

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

In the Matter of:

ELECTRONIC APPLICATION OF FLEMING	)	
SOLAR, LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY	)	CASE NO.
80 MEGAWATT MERCHANT ELECTRIC	)	2020-00370
SOLAR GENERATING FACILITY IN FLEMING	)	
COUNTY, KENTUCKY PURSUANT TO KRS	)	
278.700 AND 807 KAR 5:110	)	

ORDER

On July 23, 2021, Fleming Solar, LLC (Fleming Solar) filed a Motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for an indefinite period of time for Exhibit A<sup>1</sup> produced in response to Siting Board Staff's First Request for Information, Item 1.

In support of its July 23, 2021 motion, Fleming Solar argues that Exhibit A consists of copies of site control agreements, including leases, easement agreements, and purchase options that Fleming Solar has entered into with the landowners for Fleming Solar's proposed solar project, and that these documents contain highly sensitive information that should be kept confidential. Fleming Solar contends that if made public other renewable energy developers and other potential lessors would learn the terms and conditions in the leases and easement agreements, putting Fleming Solar at a competitive disadvantage in future negotiations.

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<sup>1</sup> Fleming Solar's Response to Siting Board Staff's First Request for Information (Staff's First Request), Exhibit A at 2.

Having considered the motion and the material at issue, the Siting Board finds that Fleming Solar's motion should be granted in part and denied in part. The Siting Board finds that for Exhibit A provided in Fleming Solar's responses to Staff's First Request, and the copies of leases and easement agreements contained therein, only the material terms of the leases and easement agreements meet the criteria for confidential treatment. Material terms as defined for the purposes of this order are the lease amount, escalation of lease payments, and remedies available to the parties of the lease for nonperformance of the terms. The above detailed material terms of the leases and easement agreements provided in Fleming Solar's responses to Staff's First Request, are exempted from public disclosure because the terms are details that could permit a competitor of Fleming Solar an unfair commercial advantage pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110, Section 5. The remaining terms governing the leases do not meet that criteria for confidentiality because they are general contract terms, and for those non-material terms the request for confidential treatment should be denied. Lastly, in keeping with standard practice, personal contact information such as phone numbers and email addresses will also be kept confidential pursuant to KRS 61.878(1)(a), and 807 KAR 5:110, Section 5.

Ad hoc appointee to the Siting Board, Mr. John Price, did not participate in the decision of this Order.

IT IS THEREFORE ORDERED that:

1. Fleming Solar's July 23, 2021 motion for confidential treatment for is granted in part and denied in part.
2. Fleming Solar's July 23, 2021 motion for confidential treatment for site control agreements, including leases, easement agreements, and purchase options that

Fleming Solar is granted solely for the material terms of the lease as defined within this Order.

3. Fleming Solar's July 23, 2021 motion for confidential treatment for all non-material terms of the leases and easement agreements contained in its responses to Staff's First Request 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 5:001, Section 13(9).

6. Fleming Solar shall inform the Siting Board if the designated material granted confidential treatment 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 Fleming 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 Fleming 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 Fleming Solar objects to the Siting Board's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400, or judicial review of this Order pursuant to KRS 278.410. 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, Fleming 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 Fleming 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 Fleming Solar to seek a remedy afforded by law.

By the Kentucky State Board on Electric  
Generation and Transmission Siting



ATTEST:



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

Case No. 2020-00370

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