

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

In the Matter of:

ELECTRONIC APPLICATION OF RUSSELLVILLE)	
SOLAR LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY)	CASE NO.
173 MEGAWATT MERCHANT ELECTRIC SOLAR)	2021-00235
GENERATING FACILITY IN LOGAN COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND)	
807 KAR 5:110)	

ORDER

Russellville Solar LLC (Russellville Solar) filed three petitions for confidential treatment pursuant to 807 KAR 5:110, Section 5, and KRS 61.878. On March 1, 2022, Russellville Solar filed a petition for confidential treatment until April 4, 2022, for the Preliminary Draft Environmental Assessment submitted with the application. On April 28, 2022, Russellville Solar filed a petition for confidential treatment in perpetuity for the material terms in leases tendered in response the Siting Board Staff's First Request for Information (Staff's First Request). On May 31, 2022, Russellville Solar filed a petition for confidential treatment in perpetuity for an Archeological Survey that was submitted in response to Siting Board Staff's Second Request for Information (Staff's Second Request).

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁴ KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.⁵ 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.⁶

MARCH 2, 2022 PETITION

In support of its March 2, 2022 petition, Russellville Solar argued that the Preliminary Draft Environmental Assessment that was submitted with its application should be given confidential protection until April 4, 2022, pursuant to KRS 61.878(1)(i) as a preliminary draft.

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(i).

APRIL 28, 2022 PETITION

In support of its April 28, 2022 petition Russellville Solar argued for confidential protection of leases of property to be used in the solar project. Russellville Solar argued this information should be held confidential because it contains highly sensitive information. Russellville Solar claimed that if the leases were exposed, other competitors and potential lessors would know the price Russellville Solar is willing to spend leasing property. This would create an unfair commercial advantage for the other developers and potential lessors. Russellville Solar requested indefinite confidential protection for the leases.

MAY 31, 2022 PETITION

In support of its May 31, 2022, petition Russellville Solar argued that the Archaeological Survey Report should be granted confidential protection. It stated that protection should be granted under both KRS 64.878(1)(c) and KRS 64.878(2)(d) stating that this report is generally recognized as confidential or proprietary and was compiled and maintained for the grant of a license to do business.

Russellville Solar further argued that the material should be granted confidential protection under KRS 61.878(k) because the documents were provided to the Tennessee Valley Authority (TVA) and 36 CFR 800.11(c) prevents the disclosure of this material.

DISCUSSION

Having considered the petitions and the materials at issue, the Siting Board finds that Russellville Solar's petitions are to be granted in part and denied in part. The Siting Board finds that the designated material contained in Russellville Solar's March 2, 2022

petition should be denied as the requested time period for confidential protection has passed and the issue is now moot.

The Siting Board finds confidential protection for the material terms of leases contained in the April 28, 2022 petition should be granted. The Siting Board finds that the designated material terms contained in the leases 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 confidential protection for the Archaeological Survey Report in the May 31, 2022 petition should be granted. The Siting Board finds that the material is exempted from public disclosure pursuant to KRS 61.878(1)(c)(2)(d), KRS 61.878(k) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Russellville Solar's petition for confidential protection filed on March 2, 2022, is denied.
2. Russellville Solar's petition for confidential protection for material terms of leases, as defined above, filed on April 28, 2022, is granted.
3. Russellville Solar's petition for confidential protection filed on May 31, 2022, is granted.
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 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. Russellville 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, Russellville 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 Russellville 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 Russellville 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 Russellville 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, Russellville 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 Russellville 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 Russellville Solar to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

[Signature]
Chairman, Public Service Commission

Vice Chairman, Public Service Commission

Commissioner, Public Service Commission

[Signature]
Secretary, Energy and Environment Cabinet,
or her designee

[Signature]
Secretary, Cabinet for Economic Development,
or his designee

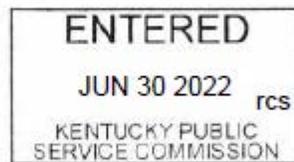
[Signature]
Logan Chick, ad hoc member

[Signature]
Hon. Martha Jane King, ad hoc member

by KAC
w/ permission

ATTEST:

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



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