

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

**In the Matter of:**

**Electronic Application Banjo Creek Solar LLC for a            )**  
**Certificate of Construction for an Approximately 120        )**  
**Megawatt Electric Generating Facility in Graves            )** **Case No. 2023-00263**  
**County, Kentucky Pursuant to KRS 278.700 and 807        )**  
**KAR 5:110    )**

---

**MOTION FOR RECONSIDERATION**

---

Banjo Creek Solar LLC (“Banjo Creek Solar”), by counsel moves the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”) for reconsideration of its order denying confidential treatment to the Interconnection System Impact Study prepared by Tennessee Valley Authority (“TVA”). Specifically, Banjo Creek Solar is narrowing the scope of its request, based on communications with TVA. In support of its motion, Banjo Creek Solar states as follows:

**I. Background**

As a part of its application filed on September 7, 2023, Banjo Creek Solar confidentially submitted a system impact study prepared by TVA and contemporaneously filed a motion for confidential treatment of that document. Banjo Creek Solar relied on TVA’s designation of the document as being “Critical Energy Infrastructure Information,” “Confidential,” and “Business Sensitive.” Citing KRS 61.878(1)(m)(1), Banjo Creek Solar requested confidential treatment on the grounds that the system impact study constitutes infrastructure records that disclose the “location, configuration, or security of critical systems,” or “detailed drawings, schematics, maps,

or specifications of structural elements, floor plans, and operating, utility, or security systems.” In addition, Banjo Creek Solar mentioned that KRS 61.878(1)(c) provides confidential protection for records that are recognized as confidential or proprietary and that would provide an unfair commercial advantage to competitors that disclosed the records.

The Siting Board denied Banjo Creek Solar’s motion on October 6, 2023. In its Order, the Siting Board addressed KRS 61.878(1)(m)(1)(f) and found as follows:

In considering whether to grant or deny a certificate of construction, the Siting Board must consider how the additional load from the project will adversely affect the reliability of electricity transmission system. The system impact study provides that information, and it is necessary for that information to be in the record for the general public’s understanding. Additionally, this information is required to be provided in the application, and the Siting Board has not granted confidential protection for the studies in the past.

Order at 2-3 (footnotes omitted).

Following receipt of the Siting Board’s order, Banjo Creek Solar asked TVA its position about the confidential nature of the Interconnection System Impact Study. TVA responded by requesting that certain information—primarily<sup>1</sup> cost estimates—be maintained as confidential. Accordingly, Banjo Creek Solar respectfully requests reconsideration of the Siting Board’s denial of confidential treatment and order the confidential treatment of limited information in the Interconnection System Impact Study.

## **II. Analysis**

As stated above, TVA’s requested redactions primarily relate to cost estimates associated with connecting Banjo Creek Solar’s project to TVA’s transmission system. This information is

---

<sup>1</sup> TVA also redacted the project name.

exempt from disclosure under KRS 61.878(1)(c) as information that is recognized as confidential or proprietary and that would provide an unfair commercial advantage to competitors.<sup>2</sup>

The Siting Board has previously granted confidential treatment to these types of cost estimates. For example, in Case No. 2022-00262, the Siting Board granted confidential treatment to cost estimates contained in Pine Grove Solar's interconnection agreement with Louisville Gas and Electric Company and Kentucky Utilities Company.<sup>3</sup> Banjo Creek Solar requests similar treatment to the cost information in its system impact study prepared by TVA.

Banjo Creek Solar notes that it respectfully disagrees with some of the Siting Board's rationale for denying confidential treatment of the system impact study. Although KRS 278.710(1)(f) requires the Siting Board to consider whether the project will adversely affect the reliability of electricity transmission system for retail customers, most exemptions listed in the Open Records Act on which confidential treatment is based, including KRS 61.878(1)(c) and (1)(m), expressly allow information to be maintained as confidential regardless of the general public's need to know. In contrast, one exception to that general rule relates to the "personal nature" exemption found in KRS 61.878(1)(a). A determination of whether information of a personal nature should be maintained as confidential requires an agency to analyze the public interest in disclosure of that information.<sup>4</sup> That analysis related to the public interest in disclosure does not apply to the exemptions in KRS 61.878(1)(c) and (1)(m) relied on in Banjo Creek Solar's initial motion.

In addition, the simple fact that information is required to be filed with an application has no bearing on whether it should be maintained confidentially. The Public Service Commission

---

<sup>2</sup> Based on the limited redactions requested by TVA, it appears that the exemption identified in KRS 61.878(1)(m) no longer applies.

<sup>3</sup> *Pine Grove Solar, LLC*, Case No. 2022-00262, 2023 WL 5623926, at \*1-2 (Ky. PSC [Aug. 25, 2023](#)).

<sup>4</sup> *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 82 (Ky. 2013).

commonly grants confidential treatment to materials that are required to be filed with an application.<sup>5</sup>

Ultimately, the cost estimates contained in TVA's Interconnection System Impact Study are exempt from disclosure under KRS 61.878(1)(c) as information that is recognized as confidential or proprietary and that would provide an unfair commercial advantage to competitors. TVA has explicitly requested confidentiality of this information, and Banjo Creek Solar has appropriately narrowed its request for confidential treatment. Accordingly, Banjo Creek Solar respectfully requests the Siting Board reconsider part of its prior determination and grant confidential treatment of certain information, including the cost estimates, of TVA's Interconnection System Impact Study in perpetuity.

Respectfully submitted,



---

STURGILL, TURNER, BARKER & MOLONEY, PLLC  
JAMES W. GARDNER  
M. TODD OSTERLOH  
333 W. Vine Street, Suite 1500  
Lexington, Kentucky 40507  
Telephone No.: (859) 255-8581  
Fax No. (859) 231-0851  
tosterloh@sturgillturner.com  
jgardner@sturgillturner.com

ATTORNEYS FOR BANJO CREEK SOLAR LLC

---

<sup>5</sup> See, e.g., *Kentucky-American Water Co.*, Case No. 2023-00191 (Ky. PSC [Oct. 10, 2023](#)); *Kentucky Utils. Co.*, Case No. 2020-00349 (Ky. PSC [Dec. 7, 2021](#)).