

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

In the Matter of:

ELECTRONIC APPLICATION OF FRON BN, LLC)	
(FRONTIER SOLAR) FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY 120)	
MEGAWATT MERCHANT SOLAR ELECTRIC)	CASE NO.
GENERATING FACILITY AND NONREGULATED)	2023-00360
ELECTRIC TRANSMISSION LINE IN MARION)	
AND WASHINGTON COUNTIES, KENTUCKY)	
PURSUANT TO KRS 278.700 AND 807 KAR)	
5:110)	

ORDER

This matter arises from two petitions for confidential treatment filed by FRON BN, LLC (Frontier Solar), pursuant to 807 KAR 5:110, Section 5,¹ and KRS 61.878, filed on February 24, 2024, and March 26, 2024. The petitions are described in further detail below.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,² 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.”³ The exceptions to the free and open

¹ The petition filed by Frontier Solar on February 24, 2024, cites 807 KAR 5:100 Section 5; however, the Siting Board corrected the citation in this paragraph.

² KRS 61.870 through 61.884.

³ KRS 61.872(1).

examination of public records should be strictly construed.⁴ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁵ KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.⁶ 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.” KRS 61.878 (1)(c) (2)(d) provides an exception to the requirement for public disclosure of records that are “confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained for the grant or review of a license to do business.” KRS 67.878 (k) provides an exception to the requirement for public disclosure of records that are” all public records or information the disclosure of which is prohibited by federal law or state law.”

FEBRUARY 24, 2024 PETITION FOR CONFIDENTIAL TREATMENT

Frontier Solar requested confidential treatment for a period of 40 years for copies of leases or purchase agreements that were filed in response to Siting Board Staff’s First Request for Information (Staff’s First Request), Item 1.⁷ Frontier Solar also requested confidential treatment for the phone numbers and email addresses for landowners that

⁴ KRS 61.878.

⁵ 807 KAR 5:110, Section 5(2)(d).

⁶ KRS 61.878(1)(a).

⁷ Frontier Solar’s Petition for Confidential Treatment (filed Feb. 24, 2024).

have executed leases with Frontier Solar in connection with the Project.⁸ In support of its petition, Frontier Solar argued that solar industry is highly competitive, and the leases contain information that could give competitors an unfair advantage, if disclosed.⁹ Frontier Solar also argued individuals' phone numbers and email addresses of nonparties are personal pursuant to 807 KAR 5:001 Section 4(10)(a)(7), and therefore should be protected from public disclosure.¹⁰

Having considered the petition and the material at issue, the Siting Board finds that Frontier Solar'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;
- 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.

⁸ Frontier Solar's Petition for Confidential Treatment at 1-2.

⁹ Frontier Solar's Petition for Confidential Treatment at 2.

¹⁰ Frontier Solar's Petition for Confidential Treatment at 1-2.

The above-detailed material terms of the leases provided in Frontier Solar's responses to Staff's First Request, Item 1, are exempted from public disclosure because the terms are details that could permit a competitor of Frontier Solar an unfair commercial advantage pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110 Section 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 Frontier Solar'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 Section 5. Additionally, personal contact information such as phone numbers and email addresses are granted confidential treatment 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.

MARCH 26, 2024 PETITION FOR CONFIDENTIAL TREATMENT

Frontier Solar requested confidential treatment indefinitely for Figure 5 of the Critical Issues Analysis provided in response to Staff's First Request, Item 34. In support of its petition, Frontier Solar argued that Figure 5 of the CIA provides locational information of cultural and historical resources reported within the Project site. Frontier Solar stated that the Siting Board has recognized historical and archaeological studies as confidential in Russellville Solar LLC.¹¹ Additionally, Frontier Solar also argued that the historic or archeologic studies should be held confidential to ensure that that the Project's

¹¹ Case No. 2021-00235, *In the Matter of the Electronic Application of Russellville Solar LLC for a Certificate of Construction for an Approximately 173 Megawatt Merchant Electric Solar Generating Facility in Logan County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110* (K.S.B. June 30, 2022), Order.

underlying cultural or historical sites and objects would not be excavated or removed by unqualified individuals.

Having considered the petition and the material issue, the Siting Board finds that confidential protection of Figure 5 of the Critical Issues Analysis in the March 24, 2024 petition should be granted. The Siting Board finds that the material is exempted from public disclosure pursuant to KRS 61.878(1)(c) (2)(d).

IT IS THEREFORE ORDERED that:

1. Frontier Solar's petition for confidential protection filed on February 24, 2024 is granted in part and denied in part.

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

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

4. Frontier Solar's petition for confidential treatment for nonparties' email addresses and phone numbers is granted.

5. Frontier Solar's petition for confidential protection filed on March 26, 2024 is granted.

6. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection in regards to the material terms of the leases for 40 years and in regard to nonparties' email addresses and phone numbers as well as Figure 5 of the CIA indefinitely or until further order of this Siting Board.

7. 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.

8. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Frontier Solar shall inform the Commission and file with the Commission an unredacted copy of the designated material.

9. Frontier 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.

10. 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, Frontier 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 Frontier 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.

11. 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 Frontier Solar to seek a remedy afforded by law.

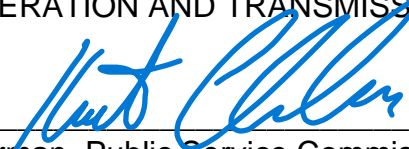
12. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

13. If Frontier Solar objects to the Siting Board's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to 807 KAR 5:110, Section 5(4), or judicial review of this Order pursuant to KRS 278.712(5). Failure to exercise either of these statutory rights will be deemed as agreement with the Siting Board's determination of which materials should be granted confidential treatment.

14. Within 30 days of the date of service of this Order, Frontier Solar shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

15. The designated material for which Frontier Solar's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Frontier Solar to seek a remedy afforded by law.

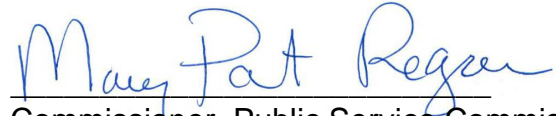
KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission

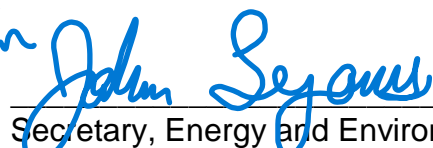


Vice Chairman, Public Service Commission



Commissioner, Public Service Commission

by KAC
w/permission



Secretary, Energy and Environment Cabinet,
or her designee



ATTEST:



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