

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION  
AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF AEUG	)	
FLEMING SOLAR, LLC FOR A CERTIFICATE	)	
OF CONSTRUCTION FOR AN	)	
APPROXIMATELY 188 MEGAWATT	)	CASE NO.
MERCHANT ELECTRIC SOLAR GENERATING	)	2020-00206
FACILITY IN FLEMING COUNTY, KENTUCKY	)	
PURSUANT TO KRS 278.700 AND 807 KAR	)	
5:110	)	

ORDER

On January 22, 2021, and April 20, 2021, AEUG Fleming Solar, LLC (AEUG Fleming) filed petitions, pursuant to 807 KAR 5:001, Section 13; 807 KAR 5:110, Section 5; KRS 61.878(1)(c)(1), (i), and (j), requesting that the Commission grant confidential protection for an indefinite period of time for designated materials contained in certain of its responses to Siting Board Staff's and Harvey Economics' Initial Request for Information and for certain of its response to Siting Board Staff's Post-Hearing Data Requests.

In support of its January 22, 2021 petition, AEUG Fleming seeks confidential treatment for its response to Siting Board Staff's Initial Request for Information (Staff's Initial Request), Item 19(c), which contains copies of leases that AEUG Fleming has entered into with participating landowners in connection with the proposed solar facility site. AEUG Fleming also seeks confidential protection for its response to Harvey Economics' Initial Request for Information, Item XIII, which relates to certain

decommissioning activities that are related to provisions of the leases. AEUG Fleming contends that the subject leases contain highly sensitive information, which if publicly disclosed would place AEUG Fleming at a competitive disadvantage in negotiating similar type leases in the future. AEUG Fleming also sought confidential protection for its response to Staff's Initial Request, Item 16, which contains a breakdown of the estimated costs of the proposed solar project, including contingencies. AEUG Fleming argues that public disclosure of this information would place it at a competitive disadvantage as vendors providing services to AEUG Fleming may use the projected costs as a guide for increasing their bids for services.

In the April 20, 2021 petition, AEUG Fleming seeks confidential treatment for its response to Siting Board Staff's Post-Hearing Data Requests (Staff's Post-Hearing Requests), Item 1, which contains a draft version of the company's viewshed mitigation study. AEUG Fleming asserts that this information should be kept confidential because the study is preliminary in nature and the draft contains proprietary information that would result in a competitive disadvantage to AEUG Fleming if the information was publicly disclosed because it contains recommendations and financial information that is not yet final. AEUG Fleming also confidential protection of information for its responses to Staff's Post-Hearing Requests, Items 3 and 7, which are six Excel files containing project-specific proprietary information underlying the economic impact study, including a breakdown of the estimated costs of the project, including contingencies.

Having considered the petitions and the material at issue, the Siting Board finds that the January 22, 2021 petition should be granted in part and denied in part. The Siting Board finds that the designated material contained in AEUG Fleming's responses to

Staff's Initial Request, Item 16, containing a breakdown of the estimated costs of the proposed solar project and contingencies does meet the criteria for confidential treatment, as public disclosure of this information would place AEUG Fleming at a competitive disadvantage. Regarding AEUG Fleming's responses to Staff's Initial Request, Item 19(c), and the leases contained therein, the Siting Board finds that only the material terms of the leases meet the criteria for confidential treatment. Material terms is defined for the purposes of this Order as "the lease amount, escalation of lease payments, and remedies available to the parties of the lease for nonperformance of the terms". All remaining information in the leases does not meet that criteria for confidentiality. In fact three specific sections fail to meet the criteria for confidential treatment in their entirety, Sections 3.3(a), 3.3(b), and 4.5. Ultimately, the information in AEUG Fleming's responses to Staff's Initial Request, Item 16, and the above detailed material terms of the leases provided in AEUG Fleming's responses to Staff's Initial Request, Item 19(c) are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1), (i), and (j), 807 KAR 5:001, Section 13, and 807 KAR 5:110, Section 5.

Next the Siting Board finds the records provided in the response to Harvey Economics' Initial Request for Information, Item XIII, fail to meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1), (i), and (j), 807 KAR 5:001, Section 13, and 807 KAR 5:110, Section 5. Ultimately, the Siting Board concludes that there is no justification for the records being made confidential, while there significant justification for them being available to the public. These leases will not be recorded, and therefore there will be no public record of what is in these leases or what the obligations of the solar utility

are. Decommissioning is an important obligation, to both the lessors and their communities, that will require performance in 30 or 40 years at the end of the useful life of the solar project, when AEUG Fleming or its successors and assigns will have less economic incentive to perform these obligations. For the protection of the public the decommissioning activities that are related to provisions of the leases should be in the public domain.

Lastly, the Siting Board finds that the April 20, 2021 petition should be granted. The Siting Board finds that the designated material within records provided in AEUG Fleming's responses to Staff's Post-Hearing Requests, Items 1, 3, and 7, contain proprietary information, and thus meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1), (i), and (j), 807 KAR 5:001, Section 13, and 807 KAR 5:110, Section 5.

IT IS THEREFORE ORDERED that:

1. AEUG Fleming's January 22, 2021 petition for confidential treatment is granted in part and denied in part.
2. AEUG Fleming's request for confidential treatment in its January 22, 2021 petition for responses to Staff's Initial Request, Item 16, is granted.
3. AEUG Fleming's January 22, 2021 petition for confidential treatment for the leases contained in its responses to Staff's Initial Request, Item 19(c), is granted solely for the material terms of the lease as defined within this Order.
4. AEUG Fleming's January 22, 2021 petition for confidential treatment for Sections 3.3(a), 3.3(b), and 4.5 and all non-material terms of the leases contained in its responses to Staff's Initial Request, Item 19(c), is denied.

5. AEUG Fleming's January 22, 2021 petition for confidential treatment for response to Harvey Economics' Initial Request for Information, Item XIII, which relates to certain decommissioning activities that are related to provisions of the leases, is denied.

6. AEUG Fleming's April 20, 2021 petition for confidential treatment is granted.

7. 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.

8. Use of the designated material granted confidential treatment by this Order in any Siting Board proceeding shall comply with 807 KAR 5:001, Section 13(9).

9. AEUG Fleming shall inform the Siting Board if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

10. 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, 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 AEUG Fleming 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.

11. 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 AEUG Fleming to seek a remedy afforded by law.

12. 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.

13. If AEUG Fleming objects to the Siting Board's determination that the requested material not be granted confidential treatment, it must seek either rehearing or judicial review of this Order. 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.

14. Within 30 days of the date of service of this Order, AEUG Fleming 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.

15. The designated material for which AEUG Fleming'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 AEUG Fleming to seek a remedy afforded by law.

By the Kentucky State Board on Electric  
Generation and Transmission Siting



ATTEST:

A handwritten signature in blue ink, appearing to read "Lita C. Bidwell". The signature is written over a horizontal line.

Executive Director  
Public Service Commission  
*on behalf of* the Kentucky State  
Board on Electric Generation  
and Transmission Siting

Case No. 2020-00206

\*AEUG Fleming Solar, LLC  
55 East Monroe Street  
Suite 1925  
Chicago, ILLINOIS 60603

\*James W Gardner  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

\*M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507