

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

**In the Matter of:** )  
 )  
**APPLICATION OF RUSSELLVILLE SOLAR LLC** )  
**FOR CERTIFICATE OF CONSTRUCTION FOR: AN** )  
**APPROXIMATELY 173-MEGAWATT MERCHANT** ) **Case No. 2021-00235**  
**ELECTRIC SOLAR GENERATING FACILITY IN** )  
**LOGAN COUNTY, KENTUCKY PURSUANT TO** )  
**KRS 278.700, ET SEQ., AND 807 KAR 5:110** )

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**FOURTH PETITION FOR CONFIDENTIALITY**

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Russellville Solar LLC (“Russellville Solar”), by counsel, and pursuant to 807 KAR 5:110, Section 5, respectfully requests the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) to grant confidential protection to certain information filed in response to the Siting Board Staff’s Second Request for Information. In support of this motion, Russellville Solar states as follows:

In response to the Siting Board Staff’s Second Request for Information, Russellville Solar is filing with the Siting Board an Archaeological Survey Report (“Report”) that was submitted to the TVA. Pursuant to 36 C.F.R. §800.11(c), it is Russellville Solar’s understanding that the TVA maintains archaeological studies as confidential documents because of the sensitive nature of archaeological sites and risk of looting artifacts from the sites.

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. KRS 61.878(1)(c)(2)(d) 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 are compiled and maintained . . . [f]or the grant or review of a license to do business.

The Report meets this standard. It is generally recognized as confidential and proprietary, as neither Russellville Solar nor the TVA openly disclose it to the public because of potential concerns out of destruction of historically sensitive lands. The Report is being provided to the Siting Board based on a request from the Siting Board’s Staff, in order to consider it for the grant of a permit required in order for Russellville Solar to conduct business. Accordingly, the Report meets the standard set forth in the above-reference exception.

KRS 61.878(k) exempts from disclosure “public records or information the disclosure of which is prohibited by federal law or regulation or state law.” 36 C.F.R. §800.11(c) authorizes the “head of a Federal agency or other public official receiving grant assistance pursuant to the” National Historic Preservation Act “shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners.” The TVA incorporates this confidentiality provision in its Programmatic Agreement, and as discussed above, withholds archaeological reports from public disclosure.<sup>1</sup>

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<sup>1</sup> See Section XI of the Programmatic Agreement, available at [https://www.tva.com/docs/default-source/1-float/appendix\\_e\\_section\\_106\\_programmatic\\_agreement\\_13feb20209faa072a-8993-46fd-8af1-eb0d084d18bf.pdf?sfvrsn=62839660\\_5](https://www.tva.com/docs/default-source/1-float/appendix_e_section_106_programmatic_agreement_13feb20209faa072a-8993-46fd-8af1-eb0d084d18bf.pdf?sfvrsn=62839660_5).

Accordingly, the Report should be granted confidential treatment on the grounds that federal regulation prohibits its public disclosure by an agency.

Accordingly, Russellville Solar respectfully requests that the above-referenced information contained in the leases be provided confidential treatment in perpetuity.

Respectfully submitted,



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