

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF LYNN BARK)	
ENERGY CENTER, LLC FOR A CERTIFICATE)	
OF CONSTRUCTION FOR AN UP TO 200)	CASE NO.
MEGAWATT MERCHANT ELECTRIC SOLAR)	2024-00104
GENERATING FACILITY IN MARTIN COUNTY,)	
KENTUCKY)	

ORDER

On August 5, 2024, Lynn Bark Energy Center, LLC (Lynn Bark Energy) filed a motion, 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 that were filed in response to Siting Board’s 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 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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

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 motion, Lynn Bark Energy, stated that the response to Siting Board Staff’s First Request, Item 1, required Lynn Bark Energy to provide a copy of the lease or purchase agreements that Lynn Bark Energy had entered into in connection with the proposed facility. Lynn Bark Energy argued that the leases 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 motion and the material at issue, the Siting Board finds that the material terms of the leases or purchase agreements 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 are defined as including:

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

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ KRS 61.878(1)(a).

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 or purchase agreements provided in Lynn Bark Energy's responses to Siting Board Staff's First Request, Item 1, are exempted from public disclosure because the terms are details that could permit a competitor of Lynn Bark Energy 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. Lynn Bark Energy's motion for confidential treatment for material terms of leases provided in Siting Board 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 indefinitely 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, Lynn Bark

Energy 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, Lynn Bark Energy 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 Lynn Bark Energy 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 Lynn Bark Energy to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING



Chairman, Public Service Commission



Commissioner, Public Service Commission



Commissioner, Public Service Commission

*By ATT with
permission*



Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee

ATTEST:



Executive Director
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on behalf of the Kentucky State
Board on Electric Generation
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