

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

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
MUNICIPAL ENERGY AGENCY FOR A	)	
CERTIFICATE OF CONSTRUCTION FOR AN	)	
APPROXIMATELY 75 MEGAWATT MERCHANT	)	CASE NO.
ELECTRIC GENERATING KYMEA ENERGY	)	2024-00290
CENTER I AND TRANSMISSION LINE IN	)	
MADISONVILLE, KENTUCKY PURSUANT TO	)	
KRS 278.700 AND 807 KAR 5:110	)	

ORDER

On February 14, 2025, Kentucky Municipal Energy Agency, (Kentucky Municipal Energy) filed a petition, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential treatment for an indefinite period for its responses to Siting Board Staff's First Request for Information (Staff's First Request), Item 2.

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

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the 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 petition, Kentucky Municipal Energy stated its response to Staff’s First Request, Item 2 required Kentucky Municipal Energy to provide any contracts, for which Kentucky Municipal Energy has paid, has negotiated to pay, or any compensation paid to non-participating landowners, whether cash or otherwise, near the project.⁶ It also required Kentucky Municipal Energy to include the terms of the agreements, and which properties are involved in terms of distance to the project boundaries.⁷

Kentucky Municipal Energy stated that it has engaged in discussions with two non-participating landowners of the two closest properties with residential structures regarding noise and visual impact during the construction and operation of the project.⁸ Kentucky Municipal Energy also stated that it has not executed written agreements with the non-

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

⁶ Kentucky Municipal Energy’s Petition for Confidential Treatment (filed Feb. 14, 2025).

⁷ Siting Board Staff’s First Request, Item 2, (filed Dec. 18, 2025).

⁸ Kentucky Municipal Energy’s Petition for Confidential Treatment at 2.

participating landowners, but the landowners are in support of the project.⁹ Kentucky Municipal Energy further argued that, based on case precedent, the Siting Board has granted confidential treatment for an agreement that was submitted by a developer in response to a request of information that was similar to the data request in the present case.¹⁰ In the time since the petition was filed, Kentucky Municipal Energy has entered into an agreement with the two non-participating landowners which were filed into the record for this case.¹¹

Kentucky Municipal Energy also requested confidential treatment for documentation related to the ongoing mitigation discussions with the non-participating adjacent landowners. Kentucky Municipal Energy argued the ongoing discussions should be granted confidential protection pursuant to KRS 61.878(1)(c)(1) which safeguards records of a personal nature that would constitute a clear unwarranted invasion of privacy.¹² Kentucky Municipal Energy stated that the negotiations and the disclosure of any agreement would inhibit Kentucky Municipal Energy's and the non-participating landowners' right to negotiate in private and "would not be beneficial to the public".¹³

Having considered the petition and the material at issue, the Siting Board finds that Kentucky Municipal Energy's Response to Staff's First Request, Item 2 and the discussions with non-participating adjacent landowners are generally recognized as

⁹ Kentucky Municipal Energy's Petition for Confidential Treatment at 2.

¹⁰ Kentucky Municipal Energy's Petition for Confidential Treatment at 3.

¹¹ Agreement with Donna Hendricks and Sharon Hendricks, Post-Case Filings (filed Aug. 7, 2025).

¹² Kentucky Municipal Energy's Petition for Confidential Treatment at 3. The petition erroneously states that KRS 61.878(1) (c)(1) safeguards records information of a personal nature. KRS 61.878(1) (c)(1) which protects safeguards records that if disclosed would permit an unfair commercial advantage.

¹³ Kentucky Municipal Energy's Petition for Confidential Treatment at 2.

confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors; 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). Similarly, given that the nonparticipating landowners are not a party to the proceedings, if the agreement and content of the discussions were disclosed, it would be an unfair invasion of privacy, this qualifying for the exemption set forth in KRS 61.878(1)(a).

IT IS THEREFORE ORDERED that:

1. Kentucky Municipal Energy's petition for confidential treatment is granted.
2. The information granted confidential treatment provided in response to Staff's First Request, Item 2 shall not be placed in the public record or made available for public inspection for indefinite period 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, Kentucky Municipal 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, Kentucky Municipal Energy shall have 20 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

Kentucky Municipal 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 Kentucky Municipal Energy to seek a remedy afforded by law.

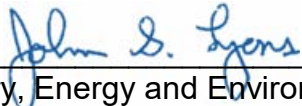
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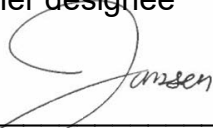
KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING


Chairman, Public Service Commission


Commissioner, Public Service Commission


Commissioner, Public Service Commission


Secretary, Energy and Environment Cabinet,
or her designee



Secretary, Cabinet for Economic Development,
or his designee

ATTEST:


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on behalf of the Kentucky State
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