

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

In the Matter of:

ELECTRONIC APPLICATION OF SONG)	
SPARROW SOLAR LLC FOR CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 104)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2023-00256
GENERATING FACILITY IN BALLARD COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700 AND)	
807 KAR 5:110)	

ORDER

On October 20, 2023, Song Sparrow Solar LLC (Song Sparrow Solar) filed a petition for confidential treatment, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1), requesting that the Siting Board grant confidential treatment for an indefinite period for copies of leases and purchase agreements, including options that have been entered into in connection with the proposed solar project, that were filed in response to Siting Board Staff’s First Request for Information (Siting Board Staff’s First Request), Item 1.

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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

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.”

DISCUSSION AND FINDINGS

In support of its petition, Song Sparrow Solar, stated that the response to Siting Board Staff’s First Request, Item 1, required Song Sparrow Solar to provide a copy of the leases or purchase agreements that Song Sparrow Solar has entered into in connection with the proposed facility. Song Sparrow Solar stated the Siting Board precedent permits confidential treatment for material terms of lease agreements. Song Sparrow Solar also argued that the leases and purchase agreements should be afforded confidential treatment because the documents contain proprietary information regarding pricing and if disclosed could provide a competitive advantage to competitors.

Having considered the petition and the material at issue, the Siting Board finds that Song Sparrow Solar’s petition should be granted in part and denied in part. The Siting Board finds that certain designated material terms contained in Song Sparrow Solar’s

³ KRS 61.878.

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ KRS 61.878(1)(a).

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 further finds that the request for confidential treatment is denied for the remaining portions of the leases because they are general contract language that would not give a competitor of Song Sparrow Solar an unfair commercial advantage. Therefore, the remaining terms do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Song Sparrow Solar's petition for confidential treatment is granted in part and denied in part.

2. Song Sparrow Solar's petition for confidential treatment for the material terms of leases provided in response to Siting Board Staff's First Request, Item 1, is granted.

3. Song Sparrow Solar's petition for confidential treatment for the remaining portions of the leases is denied.

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. Song Sparrow 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.

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, Song Sparrow 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 Song Sparrow 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 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 Song Sparrow Solar to seek a remedy afforded by law.

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KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

Art Coker

Chairman, Public Service Commission

Art

Vice Chairman, Public Service Commission

Mary Pat Regan

Commissioner, Public Service Commission

John Spores

Secretary, Energy and Environment Cabinet,
or her designee

*by KAC
w/ permission*

Sydney Matney

Secretary, Cabinet for Economic Development,
or his designee

Todd Cooper

Todd Cooper, Judge Executive

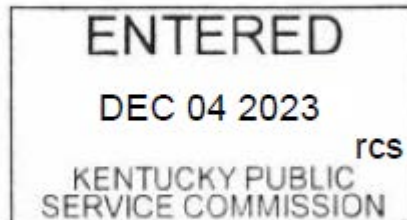
Terry Simmons

Terry Simmons, ad hoc member

ATTEST:

Linda C. Bidwell

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



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