

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

**ELECTRONIC APPLICATION OF RHUDES)
CREEK SOLAR, LLC FOR A CERTIFICATE OF)
CONSTRUCTION FOR AN APPROXIMATELY)
100 MEGAWATT MERCHANT ELECTRIC) Case No. 2021-00127
SOLAR GENERATING FACILITY AND A)
RELATED 138 KV NONREGULATED ELECTRIC)
TRANSMISSION LINE APPROXIMATELY 1 ½)
MILES IN LENGTH IN HARDIN COUNTY,)
KENTUCKY PURSUANT TO KRS)
278.700 AND 807 KAR 5:110)**

PETITION FOR CONFIDENTIALITY

Rhudes Creek Solar, LLC (“Rhudes 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 Responses to Staff’s First 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).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” In enacting this provision, the

General Assembly acknowledged “that personal privacy is of legitimate concern and worthy of protection from invasion by unwarranted public scrutiny.” *Kentucky Bd. of Exam'rs of Psychologists v. Courier–Journal*, 826 S.W.2d 324, 327 (Ky. 1992).

Public Service Commission regulations suggest that certain information such as home addresses, phone numbers, and email addresses of non-parties may be redacted. 807 KAR 5:011, Section 4(10). In response to Item 6, Rhudes Creek Solar is providing the public-meeting sign-in sheets, which contain addresses, phone numbers, and email addresses. This information should be protected from public disclosure because it contains personal information.

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).

Item 13 of the First Request for Information requests a project-specific breakdown of estimated costs. Rhudes Creek Solar could be at a significant competitive disadvantage if it were to disclose this underlying information. In addition to other reasons, vendors providing services to Rhudes Creek Solar may use the projected costs as a guide for increasing their bids for services. The Siting Board has granted confidential treatment for similar requests by solar developers. *See Turkey Creek Solar, LLC*, Case No. 2020-00040 (KSB Sept. 22, 2020); *AEUG Fleming Solar, LLC*, Case No. 2020-00206 (KSB July 30, 2021).

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

Respectfully submitted,



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