

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

In the Matter of:

ELECTRONIC APPLICATION OF BANJO CREEK)	
SOLAR LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 120)	CASE NO.
MEGAWATT ELECTRIC GENERATING FACILITY)	2023-00263
IN GRAVES COUNTY, KENTUCKY PURSUANT)	
TO KRS 278.700 AND 807 KAR 5:110)	

ORDER

On October 20, 2023, Banjo Creek Solar, LLC (Banjo Creek) filed a petition pursuant to 807 KAR 5:110, Section 5, and KRS 61.878 (1)(c)(1), requesting that the Siting Board grant confidential protection 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 (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 examination of public records should be strictly construed.³ The party requesting that the

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁴ 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, Banjo Creek argued that the leases that it has entered into with the landowners for the proposed solar project should be granted confidential protection in the entirety. Banjo Creek argued that the leases are a corporate non-financial asset of Banjo Creek and are an integral part of the inner workings of the company that contain the methods for determining a contract price and the assumption of business risks by Banjo Creek.

Having considered the petition and the material at issue, the Siting Board finds that Banjo Creek’s petition should be granted in part and denied in part. The Siting Board finds that the material terms of the leases and purchase agreements are exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5. Material terms as defined for the purposes of this Order are:

- a. The lease amount;
- b. Terms of escalation of lease payments;
- c. Remedies available to the parties of the lease for nonperformance of the terms;

⁴ 807 KAR 5:110, Section 5(2)(d).

d. Economic terms other than lease rates and related escalations such as signing payments, crop damage calculations, construction rent amounts, extension fees, and holdover rent amounts; and

e. The structure of the lease term including the outside date for the rent commencement date.

The above-detailed material terms of the leases provided in Banjo Creek's responses to Staff's First Request are exempted from public disclosure because the terms are details that could permit a competitor of the Banjo Creek an unfair commercial advantage pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110(5). The remaining terms governing the leases do not meet that criteria for confidentiality because they are general contract terms and do not provide competitors any insight into Banjo Creek's inner workings. Therefore, the leases in their entirety 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(5). Additionally, personal contact information such as phone numbers and email addresses will also be kept confidential pursuant to KRS 61.878(1)(a), and 807 KAR 5:110(5), which prohibit disclosure of information that could result in an unwarranted invasion of personal privacy if publicly disclosed.

IT IS THEREFORE ORDERED that:

1. Banjo Creek's petition for confidential treatment is granted in part and denied in part.

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

3. Banjo Creeks 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. Banjo Creek 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, Banjo Creek 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 Banjo Creek 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 Banjo Creek 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

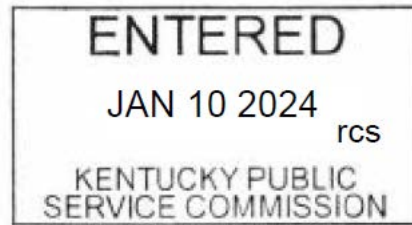
by KAC
w/permission



Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee



ATTEST:



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on behalf of the Kentucky State
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