

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

In the Matter of:

ELECTRONIC APPLICATION OF PINE GROVE)	
SOLAR, LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 50)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2022-00262
GENERATING FACILITY IN MADISON COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND)	
807 KAR 5:110)	

ORDER

On February 5, 2023, Pine Grove Solar, LLC (Pine Grove Solar) filed a petition, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for an indefinite period for its responses to Siting Board Staff's First Request for Information (Staff's First Request), Items 36 and 37.

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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

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.”

DISCUSSION AND FINDINGS

In support of its petition, Pine Grove Solar stated its response to Staff’s First Request, Item 36 contains the leases for the property that will be used in the project. Pine Grove Solar argued that if the material terms of the leases are disclosed competitors in the solar industry will know the amount Pine Grove Solar is willing to pay for property and it will face a competitive disadvantage in future negotiations.

Pine Grove Solar requested confidential treatment for its response to Staff’s First Request, Item 37. Pine Grove Solar stated this response contains an Agreement of Goodwill, an option to purchase property, of a nonparticipating landowner. The Agreement of Goodwill expires on December 21, 2024, if the property is not purchased. Pine Grove Solar argued this information should be held confidential pursuant to KRS 61.878(1)(a) because the nonparticipating landowner is not a party to the proceedings and if the agreement is disclosed it would be an unfair invasion of privacy. Pine Grove Solar also argued the agreement should be granted confidential protection

⁴ 807 KAR 5:001E, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

pursuant to KRS 61.878(1)(c)(1) because disclosure could put it at a disadvantage in negotiating other similar agreements.

Having considered the petition and the material at issue, the Siting Board finds that certain designated material terms contained in Pine Grove Solar's leases filed in response to Staff's First Request, Item 36 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 Commission concludes that if the material terms of the leases were disclosed, then Pine Grove Solar could face a competitive disadvantage because other developers could use this information to negotiate more favorable lease terms.

The Siting Board further finds that the Agreement of Goodwill contained in the response to Staff's First Request, Item 37 is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1). The

information contains the details of an option to purchase property and if disclosed Pine Grove Solar could face commercial harm. The Siting Board finds the information should only receive confidential protection until the agreement expires on December 21, 2024, or when the property is purchased, whichever occurs sooner.

IT IS THEREFORE ORDERED that:

1. Pine Grover Solar's petition for confidential treatment is granted.
2. The information granted confidential treatment provided in response to Staff's First Request, Item 36 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. The information granted confidential treatment provided in response to Staff's First Request, Item 37 shall not be placed in the public record or made available for public inspection until December 21, 2024, or until the property is purchased, whichever occurs sooner.
4. 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.
5. Pine Grove Solar 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.
6. 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, Pine Grove 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 Pine Grove 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.

7. 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 Pine Grove Solar to seek a remedy afforded by law.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

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