

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

In the Matter of:

ELECTRONIC APPLICATION OF FLEMING)	
SOLAR, LLC FOR A CERTIFICATE OF)	
CONSTRUCTION FOR AN APPROXIMATELY)	
80 MEGAWATT MERCHANT ELECTRIC)	Case No. 2020-00370
SOLAR GENERATING FACILITY IN FLEMING)	
COUNTY, KENTUCKY PURSUANT TO)	
KRS 278.700 AND 807 KAR 5:110)	

**FLEMING SOLAR, LLC’S
MOTION FOR CONFIDENTIAL TREATMENT**

Fleming Solar, LLC (“Fleming Solar”) 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 First Requests for Information. In particular, Fleming Solar seeks confidential treatment of Exhibit A produced in response to Siting Board Staff Request No. 1 (“Staff 1”).

Pursuant to 807 KAR 5:110, Section 5(2)(a)(2), Fleming Solar is filing under seal with the Siting Board those portions of the Exhibits containing confidential information with the confidential information identified. Fleming Solar 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 Fleming Solar is seeking confidential treatment.

B. Exhibit A to Staff 1.

Exhibit A to Staff 1 consists of copies of site control agreements, including leases, easement agreements, and purchase options, that Fleming Solar has entered into with the landowners for Fleming Solar’s proposed solar project. These site control agreements contain highly sensitive information that should be kept confidential. If these site control 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 Fleming Solar at a competitive disadvantage in future negotiations.¹ Fleming Solar requests that the site control agreements be maintained as confidential for an indefinite period of time.

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

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

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).

2. Granting Fleming Solar 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 FLEMING SOLAR, LLC