

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

In the Matter of:

ELECTRONIC APPLICATION OF CLOVER)	
CREEK SOLAR PROJECT D/B/A NEW)	
FRONTIERS SOLAR PARK FOR A CERTIFICATE)	
OF CONSTRUCTION FOR AN APPROXIMATELY)	
100 MEGAWATT MERCHANT ELECTRIC SOLAR)	CASE NO.
GENERATING FACILITY AND NONREGULATED)	2024-00253
ELECTRIC TRANSMISSION LINE IN)	
BRECKINRIDGE COUNTY, KENTUCKY)	
PURSUANT TO KRS 278.700 AND 807 KAR)	
5:110)	

ORDER

On January 3, 2025, Clover Creek Solar Project dba New Frontiers Solar Park (Clover Creek 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 35 years for copies of leases, 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)(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, Clover Creek Solar, stated that the response to Siting Board Staff’s First Request, Item 1, required Clover Creek Solar to provide a copy of the leases or purchase agreements that Clover Creek Solar has entered into in connection with the proposed facility. Clover Creek Solar argued that the leases and purchase agreements should be afforded confidential treatment because the documents contain propriety information regarding pricing and, if disclosed, would provide a competitive advantage to competitors.

Having considered the petition and the material at issue, the Siting Board finds that Clover Creek Solar’s petition should be granted. The Siting Board finds that certain designated material terms of the lease easements are generally recognized as confidential or proprietary; they 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;

³ KRS 61.878.

⁴ 807 KAR 5:110, Section 5(2)(d).

- b. Escalation of lease payments;
- 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 Clover Creek Solar's responses to Staff's First Request, Item 1 is exempted from public disclosure because the terms are details that could permit a competitor of Clover Creek 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. Clover Creek Solar's motion for confidential treatment of material terms of leases provided in 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, Clover Creek

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, Clover Creek 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 Clover Creek 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 Clover Creek 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 ALT
w/ permission



Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee

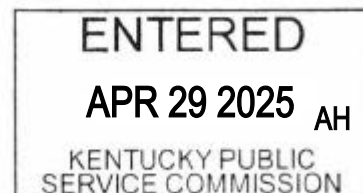


Maurice Lucas, ad hoc member

ATTEST:



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



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