

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

In the Matter of the Application of Turkey Creek)
Solar, LLC, for a Construction Certificate to Construct) Case No. 2020-00040
a Merchant Electric Generating Facility)

PETITION FOR CONFIDENTIALITY

Turkey Creek Solar, LLC (“Turkey Creek”), by counsel and pursuant to 807 KAR 5:001, Section 13, respectfully requests the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) to grant confidential protection to documents it filed as a part of its Responses to the Siting Board Staff’s Initial Request for Information, Items 2b, 5, and 8.

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Siting Board shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” under the Kentucky Open Records Act. 807 KAR 5:110, Section 5(2)(a)(1).

Turkey Creek’s narrative response to Item 2b relates to concerns that were received by Turkey Creek resulting from the public outreach efforts and state how Turkey Creek addressed those concerns. The response specifically identifies certain individuals who discussed the project with representatives of Carolina Solar Energy, in addition to the concerns that they raised. Similarly, the documents attached as Exhibit F and referenced in response to Items 2b and 5, are written or electronic correspondence pertaining the project received from neighboring

property owners. These materials should be given confidential treatment for two reasons: (1) they include correspondence with private individuals and (2) they include information of a personal nature.

KRS 61.878(1)(j) permits non-disclosure of “correspondence with private individuals.” This is particularly true when the communications are “under conditions in which the candor of the correspondents depends on assurances of confidentiality.” 00-ORD-168, at 2. With respect to the communications at issue here, the individuals who discussed the project with representatives of Carolina Solar Energy would not have knowledge that their communications would be subject to public disclosure. This is not a circumstance where the private individuals were communicating with a public agency to provide input on how they believed the agency should handle a certain matter.

Similarly, KRS 61.878(1) protects “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” The information on which confidential treatment is requested contains information of a personal nature. Specifically, individuals were able to discuss their specific concerns about the project. Their comments provide insight into the inner workings of their personal concerns. And not everyone may want their concerns articulated in a public forum.

While Turkey Creek desires to provide complete information to the Siting Board, it has reservations about publicly disclosing communications with private individuals, in which they express their personal feelings. Accordingly, Turkey Creek respectfully requests confidential protection in perpetuity of the relevant narrative response to Item 2b relate and Exhibit F of the Responses to the Siting Board Staff’s Initial Request for Information.

Turkey Creek's Response to Item 8 provides a breakdown of the total cost of the project, including contingencies. KRS 61.878(1)(c)(1) exempts from disclosure:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception "is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage." 97-ORD-66 at 10 (Ky. OAG Apr. 22, 2008).

Turkey Creek could be at a significant competitive disadvantage if it were to disclose the total anticipated cost of the project. In addition to other reasons, vendors providing services to Turkey Creek may use the projected costs as a guide for increasing their bids for services.

For the foregoing reasons, Turkey Creek respectfully requests confidential treatment of the aforementioned information for a permanent period of time.

Respectfully submitted,



M. TODD OSTERLOH
JAMES W. GARDNER
STURGILL, TURNER, BARKER & MOLONEY, PLLC
333 W. Vine Street, Suite 1500
Lexington, Kentucky 40507
Telephone No.: (859) 255-8581
Fax No. (859) 231-0851
tosterloh@sturgillturner.com
jgardner@sturgillturner.com

ATTORNEYS FOR TURKEY CREEK SOLAR, LLC