

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

In the Matter of:)
)
Application of Pine Grove Solar, LLC for a Certificate)
of Construction for an Approximately 50 Megawatt) **Case No. 2022-00262**
Merchant Electric Solar Generating Facility in)
Madison County, Kentucky Pursuant to KRS 278.700)
and 807 KAR 5:10)

PINE GROVE SOLAR LLC’S PETITION FOR CONFIDENTIAL TREATMENT

Pine Grove Solar, LLC (“Pine Grove Solar”), by counsel, moves the Kentucky Siting Board on Electric Generation and Transmission Siting (the “Siting Board”) for an order granting confidential treatment to certain information and documents filed the response to the Siting Board’s Post Hearing Request for Information. Specifically, Pine Grove Solar requests confidential treatment for information contained in the document responsive to Item 5. In support of this motion, Pine Grove Solar states as follows:

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission 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” in accordance with the Kentucky Open Records Act, KRS 61.878. 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)(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.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995). The information and document referenced below are confidential and proprietary and the disclosure of which would present an unfair commercial disadvantage to Pine Grove Solar.

Item 5 of the Siting Board’s Post-Hearing Request for Information seeks the Large Generator Interconnection Agreement (LGIA) with Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E/KU). Disclosure of actual or estimated costs associated with interconnection would be a significant proprietary harm to Pine Grove Solar and/or LG&E/KU. The publication of costs would provide non-parties to the agreement with important financial components of the LGIA that could be used to competitively disadvantage Pine Grove Solar and/or LG&E/KU in future transactions. Additionally, publication of the cost estimates for materials and services in the LGIA would allow vendors to increase their bids for services as they relate to the present agreement. All cost information contained in the LGIA is specific to the materials, labor, and other costs associated with Pine Grove Solar’s connection to LG&E/KU and is not general information that would otherwise be publicly available.

The Siting Board has previously held that cost information specific to a project warranted confidential treatment under the Kentucky Open Records Act. *See Electronic Application of Horus Kentucky 1 LLC for a Certificate of Construction for an Approximately 69.3 Megawatt Merchant Electric Solar Generating Facility in Simpson County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, No. 2020-00417 at 3-4 (Mar. 14, 2022); *Electronic Application of Unbridled Solar, LLC for a Certificate of Construction for an Approximately 160 Megawatt Merchant Electric Solar Generating Facility and Nonregulated Electric Transmission Line in Henderson and Webster Counties, Kentucky*, 2020-00242 at 7 (May 3, 2022); *Electronic Application of AEUG Madison Solar, LLC for a Certificate of Construction for an Approximately 100-Megawatt Merchant Electric Solar Generating Facility in Madison County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, 2020-00219 at 5 (Apr. 14, 2022); *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*, 2020-00043 at 4 (Mar. 24, 2022); *Electronic Application of Thoroughbred Solar, LLC for Certificate of Construction for an Approximately 50 Megawatt Merchant Electric Solar Generating Facility in Hart County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, 2022-00115 at 4 (Jan. 6, 2023).

The Siting Board has not specifically dealt with cost information specific to an LGIA. However, the underlying principle of holding confidential project-specific cost information to preclude vendors or competitors from working a proprietary harm against a Siting Board applicant applies to Pine Grove Solar. Publication of cost information in the LGIA would work a proprietary disadvantage against Pine Grove Solar and/or LG&E/KU, and KRS 61.878(1)(c)(1) excludes the requirement of publication of these commercially sensitive terms.

For the foregoing reasons for an indefinite amount of time, Pine Grove Solar respectfully requests confidential treatment of the cost information in the LGIA.

RESPECTFULLY SUBMITTED,

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