

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

In the Matter of:

ELECTRONIC APPLICATION OF BANJO CREEK	)	
SOLAR LLC FOR A CERTIFICATE OF	)	
CONSTRUCTION FOR AN APPROXIMATELY	)	CASE NO.
120 MEGAWATT ELECTRIC GENERATING	)	2023-00263
FACILITY IN GRAVES COUNTY, KENTUCKY	)	
PURSUANT TO KRS 278.700 AND 807 KAR	)	
5:110	)	

ORDER

On September 7, 2023, Banjo Creek Solar LLC, (Banjo Creek) filed a motion, pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, that requested that the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) grant confidential treatment for the Interconnection System Impact Study prepared by the Tennessee Valley Authority (TVA) filed with its application.

LEGAL STANDARD

The Siting Board is a public agency subject to Kentucky Open Records Act,<sup>1</sup> which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.”<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

exemptions is applicable.<sup>4</sup> KRS 61.878(1)(m)(1)(f) grants confidential protection for information that if disclosed would have a reasonable likelihood of threatening public safety by disclosing critical electrical systems.<sup>5</sup>

### DISCUSSION AND FINDINGS

In support of its motion, Banjo Creek argued that the Interconnection System Impact Study that was conducted by TVA analyzes details of electric infrastructure, facility additions, modifications and upgrades that are needed to create and maintain a safe and reliable interconnection of the Banjo Creek project. Banjo Creek stated the study should be granted pursuant to KRS 61.878(1)(m)(1) because the information contained in the study contains critical energy infrastructure information (CEII). Banjo Creek also stated confidential treatment has been previously granted to similar CEII.

Having considered the motion and the material at issue, the Siting Board finds that affected study completed by TVA as part of the application does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to 807 KAR 5:110, Section 5, and KRS 61.878(1)(m)(1)(f). 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.<sup>6</sup> 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.<sup>7</sup> Additionally, this information is

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<sup>4</sup> 807 KAR 5:110, Section 5(2)(d).

<sup>5</sup> KRS 61.878 (1)(m)(1)(f).

<sup>6</sup> KRS 278.710(f).

<sup>7</sup> See Case No. 2020-00243, *Electronic Application of Golden Solar, LLC for a Certificate of Construction for an Approximately 100 Megawatt Merchant Electric Solar Generating Facility in Caldwell County, Kentucky* (Ky. PSC Feb. 7, 2023).

required to be provided in the application,<sup>8</sup> and the Siting Board has not granted confidential protection for the studies in the past.

IT IS THEREFORE ORDERED that:

1. Banjo Creek's motion for confidential treatment is denied.
2. 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.
3. If Banjo 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.
4. Within 30 days of the date of service of this Order, Banjo 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.
5. The designated material for which Banjo 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 in order to allow Banjo Creek to seek a remedy afforded by law.

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<sup>8</sup> KRS 278.706(i).

KENTUCKY STATE BOARD ON ELECTRIC  
GENERATION AND TRANSMISSION SITING

Chairman, Public Service Commission

Vice Chairman, Public Service Commission

Commissioner, Public Service Commission

Secretary, Energy and Environment Cabinet,  
or her designee

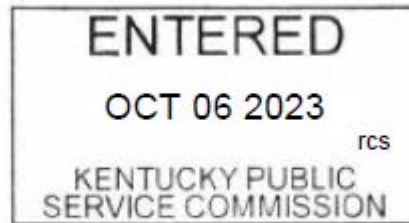
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Secretary, Cabinet for Economic Development,  
or his designee

Jesse Perry Judge Executive Graves County

ATTEST:

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



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