

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

In the Matter of:

ELECTRONIC APPLICATION OF HUMMINGBIRD )	
ENERGY, LLC FOR A CERTIFICATE OF )	
CONSTRUCTION FOR AN APPROXIMATELY )	
200 MEGAWATT MERCHANT ELECTRIC SOLAR )	CASE NO.
GENERATING FACILITY AND NONREGULATED )	2022-00272
ELECTRIC TRANSMISSION LINE IN FLEMING )	
COUNTY, KENTUCKY PURSUANT TO KRS )	
278.700 AND 807 KAR 5:110 )	

ORDER

On October 23, 2023, Hummingbird Energy, LLC (Hummingbird Energy) filed a second motion for confidential treatment, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1), requesting that the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) grant confidential treatment for 40 years for its response to Siting Board Staff’s First Request for Information (Staff’s First Request), Item 1. The response contained leases and purchase agreements that have been entered into in connection with the proposed solar project.

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

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

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

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 exemptions is applicable.<sup>4</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, Hummingbird Energy stated that it had previously requested confidential treatment for the leases for the land to be used in the project and the siting board granted confidential treatment for the material terms of the leases but the Order did not contain confidential treatment for the personal and financial information in the leases.<sup>5</sup> Hummingbird Energy also stated confidential protection was requested for 40 years, but the Siting Board only granted confidential treatment for ten years.<sup>6</sup> Hummingbird Energy now requested confidential treatment for personal information such as phone numbers and email address because the individuals are not a party to the case, and it would be an invasion of the privacy for the information to be disclosed. Hummingbird Solar also argued that the payments made to landowners should be held confidential because the leases and purchase agreements contain information that could give competitors and unfair advantage if disclosed. Having

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<sup>3</sup> KRS 61.878.

<sup>4</sup> 807 KAR 5:110, Section 5(2)(d).

<sup>5</sup> Hummingbird Energy Second Motion for Confidential Protection at 2.

<sup>6</sup> Hummingbird Energy Second Motion for Confidential Protection at 2.

considered the motion and the material at issue, the Siting Board finds that Hummingbird Energy's motion should be denied. The Siting Board issued an Order on September 22, 2023, that granted confidential protection for the material terms of the leases, including the lease amounts and economic terms, and the email addresses and phone numbers of the property owners.<sup>7</sup> It is not necessary for the Siting Board to again grant confidential protection for this information. The Siting Board will however grant confidential treatment of the material terms of the leases and personal information for 40 years.

IT IS THEREFORE ORDERED that:

1. Hummingbird Energy's motion for confidential treatment is denied.
2. The Siting Board's September 22, 2023 Order is amended to grant confidential treatment for a period of 40 years.
3. All other provisions of the Siting Board's September 22, 2023 Order that are not in conflict with the terms of this Order shall remain in effect.

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<sup>7</sup> Order (Ky. PSC Sept. 22, 2023).

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

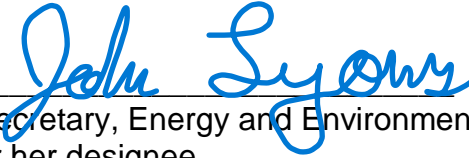


Vice Chairman, Public Service Commission

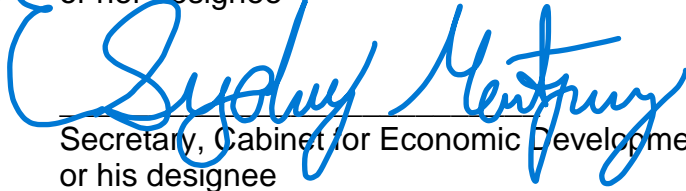


Commissioner, Public Service Commission

by KAC  
w/permission



Secretary, Energy and Environment Cabinet,  
or her designee

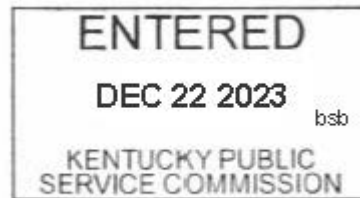


Secretary, Cabinet for Economic Development,  
or his designee

ATTEST:



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



\*Jon Sims  
Fleming County Judge  
100 Court Square  
Flemingsburg, KENTUCKY 41041

\*Gregory T Dutton  
Frost Brown Todd, LLC  
400 West Market Street  
32nd Floor  
Louisville, KENTUCKY 40202-3363

\*John C. Price  
Resident Representative  
183 Joshua St.  
Flemingsburg, KENTUCKY 41041

\*Pierce T. Stevenson  
Frost, Brown, Todd, LLC  
250 West Main Street  
Suite 2800  
Lexington, KENTUCKY 40507