

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 April 1, 2025, Clover Creek Solar, LLC d/b/a New Frontiers Solar Park, (Clover Creek Solar) filed a petition for confidential treatment, 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 material terms in a purchase power agreement (PPA), that was filed in response to Siting Board Staff's Post Hearing Request for Information (Siting Board Staff's Post Hearing Request), Item 5.

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 motion, Clover Creek Solar stated that the response to Siting Board Staff’s Post Hearing Request, Item 5 required Clover Creek Solar to provide a copy of the PPA that Clover Creek Solar entered in connection with the proposed facility. Clover Creek Solar argued that the PPA contains “confidential and commercial[ly] sensitive” terms that, if disclosed, could “economically harm New Frontier Solar.”⁵ Clover Creek Solar argued that the PPA should be afforded confidential treatment because, if disclosed, it would provide a competitive advantage to competitors.⁶ Clover Creek Solar asserted that the disclosure of the terms would undercut New Frontier Solar’s ability to negotiate future purchase power agreements.⁷

Having considered the petition and the material at issue, the Siting Board finds that Clover Creek Solar’s petition should be granted, in part, and denied, in part. The Siting Board finds that material terms of the PPA, are generally recognized as confidential or

³ KRS 61.878.

⁴ 807 KAR 5:110, Section 5(2)(d).

⁵ Clover Creek Solar’s Motion for Confidential Treatment (filed Apr. 1, 2025) at 2.

⁶ Clover Creek Solar’s Motion for Confidential Treatment (filed Apr. 1, 2025) at 2.

⁷ Clover Creek Solar’s Motion for Confidential Treatment (filed Apr. 1, 2025) at 3.

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:

1. The lease amounts;
2. Escalation of lease payments;
3. Remedies available to the parties of the lease for nonperformance of the terms;
4. 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
5. The structure of the lease term including the outside date for the rent commencement date.

The Siting Board finds the material terms, as defined above, of the purchase power agreement are confidential and are exempted from public disclosure pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Clover Creek Solar's April 1, 2025, petition for confidential treatment for is granted, in part, and denied, in part.
2. Clover Creek Solar's petition for confidential treatment for the material terms of the PPA provided in response to Siting Board's Staff's First Request, Item 5 is granted.
3. Clover Creek Solar's petition for confidential treatment for the remaining portions of the purchase power agreement 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. Clover Creek 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.

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, 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.

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 Clover Creek Solar to seek a remedy afforded by law.

9. 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.

10. If Clover Creek 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.

11. Within 30 days of the date of service of this Order, Clover Creek 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.


12. The designated material for which Clover Creek 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 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



Secretary, Energy and Environment Cabinet,
or her designee


Secretary, Cabinet for Economic Development,
or his designee


Maurice Lucas, ad hoc member

by AH
w/ permission

ATTEST:


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



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