

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 )  
GENERATING FACILITY AND NONREGULATED )  
ELECTRIC TRANSMISSION LINE IN MARION )  
AND WASHINGTON COUNTIES, KENTUCKY )  
PURSUANT TO KRS 278.700 AND 807 KAR )  
5:110 )

CASE NO.  
2023-00360

ORDER

On May 7, 2024, FRON BN, LLC (Frontier Solar), 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 treatment for a period of 40 years for material terms of an easement, that was filed to supplement Siting Board’s 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,<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 examination of public records should be strictly construed.<sup>3</sup> The party requesting that the

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

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

<sup>3</sup> KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.<sup>5</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.” KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.<sup>6</sup>

### DISCUSSION AND FINDINGS

In support of its petition, Frontier Solar argued that the leases contain information that could give competitors an unfair advantage if disclosed and would reveal commercially sensitive information regarding the inner workings of Frontier Solar.<sup>7</sup>

Having considered the petition and the material at issue, the Siting Board finds that material terms of the lease easements are 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). Material terms, as defined for the purposes of this Order, are:

- a. The lease amounts;
- b. Escalation of lease payments;

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

<sup>5</sup> KRS 61.878(1)(a).

<sup>6</sup> KRS 61.878(1)(i).

<sup>7</sup> Frontier Solar’s Third Petition for Confidential Treatment (filed May 7, 2024).

c. Remedies available to the parties of the lease for nonperformance of the terms;

d. 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

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 Frontier Solar's supplemental responses to Staff's First Request, Item 1 is 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.

IT IS THEREFORE ORDERED that:

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

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 40 years or until further order of this Siting Board.

3. 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.

4. 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.

5. 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.

6. 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.

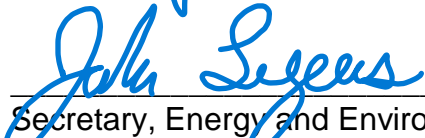
KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

  
Chairman, Public Service Commission

  
Vice Chairman, Public Service Commission


  
Commissioner, Public Service Commission

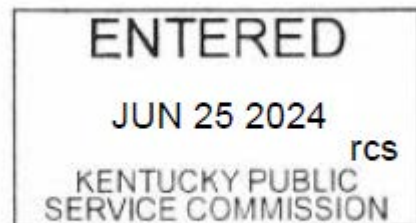
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w/ permission*

  
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*



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