in part.
2. Flat Run Solar's May 27, 2021 petition for confidential treatment for copies of leases submitted in its responses to Items 4(c) and 14(b) of Siting Board Staff's First Request 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. Flat Run Solar's May 27, 2021 petition for confidential treatment for all non-material terms of the lease agreements contained in its responses to Siting Board Staff's First Request is denied.

4. 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 Commission.

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

6. Flat Run Solar shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. 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 Flat Run Solar is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission 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 Flat Run Solar to seek a remedy afforded by law.

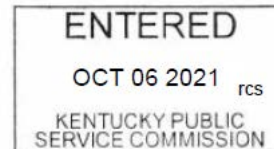
9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Flat Run Solar objects to the Commission'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 Commission's determination of which materials should be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Flat Run Solar 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.

12. The designated material for which Flat Run Solar'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 Flat Run Solar to seek a remedy afforded by law.

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bridwell". 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
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and Transmission Siting

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