

**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)

SECOND PETITION FOR CONFIDENTIALITY

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 Post-Hearing Data Requests.

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 1 of the Siting Board Staff’s Post-Hearing Data Request seeks a draft version of a viewshed mitigation study. In response to this request, AEUG Fleming is submitting a draft version of a viewshed mitigation study that is not finalized. AEUG Fleming will continue its dialogue with neighboring landowners on these issues, and these discussions will impact the final viewshed mitigation study. In addition to being preliminary, these drafts contain proprietary information that would result in a competitive disadvantage to AEUG Fleming if the information was publicly disclosed.

KRS 61.878(1)(i) and (j) exempts from disclosure:

- (i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency; [and]
- (j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.

This draft version of a viewshed mitigation study is not finalized. It is, by its very nature, a preliminary draft and offers preliminary recommendations. It, therefore, is exempt from disclosure under the Open Records Act and appropriate for confidential treatment.

In addition, 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 there would be public disclosure of the preliminary draft as it contains recommendations and financial information that is not yet final.

Items 3 and 7 of the Post-Hearing Data Request seek information underlying the economic-impact study prepared by Dr. David Loomis. In response, AEUG Fleming is filing six Excel files that contain project-specific proprietary information, including a breakdown of the estimated costs of the project, including contingencies.

As discussed above, 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 this underlying information. 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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