

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

In the Matter of:

ELECTRONIC APPLICATION OF ASHWOOD)	
SOLAR I, LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 86)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2020-00280
GENERATING FACILITY IN LYON COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND)	
807 KAR 5:110)	

ORDER

On February 25, 2021, Ashwood Solar I, LLC (Ashwood Solar) filed a petition, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for an indefinite period for leases provided in response to Item 25 of the Siting Board Staff's First Request for Information and the response to Question 5 of BBC Research and Consulting (BBC) that is attached to Staff's First Request as an Appendix.¹

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,² 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."³ The exceptions to the free and open

¹ Ashwood Solar filed an identical motion on May 5, 2021. This Order resolves all confidentiality requests made by Ashwood Solar.

² KRS 61.870 through 61.884.

³ KRS 61.872(1).

examination of public records should be strictly construed.⁴ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁵ KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.⁶ 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) grants confidential protection to preliminary drafts, notes, or correspondence.⁷

DISCUSSION AND FINDINGS

In support of its petition, Ashwood Solar argued that its response to Item 25 of Staff’s First Request required it to provide the leases for property to be used in the project. Ashwood Solar stated if the leases were not given confidential protection, it could cause a competitive disadvantage because other solar developers and property owners would know the amounts Ashwood Solar was prepared to pay to lease property.

Ashwood Solar also requested confidential protection of its response to Question 5 of BBC’s Questions contained in the Appendix to Staff’s First Request. This response required Ashwood Solar to disclose any complaints of neighboring landowners and the resolution. The response includes the names of two landowners, the general nature of

⁴ KRS 61.878.

⁵ 807 KAR 5:001, Section 13(2)(c).

⁶ KRS 61.878(1)(a).

⁷ KRS 61.878(1)(i).

their complaints, and Ashwood Solar's plan to remedy the complaint. Ashwood Solar argued this should be granted confidential protection pursuant to KRS 61.878(1)(i) because it is correspondence with individuals not involved in the proceeding.

Having considered the petition and the material at issue, the Siting Board finds that Ashwood Solar's petition is granted in part and denied in part. The Siting Board finds that the certain material terms of the leases contained in Ashwood Solar's response to Item 25 of Staff's First Request 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 finds that the names of the landowners provided in response to Question 5 of BBC's Questions meet the criteria for confidential treatment and are exempted from public disclosure. The Siting Board has previously held that the names of individuals that correspond with solar developers are confidential because it is an unwarranted invasion of privacy pursuant to KRS 61.878(1)(a).

The Siting Board further finds that the request for confidential treatment is denied for contents of the complaints and the proposed remedy by Ashwood Solar in the response to Question 5 of BBC's Questions. The Siting Board has previously held that comments and concerns from landowners are important to the process and the creation of a robust record in Siting Board proceedings. Therefore, contents of the complaints and proposed remedy by Ashwood Solar 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.

IT IS THEREFORE ORDERED that:

1. Ashwood Solar's petition for confidential treatment for information provided in response to Staff's First Request is granted in part and denied in part.
2. Ashwood Solar's petition for confidential treatment for material terms of leases, as described above, provided in response to Item 25 of Staff's First Request is granted.
3. Ashwood Solar's petition for confidential treatment of the landowner names provided in response to Question 5 of BBC is granted.
4. Ashwood Solar's petition for confidential treatment for the contents of the complaints and Ashwood Solar's proposed remedy provided in response to Question 5 of BBC is denied.
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 5:110, Section 5.

7. Ashwood Solar 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 Ashwood Solar 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 Ashwood Solar 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 Ashwood Solar 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

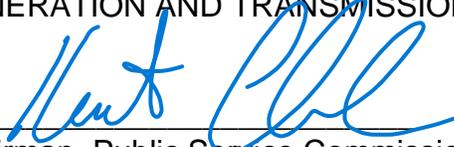
agreement with the Siting Board's determination of which materials should be granted confidential treatment.

12. Within 30 days of the date of service of this Order, Ashwood 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.

13. The designated material for which Ashwood 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 Ashwood Solar to seek a remedy afforded by law.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



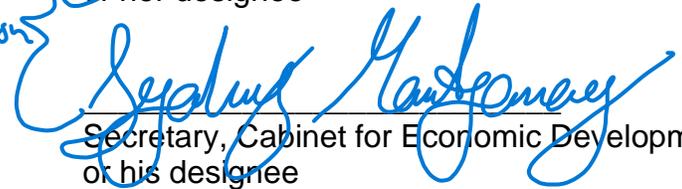
Chairman, Public Service Commission

Vice Chairman, Public Service Commission

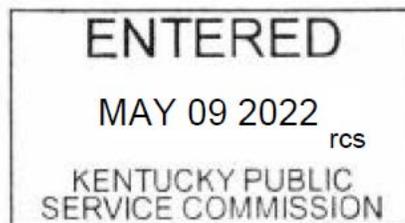
Commissioner, Public Service Commission

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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

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