

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF SEBREE)	
SOLAR, LLC FOR A CERTIFICATE TO)	
CONSTRUCT AN APPROXIMATELY 250)	
MEGAWATT MERCHANT SOLAR ELECTRIC)	
GENERATING FACILITY AND AN)	CASE NO.
APPROXIMATELY 4.5 MILE NONREGULATED)	2021-00072
ELECTRIC TRANSMISSION LINE IN)	
HENDERSON COUNTY, KENTUCKY AND)	
WEBSTER COUNTY, KENTUCKY PURSUANT)	
TO KRS 278.700 AND 807 KAR 5:110)	

ORDER

On October 15, 2021, Sebree Solar, LLC (Sebree Solar) filed a motion for confidential treatment, 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 Sebree Solar's decommissioning plan for the solar project, which was filed in response to Siting Board Staff's First Request for Information (Staff's First Request), Item 35.

On January 14, 2022, Sebree Solar filed a second motion for confidential treatment for a period of ten years for the facility leases and transmission line leases it entered into with landowners for the property on which the project would be constructed. The leases were filed in response to Siting Board Staff's Post Hearing Data Request (Staff's Post Hearing Request), Item 2.

In support of its first motion Sebree Solar argued that portions of its decommissioning plan should be afforded confidential treatment because it contains

detailed estimates regarding the costs of implementing the decommissioning plan and anticipated salvage values. Sebree Solar further argued that the designated material consists of proprietary commercial information concerning pricing estimates that could be detrimental to Sebree Solar in future negotiations if the material was publicly disclosed.

In support of its second motion, Sebree Solar argued that the leases it has entered into should be confidential in their entirety. Sebree Solar asserted that the designated material contains Sebree Solar's business decisions and strategy, and thus if publicly disclosed would result in competitive disadvantage to Sebree Solar in future negotiations of lease provisions, pricing and terms and conditions.

In both motions, Sebree Solar cited to KRS 61.878(l)(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." Sebree 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 Sebree 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

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

² *Id.* at 768

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 first motion with regard to the decommissioning plan, the Siting Board finds that disclosure of information concerning estimated costs of implementing the plan and salvage value could permit a competitor of Sebree Solar an unfair commercial advantage and therefore that designated material meets the criteria for confidential treatment pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110(5). Other terms in the plan do not meet the standard for confidential treatment, nor has such been requested. The Siting Board finds that Sebree Solar’s first motion should be granted as to cost estimates and salvage value in the decommissioning plan.

Having considered the second motion and the documents at issue with regard to its leases, the Siting Board finds that Sebree Solar’s motion should be granted in part and denied in part. The Siting Board finds only the material terms contained in Sebree 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;

³ *Id.*

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 Sebree 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 Sebree 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. Sebree Solar's motion for confidential treatment for portions of the decommissioning plan furnished in response to the Staff's First Request Item 35 is granted.

2. The designated material granted confidential treatment by ordering paragraph 1 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.

3. Sebree Solar's motion for confidential treatment for its leases filed in response to Staff's Post Hearing Request Item 2 is granted in part and denied in part.

4. The designated material granted confidential treatment by ordering paragraph 3 shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Siting Board.

5. 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.

6. Sebree Solar shall inform the Siting Board 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, Sebree 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 Sebree 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.

8. 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 Sebree Solar to seek a remedy afforded by law.

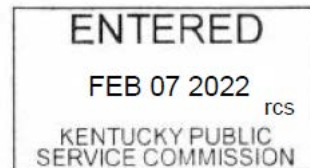
9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Sebree 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.

11. Within 30 days of the date of service of this Order, Sebree 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 Sebree 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 Sebree Solar to seek a remedy afforded by law.

By the Kentucky State Board on Electric
Generation and Transmission Siting



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bridwell". The signature is written in a cursive style and is positioned above the printed name and title.

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

Case No. 2021-00072

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