

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

In the Matter of:

ELECTRONIC APPLICATION OF BLUEBIRD )	
SOLAR LLC FOR A CERTIFICATE OF )	
CONSTRUCTION FOR AN APPROXIMATELY )	CASE NO.
100 MEGAWATT MERCHANT ELECTRIC SOLAR )	2021-00141
GENERATING FACILITY IN HARRISON )	
COUNTY, KENTUCKY PURSUANT TO KRS )	
278.700 AND 807 KAR 5:110 )	

O R D E R

On October 14, 2022, Bluebird Solar LLC (Bluebird Solar) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for certain information contained in Bluebird Solar's motion for a declaratory order or in the alternative for approval of anticipated transactions.<sup>1</sup> Bluebird Solar did not provide a time period for the material to be treated as confidential, but the Siting Board shall treat Bluebird Solar's motion as one for confidential treatment for an indefinite period.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,<sup>2</sup> which requires that all public records "be open for inspection by any person, except as otherwise

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<sup>1</sup> Bluebird Solar's Motion for Declaratory Order or in the Alternative for Approval of Anticipated Transactions (filed Oct. 14, 2022), at 2–3, Exhibit 1.

<sup>2</sup> KRS 61.870 through 61.884.

provided by KRS 61.870 to KRS 61.884.<sup>3</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>4</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<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.”

#### DISCUSSION AND FINDINGS

In support of its motion, Bluebird Solar argued that the portions of motion that contain information explaining the organizational structure BayWa.r.e. AG should be granted confidential protection pursuant to KRS 61.878(1)(c)(1) because if disclosed it would allow competitors an unfair commercial advantage. Other solar development companies would have knowledge of BayWa.r.e. AG’s internal financing structure.

Having considered the motion and the material at issue, the Siting Board finds that Bluebird Solar’s motion should be denied. The information contained in Bluebird Solar’s motion, does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1). Bluebird Solar has not identified any specific harm that it will face if BayWa.r.e AG’s corporate structure is disclosed. Additionally, it is important the public, specifically the public in Harrison County where the project is located, have an understanding of who the

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<sup>3</sup> KRS 61.872(1).

<sup>4</sup> KRS 61.878.

<sup>5</sup> 807 KAR 5:110, Section 5(2)(d).

owner of the project is an who will be responsible for ensuring compliance with the Siting Board's requirements for the solar facility.

IT IS THEREFORE ORDERED that:

1. Bluebird Solar's motion for confidential treatment is denied.
2. 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.
3. If Bluebird 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.
4. Within 30 days of the date of service of this Order, Bluebird 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.
5. The designated material for which Bluebird 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 in order to allow Bluebird Solar to seek a remedy afforded by law.

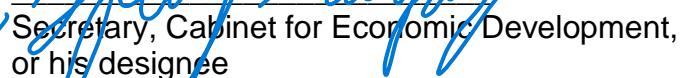
KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

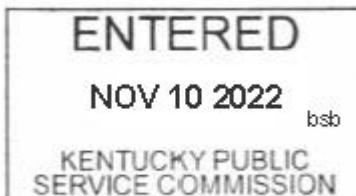
  
Chairman, Public Service Commission

Vice Chairman, Public Service Commission

  
Commissioner, Public Service Commission

  
Secretary, Energy and Environment Cabinet,  
or her designee

  
Secretary, Cabinet for Economic Development,  
or his designee



ATTEST:

  
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Public Service Commission  
*on behalf of the Kentucky State*  
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