

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

In the Matter of:

ELECTRONIC APPLICATION OF TELESTO	)	
ENERGY PROJECT LLC FOR CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY 110	)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR	)	2022-00096
GENERATING FACILITY IN HARDIN COUNTY,	)	
KENTUCKY	)	

ORDER

On August 29, 2022, Telesto Energy Project LLC (Telesto) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for 40 years for its Response to Siting Board Staff’s First Request for Information (Response to Staff’s First Request), Item 77.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,<sup>1</sup> 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.”<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

exemptions is applicable.<sup>4</sup> KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.<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, Telesto argued that the material terms of the leases provided in its Response to Staff’s First Request, Item 77 should be granted confidential protection pursuant to KRS 61.878(1)(c)(1) because if the leases are disclosed it faces a significant commercial disadvantage. Telesto argued if the terms of these leases were made public other solar development companies and/or landowners could use the information in negotiations to undermine Telesto’s position. Additionally, Telesto argued the email addresses and phone numbers of the property owners contained in the leases should be held confidential pursuant to KRS 61.878(1)(a) because it would be an unwarranted disclosure of personal privacy for that information to be made public.

Having considered the petition and the material at issue, the Siting Board finds that Telesto’s motion is granted. The Siting Board finds that certain designated material terms contained in Telesto’s 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:

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<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>5</sup> KRS 61.878(1)(a).

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 further finds the email addresses and phone numbers of the landowners contained in the leases are confidential and are exempted from public disclosure pursuant to 807 KAR 5:110, Section 5 and KRS 61.878(1)(a).

IT IS THEREFORE ORDERED that:

1. Telesto's motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 40 years or until further order of this Siting Board.
3. 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.
4. Telesto shall inform the Siting Board if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. 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, Telesto 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 Telesto 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.

6. The Siting Board shall not make the requested material 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 Telesto to seek a remedy afforded by law.

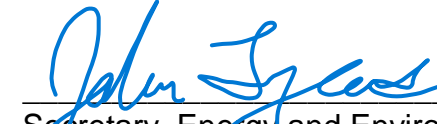
KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

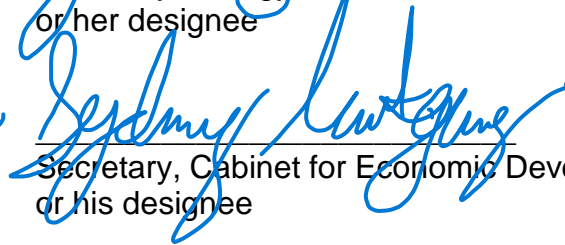
  
Chairman, Public Service Commission

Vice Chairman, Public Service Commission

  
Commissioner, Public Service Commission


By KAC  
w/ permission

  
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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