

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF MT OLIVE)	
CREEK SOLAR, LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY)	CASE NO.
60 MEGAWATT MERCHANT ELECTRIC)	2020-00226
SOLAR GENERATING FACILITY IN RUSSELL)	
COUNTY, KENTUCKY PURSUANT TO KRS)	
278.700 AND 807 KAR 5:110)	

ORDER

On July 11, 2021, Mt. Olive Creek Solar, LLC (Mt. Olive Creek) filed a motion, pursuant to 807 KAR 5:001, Section 4(10)(a)(7), and KRS 61.878(1)(c)(1) requesting that the Siting Board grant confidential protection for five years for certain information contained in its responses to Siting Board Staff’s First Request for Information (Siting Board Staff’s First Request).

In its July 11, 2021 motion, Mt. Olive Creek seeks confidential treatment for its responses to Siting Board Staff’s First Request, Items 18(a) and 18(b), which contain copies of leases that Mt. Olive Creek has entered into with participating landowners in connection with the proposed solar facility site. Mt. Olive Creek contends the subject leases contain personal information—including addresses, phone numbers, and email addresses of individuals not parties to this proceeding. Mt. Olive Creek also asserts the subject leases contain sensitive financial information relating to payments made to landowners, which if publicly disclosed would place Mt. Olive Creek at a competitive disadvantage in negotiating similar type leases in the future.

Having considered the motion and the material at issue, the Siting Board finds that the July 11, 2021 motion should be granted. The Siting Board finds that the designated material contained in Mt. Olive Creek's responses to Siting Board Staff's First Request, Items 18(a) and 18(b), contain addresses, phone numbers, and email addresses for landowners who have executed leases with Mt. Olive Creek. The Siting Board notes this information contains information of a personal nature and public disclosure would result in an invasion of the personal privacy of nonparties. This grant of confidential treatment does not extend to the physical addresses of the leased properties, which are already public.

Regarding financial information relating to payments made to landowners, the Siting Board finds the information to be generally recognized as confidential or proprietary. In prior cases where confidential protection of leases in Siting Board cases has been requested, the Siting Board has found that only the material terms of the leases meet the criteria for confidential treatment. Financial information relating to payments made to landowners in the leases are certainly material terms of the leases, and public disclosure of this information would place Mt. Olive Creek at a competitive disadvantage when compared to similarly situated actors in the market. Accordingly, the financial information relating to payments made to landowners in the leases provided in Mt. Olive Creek's responses to Siting Board Staff's First Request, are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1), and 807 KAR 5:110, Section 5.

Ad-hoc members of the Siting Board, Hon. Jeffrey Hoover and Russell County Judge-Executive Gary Robertson, dissent from this opinion as it relates to financial information regarding payments made to participating landowners.

IT IS THEREFORE ORDERED that:

1. Mt. Olive Creek's July 11, 2021 motion for confidential treatment 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 for five years 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 5:001, Section 13(9).
4. Mt. Olive Creek shall inform the Siting Board if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.
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, 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 Mt. Olive Creek 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 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 Mt. Olive Creek to seek a remedy afforded by law.

By the Kentucky State Board on Electric
Generation and Transmission Siting



ATTEST:

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

*Mt. Olive Creek Solar, LLC
400 West Main Street
Suite 503
Durham, NORTH CAROLINA 27701

*Gregory T Dutton
Frost Brown Todd, LLC
400 West Market Street
32nd Floor
Louisville, KENTUCKY 40202-3363

*Gary D. Robertson
Russell County Judge Executive
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*Jeff Hoover
Resident Representative
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