

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

In the Matter of:

ELECTRONIC APPLICATION OF GLOVER)	
CREEK SOLAR, LLC FOR A CONSTRUCTION)	
CERTIFICATE TO CONSTRUCT AN)	CASE NO.
APPROXIMATELY 55 MEGAWATT MERCHANT)	2020-00043
ELECTRIC SOLAR GENERATING FACILITY IN)	
METCALFE COUNTY, KENTUCKY PURSUANT)	
TO KRS 278.700 AND 807 KAR 5:110)	

ORDER

On January 21, 2021, Glover Creek Solar, LLC (Glover Creek) filed a petition, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting that the Siting Board grant confidential protection for an indefinite period for its response to Siting Board Staff's First Request for Information on Rehearing Item 2(g) and quotes from vendors for fencing. On February 15, 2021, Glover Creek filed a petition requesting confidential protection for an indefinite period for portions of its response to Siting Board Staff's Second Request for Information on Rehearing Item 3. On May 25, 2021, Glover Creek filed a petition requesting confidential protection for an indefinite period for information contained in its motion to amend project boundaries.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records "be open for inspection by any person, except as otherwise

¹ KRS 61.870 through 61.884.

provided by KRS 61.870 to KRS 61.884.² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁴ KRS 61.878(1)(a) grants confidential protection for information that if disclosed would create an invasion of personal privacy.⁵ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. KRS 61.878(1)(j) permits non-disclosure of correspondence with private individuals.⁶

JANUARY 19, 2021 PETITION

In support of its petition, Glover Creek argued the response to Siting Board Staff’s First Request for Information on Rehearing Item 2(g) contains correspondence with individuals relating to concerns about the project from public outreach. Glover Creek argued these documents contain personal information about individuals and should be held confidential. Glover Creek stated this same information was granted confidential protection in the September 23, 2020 Order in this case.

Glover Creek also requested confidential protection of the estimates from vendors for vegetative buffers and fencing. Glover Creek argued this should be confidential

² KRS 61.872(1).

³ KRS 61.878.

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(j).

because if disclosed it could create an unfair commercial advantage. Other vendors could see the estimates and price vegetation and fencing differently.

FEBRUARY 15, 2021 PETITION

Glover Creek requested confidential protection for documents provided in response to Siting Board Staff's Second Request for Information on Rehearing Item 3. This response provided cost estimates from vendors on vegetative buffers and fencing. Glover Creek stated this information should be granted confidential protection because if it was disclosed it could create an unfair commercial advantage. Other vendors could use the estimates and change their pricing, harming Glover Creek's financial situation.

MAY 25, 2021 PETITION

Glover Creek requested confidential protection of portions of Exhibit B to the Motion to Amend Project Boundaries. This contains information related to the purchase agreement of real property. Glover Creek argued this should be held confidential because it could place Glover Creek at a disadvantage if others knew the price it was willing to pay for real property.

Glover Creek also requested confidential protection of portions of Exhibit L to the Motion to Amend Project Boundaries. This contains correspondence with private individuals that discussed the project with representatives of Carolina Solar Energy. Glover Creek stated these individuals did not want their communications in the public forum.

DISCUSSION

Having considered the petition and the material at issue, the Siting Board finds that Glover Creek's petition is granted in part and denied in part. The Siting Board finds that

the cost estimates in the January 19, 2021 Petition and February 15, 2021 Petition are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

The Siting Board finds that the correspondence in the January 19, 2021 Petition and the May 25, 2021 Petition shall be granted confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(j). The Siting Board notes that the Siting Board's precedent regarding confidentiality pursuant to KRS 61.878(1)(j) only allows the names and personal address of the writer of the correspondence to be granted confidential protection. In this case, the September 23, 2020 Order granted confidential protection of the entirety of the correspondence. To be consistent with orders in this case, the entirety of the document shall be held confidential.

The Siting Board further finds that the request for confidential treatment is denied for Exhibit B to the motion to amend project boundaries. The Siting Board has previously held that information about the sale of real property is not entitled to confidential protection because the sale, including the total compensation, will be recorded so there is nothing gained by granting confidential protection in this proceeding. Therefore, does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. Glover Creek's petitions for confidential treatment are granted in part and denied in part.

2. Glover Creek's petition for confidential treatment for personal correspondence and cost estimates in the January 19, 2020, February 15, 2020, and May 25, 2020 petitions is granted.

3. Glover Creek's petition for confidential treatment for Exhibit B of the motion to amend project boundaries in the May 25, 2020 petition is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further order of this Siting Board.

5. Use of the designated material granted confidential treatment by this Order in any Siting Board proceeding shall comply with 807 KAR 5:110, Section 5.

6. Glover Creek shall inform the Siting Board if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Glover Creek shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Glover Creek is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Siting Board shall deny the request for inspection.

8. The Siting Board shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of

service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Glover Creek to seek a remedy afforded by law.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Glover Creek objects to the Siting Board's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to 807 KAR 5:110, Section 5(4), or judicial review of this Order pursuant to KRS 278.712(5). Failure to exercise either of these statutory rights will be deemed as agreement with the Siting Board's determination of which materials should be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Glover Creek shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which Glover Creek's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Glover Creek to seek a remedy afforded by law.

KENTUCKY STATE BOARD ON ELECTRIC
GENERATION AND TRANSMISSION SITING

Mark Cole

Chairman, Public Service Commission

Ray O'Rourke

Vice Chairman, Public Service Commission

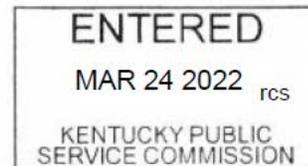
*by KAC
w/permission*

John Lewis

Secretary, Energy and Environment Cabinet,
or her designee

Seamus McCreary

Secretary, Cabinet for Economic Development,
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ATTEST:

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Executive Director
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on behalf of the Kentucky State
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