

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

**In the Matter of the Application of AEUG Fleming                    )**  
**Solar, LLC for a Construction Certificate to Construct        ) Case No. 2020-00206**  
**a Merchant Electric Generating Facility                            )**

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**PETITION FOR CONFIDENTIALITY**

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AEUG Fleming Solar, LLC (“AEUG Fleming”), 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 and Harvey Economics’ Initial Request for Information.

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).

Item 19(c) of the Siting Board Staff’s Initial Request for Information request copies of leases. In addition, information requested by Harvey Economics in Item XII relate to certain decommissioning activities that are related to provisions of the leases. These leases contain highly sensitive information that should be kept confidential.

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).

AEUG Fleming could be at a significant competitive disadvantage if it were to disclose the leases that it has entered into with the property owners. If these leases are publicly disclosed, other competitors in the energy sector and other potential lessors would be able to learn of terms contained within those leases. AEUG Fleming has further redacted highly sensitive information that would not be relevant for the Siting Board’s decision under KRS 278.710. The Siting Board recently granted confidential treatment for similar requests by solar developers. *See Glover Creek Solar, LLC*, Case No. 2020-00043 (Ky. PSC Oct. 2, 2020).

In addition, AEUG Fleming’s Response to Item 16 of the Siting Board Staff’s Request provides a breakdown of the estimated costs 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).

AEUG Fleming 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 AEUG Fleming may use the projected costs as a guide for increasing their bids for services. The Siting Board has recently granted confidential treatment for similar requests by solar developers. *See Turkey Creek Solar, LLC*, Case No. 2020-00040 (Ky. PSC Sept. 22, 2020).

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

Respectfully submitted,



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