

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

In the Matter of:

ELECTRONIC APPLICATION OF NORTHERN)
BOBWHITE SOLAR LLC FOR A CERTIFICATE)
OF CONSTRUCTION FOR AN APPROXIMATELY)
96 MEGAWATT MERCHANT SOLAR ELECTRIC) Case No. 2020-00208
GENERATING FACILITY IN MARION COUNTY,)
KENTUCKY PURSUANT TO KRS 278.700 AND)
807 KAR 5:110)

**NORTHERN BOBWHITE SOLAR LLC'S
MOTION FOR CONFIDENTIAL TREATMENT**

Northern Bobwhite Solar LLC (“Bobwhite”) moves the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) pursuant to 807 KAR 5:110, Section 5 for an order granting confidential protection to the identified portions of its Responses to the Siting Board Staff’s and Harvey Economics’ First Requests for Information:

- Exhibit K produced in response to Siting Board Staff Request 2(b) (“Staff 2(b)”);
- Exhibit W produced in response to Harvey Economics Request XI.B.5 (“Harvey XI.B.5”); and
- Exhibit X produced in response to Harvey Economics Request XI.B.6 (“Harvey XI.B.6”).

Pursuant to 807 KAR 5:110, Section 5(2)(a)(2), Bobwhite is filing under seal with the Siting Board those portions of the Exhibits containing confidential information with the confidential information identified. Bobwhite is also filing redacted versions of the affected documents.

A. Standard for Granting Confidential Treatment

807 KAR 5:110, Section 5 requires that 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).

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). This exception applies to the following information for which Bobwhite is seeking confidential treatment:

B. Exhibit K to Staff 2(b).

Exhibit K to Staff 2(b) consists of copies of leases and easement agreements that Bobwhite has entered into with the landowners for the Project. These leases and easement agreements contain highly sensitive information that should be kept confidential. Bobwhite would be placed at a significant competitive disadvantage if these leases and easement agreements were publicly disclosed. If these leases and easement agreements were publicly disclosed, other renewable energy developers and other potential lessors would learn the terms and conditions in the leases and easement agreements. Such knowledge would put Bobwhite at a competitive disadvantage.¹

¹ The Siting Board recently granted confidential treatment for a similar request. *See, In the Matter of Electronic Application of Glover Creek Solar, LLC for a Construction Certificate to Construct an Approximately 55 Megawatt Merchant Electric Solar Generating Facility in Metcalfe County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, at 2 (Case No. 2020-00043) (Ky. P.S.C. Oct. 2, 2020).

Bobwhite has further redacted highly sensitive information that would not be relevant for the Siting Board's decision under KRS 278.710. Bobwhite requests that the leases and easement agreements be maintained as confidential for an indefinite period of time.

C. Exhibit W to Harvey XI.B.5 and Exhibit X to Harvey XI.B.6.

Exhibit W to Harvey XI.B.5 and Exhibit X to Harvey XI.B.6 include information regarding potential future salaries of Project employees and anticipated annual operations and maintenance expenses for the Project. Public disclosure regarding detailed information regarding the cost of Project would put Bobwhite at a significant competitive advantage. Additionally, such disclosure would provide insight to potential contractors and service providers regarding anticipated costs for such services allowing such contractors and service providers to use those anticipated costs as a guide to increasing bids for services.² Bobwhite requests that the designated information contained in Exhibit W to Harvey XI.B.5 and Exhibit X to Harvey XI.B.6 be maintained as confidential for the duration of the Project.

WHEREFORE, Northern Bobwhite Solar LLC respectfully requests the Siting Board enter an Order:

1. According confidential status to and withholding from public inspection the identified information; and

² The Siting Board recently granted confidential treatment for such similar cost information. *See In the Matter of Electronic Application of Glover Creek Solar, LLC for a Construction Certificate to Construct an Approximately 55 Megawatt Merchant Electric Solar Generating Facility in Metcalfe County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, at 2 (Case No. 2020-00043) (Ky. P.S.C. Sept. 23, 2020).

2. Granting Bobwhite all further relief to which it may be entitled.

Respectfully submitted,



Kenneth J. Gish (KBA #93970)
K&L GATES, LLP
300 South Tryon Street
Suite 1000
Charlotte, North Carolina 28202
Telephone: (704) 331-7424
Facsimile: (704) 331-7598
ken.gish@klgates.com

COUNSEL FOR NORTHERN BOBWHITE
SOLAR LLC