

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF HENDERSON)	
COUNTY SOLAR LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 50)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2020-00391
GENERATING FACILITY IN HENDERSON)	
COUNTY, KENTUCKY PURSUANT TO KRS)	
278.700 AND 807 KAR 5:110)	

ORDER

On November 9, 2021, Henderson County Solar LLC (Henderson County Solar) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for 30 years for the entirety of seven leases filed in response to the Siting Board Staff's Post Hearing Request for Information, Item 4.

In support of its motion, Henderson County Solar argued that the leases contain personal information including names, addresses and contact information protected by 807 KAR5:001, Section 4(10)(a)(7). In addition it argued that there is confidential financial information on the term of the lease, the amount to be paid, and remedies in the event of default. Henderson County Solar argued that other commercial terms are in the leases, and disclosure of all of those terms could put it at a competitive disadvantage. Henderson County Solar cites KRS 61.878(1)(c)(1) which states, "[r]ecords 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 permit an unfair commercial advantage to competitors of the entity that disclosed the records." Henderson County

Solar also cited to *Hoy v. Kentucky Industrial Revitalization Authority*,¹ for the proposition that these materials should be classified as confidential because they contain “information concerning the inner workings of a corporation [which] is ‘generally accepted as confidential or proprietary.’”² Notably, *Hoy* involved information submitted in an application for investment tax credits, which was exempt from disclosure under another section, KRS 61.878(1)(c)(2). The language quoted by Henderson County Solar refers to documents required for such an application for tax credits showing “a financial history of the corporation, projected cost of the project, the specific amount and timing of capital investment, copies of financial statements and a detailed description of the company's productivity, efficiency and financial stability.”³ None of the information at issue in this matter relates to such an application.

Having considered the motion and the material at issue, the Siting Board finds that Henderson County Solar's motion should be granted in part and denied in part. The Siting Board finds that the designated material contained in Henderson County Solar's leases containing landowners names and the addresses of the property being leased does not meet the standard for confidential treatment under KRS 61.878(1)(a). Landowners' names and addresses that are found in the public record in the property records of the county will not be afforded confidential treatment. Release of that information cannot constitute an unwarranted invasion of privacy. However in the event a personal address different from the property address, an email address, phone number or other type of

¹ *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

² *Id.* at 768

³ *Id.*

personal contact information is shown in the leases, that information does meet the standard and to that extent the motion for confidential treatment is granted.

The Siting Board also finds the material terms contained in Henderson County Solar's leases with participating landowners meet the criteria for confidential treatment, and therefore are exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110(5). For the purposes of this Order, the material terms are defined as follows:

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.

The above-detailed material terms of the leases provided in Henderson County Solar's responses to Siting Board Staff's Post Hearing Request are exempted from public disclosure because the terms are details that could permit a competitor of Henderson County Solar an unfair commercial advantage pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110(5).

The remaining terms of the leases not designated above do not meet that criteria for confidentiality because they are general contract terms, and for those non-material terms the request for confidential treatment should be denied. The Siting Board has

previously held that leases in their entirety are not entitled to confidential protection because of the failure to meet the requisite standard for exemption from disclosure. Therefore, the remaining terms of the leases 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(5).

IT IS THEREFORE ORDERED that:

1. Henderson County Solar's motion for confidential treatment for seven leases is granted in part and denied in part.

2. Henderson County Solar's motion for confidential treatment as to the personal contact information in the leases, consisting of alternate private addresses, email addresses and phone numbers is granted.

3. Henderson County Solar's motion for confidential treatment as to the material terms in the leases is granted.

4. Henderson County Solar's motion for confidential treatment for the remaining terms of the leases 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 30 years 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. Henderson County 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, Henderson County Solar 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 Henderson County 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 Henderson County 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 Henderson County 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.

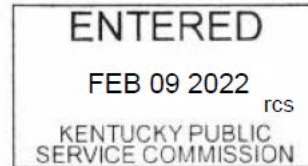
12. Within 30 days of the date of service of this Order, Henderson County Solar shall file a revised version of the designated material for which confidential treatment was

denied, reflecting as unredacted the information that has been denied confidential treatment.

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

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By the Kentucky State Board on Electric
Generation and Transmission Siting



ATTEST:

A handwritten signature in blue ink, reading "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. 2020-00391

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