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

In the Matter of:		
ELECTRONIC APPLICATION OF SOUTH FORK SOLAR, LLC FOR A CERTIFICATE OF CONSTRUCTION FOR AN APPROXIMATELY 45-MEGAWATT MERCHANT ELECTRIC SOLAR PHOTOVOLTAIC GENERATING FACILITY IN NICHOLAS COUNTY, KENTUCKY PURSUANT TO KRS 278.700, ET SEQ., AND 807 KAR 5:110	)	Case No. 2026-00256

PETITION FOR CONFIDENTIAL TREATMENT

South Fork Solar, LLC ("South Fork 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 with the Application. Specifically, South Fork Solar requests confidential treatment of information contained in a lease it has with landowners. In support of this motion, South Fork 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 documents referenced below are all confidential and proprietary and the disclosure of which would present an unfair commercial disadvantage to South Fork Solar.

As a part of the Application, South Fork Solar is providing a copy of an executed lease that South Fork Solar has executed in development of this project. Previously, the Siting Board has held that material terms of lease agreements are confidential. In *In re Sebree Solar, LLC*, Case No. 2021-00072 at 3-4 (K.S.B. Feb. 7, 2022), the Siting Board defined material terms as:

> (1) the lease amount; (2) terms of escalation of lease payments; (3) remedies available to the parties of the lease for nonperformance of the terms; (4) economic terms other than lease rates and related escalations such as signing payments, crop damage calculations, construction rent amounts, extension fees, and holdover rent amounts; and (5) the structure of the lease term including the outside date for the rent commencement date.

See also In re AEUG Fleming Solar, LLC, Case No. 2020-00206 (K.S.B. July 30, 2021).

The material terms contained in the lease contain proprietary commercial information relating to pricing and other sensitive information that if made publicly available would work a significant competitive disadvantage against South Fork Solar. Accordingly, South Fork Solar is publicly filing the Siting Board copies of the lease with redacted material terms and also is confidentially submitting the Siting Board unredacted copies of the lease filed under seal.

South Fork Solar also seeks confidential treatment of the redacted information in Attachment H, Socioeconomic Report, page 10, Table 5. Confidential treatment is necessary because of the proprietary economic information contained in its Socioeconomic Report, which includes South Fork Solar's estimated costs and capital expenditures for components of and the whole of the project. Possession of such information would be highly advantageous to competitors, who may use it to undercut South Fork Solar's position. The Siting Board has routinely afforded confidential treatment of this information in prior applications, in recognition of its proprietary nature.[1]

For the foregoing reasons for an indefinite amount of time, South Fork Solar respectfully requests confidential treatment of the Lease Agreement and for the material identified in the Socioeconomic Report.

Respectfully submitted,

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[1] *See, e.g.*, *In the Matter of: Electronic Application of Bright Mountain Solar, LLC for a Certificate of Construction for an Up to 80 Megawatt Merchant Electric Solar Generating Facility and Related Nonregulated Transmission Line of Approximately 4 Miles In Perry County, Kentucky Pursuant to KRS 278.700 And 807 KAR 5:110*, Case No. 2022-00274 (K.S.B. Jan. 12, 2024).