

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

**In the Matter of the Application of Glover Creek Solar,)
LLC, for a Construction Certificate to Construct a) Case No. 2020-00043
Merchant Electric Generating Facility)**

FIFTH PETITION FOR CONFIDENTIALITY

Glover Creek Solar, LLC (“Glover 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 Motion to Amend Project Boundaries.

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).

As a part of its Exhibit B to the Motion to Amend Project Boundaries, Glover Creek seeks confidential treatment of its Purchase Agreement, which is a confidential and proprietary document with certain terms related to the acquisition of property.

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).

Glover Creek and its vendors could be at a significant competitive disadvantage if it were to disclose land purchase agreements and leases related to its Project.

In addition, Glover Creek seeks confidential protection for the documents filed as Exhibit L to its Motion to Amend Project Boundaries. 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.

For the foregoing reasons, Glover 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 GLOVER CREEK SOLAR, LLC