

Constitution Solar, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 20 megawatt AC solar photovoltaic electric generating facility in Plainfield, Connecticut

*Connecticut  
Siting  
Council*

March 27, 2020

**MOTION FOR PROTECTIVE ORDER**

1. Constitution Solar, LLC (“Constitution Solar” or the “Petitioner”) respectfully moves the Connecticut Siting Council (the “Council”) for a protective order to ensure that confidential information provided by Constitution Solar in connection with its petition for a declaratory ruling is not subject to public disclosure, in accordance with Conn. Gen. Stat. § 1-210(b) and Regulations of Connecticut State Agencies § 16-50j-22a(d)(1).

2. The confidential information addressed in this motion includes the Phase IB/Phase II Cultural Resources Report prepared by Heritage Consultants, LLC. Specifically, this information specifies the locations of identified cultural resources contained within the Project Site (the “Confidential Information”).

3. Pursuant to Conn. Gen. Stat. § 1-210(b), the Council is authorized to protect from public disclosure “trade secrets,” which for purposes of the Freedom of Information Act are defined as information, including compilations and cost data “that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Conn. Gen. Stat. § 1-210(b)(5)(A); Conn. Gen. Stat. § 35-51(d). The Council is also authorized to protect from public disclosure “[c]ommercial and financial information given in confidence, not required by statute.” Conn. Gen. Stat. § 1-210(b)(5)(B); *See, Department of Public Utilities v. Freedom of Information Comm’n*, 29 Conn. L. Rptr. 215, 2001

WL 79833, at \*3 (Conn. Super. Ct. January 12, 2001); *see also Chief of Staff v. Freedom of Information Comm'n*, 25 Conn. L. Rptr. 270, 1999 WL 643373, at \*2-3 (Conn. Super. Ct. August 12, 1999).

4. In accordance with the above, the Confidential Information qualifies as both a trade secret and as commercial financial information given in confidence, not required by statute, and therefore should be exempt from disclosure. Moreover, the Confidential Information is considered commercially and competitively sensitive and highly proprietary. Attached to this Motion is the Affidavit of David George, Director of Archaeological Services at Heritage Consultants, LLC, attesting to the fact that Constitution Solar protects this type of information because of the irreparable harm that disclosure would cause to the cultural resources identified on the Project site.

5. Neither federal law nor Connecticut statutes require that the Petitioner publicly submit the Confidential Information. In this case, the necessity of withholding public disclosure of the data outweighs the public interest in such disclosure.

6. In prior proceedings, the Council has protected similar information from public disclosure. See Petition 1310A, Quinebaug Solar, Council Decision on Motion for Protective Order (December 6, 2019).

WHEREFORE, for all of the foregoing reasons, Constitution Solar requests that the Council grant its Motion for Protective Order.

Respectfully Submitted,

CONSTITUTION SOLAR, LLC

A handwritten signature in black ink that reads "Kate Boucher". The signature is written in a cursive style.

By \_\_\_\_\_

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*Its Attorneys*



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**PROTECTIVE ORDER CONCERNING CONSTITUTION SOLAR LLC'S PROVISION  
OF CONFIDENTIAL COMMERCIAL AND FINANCIAL INFORMATION**

WHEREAS, Constitution Solar, LLC (the "Company") has been requested to provide the Connecticut Siting Council (the "Council") with certain information related to locations of identified cultural resources (the "Confidential Information") that would, in the opinion of the Company, result in the disclosure of a commercially valuable or financial information that is given in confidence and not required by statute, and/or which information the Company contends constitutes a trade secret within the meaning of Connecticut General Statutes § 1-210(b)(5) (collectively, the "Confidential Information"); and

WHEREAS the Company has expressed a willingness to provide the Confidential Information subject to a protective order (the "Order");

NOW, THEREFORE, it is hereby ordered, that the following procedures are adopted for the protection of the Confidential Information provided by the Company:

1. All Confidential Information provided by the Company, whether in documentary form or otherwise, shall be identified as follows: "[identifying title] [Confidential Information]", and will be governed by the terms of this Order. This Order is applicable to all such Confidential Information, whether in the form of documents, data, testimony, studies, or otherwise.

2. All Confidential Information made available pursuant to this Order shall be given to Members and staff of the Council, upon execution of the Acknowledgment referenced below (each a "Signatory" and collectively, the "Signatories"). Any parties to the Council proceeding

will separately be provided the Confidential Information upon 1) consent of the Company and 2) execution of the Nondisclosure Agreement in the form attached hereto as Exhibit 1 (each also a “Signatory” and collectively, the “Signatories”).

3. Upon execution of the Nondisclosure Agreement, Confidential Information will be marked as such and delivered in sealed envelopes to the Council. A statement in the following form shall be placed prominently on each envelope:

**CONFIDENTIAL-PROPRIETARY**

This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the Protective Order entered by the Connecticut Siting Council in connection with a Constitution Solar, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 20 megawatt AC solar photovoltaic electric generating facility in Plainfield, Connecticut

4. Any Confidential Information made available pursuant to this Order shall be part of the record in the docket cited above, subject to the same relevancy and other evidentiary considerations as non-confidential information and subject to the conditions stated in Paragraphs Five and Six of this Order.

5. If the Confidential Information is used in any manner in any interrogatory, letter, petition, brief or other writing (each a “Document”), all reference to the Confidential Information in the Document shall be either:

- a) in a separate document, prominently labeled “Proprietary Information”, which document shall be safeguarded in accordance with the Order and distributed only to Members and staff of the Council, and to Signatories; or
- b) solely by title or exhibit reference in a manner reasonably calculated not to disclose the Confidential Information.

6. If the Confidential Information is used in any manner in any Council proceeding or during the course of a public hearing before the Council (a “Hearing”), the Hearing shall not be held before, nor any record of it made available to, any party or other person or entity not a

Signatory, other than the appropriate representatives of the Council. No record shall be disclosed, nor any communication made, of use of the Confidential Information in the Hearing to any person or entity not a Signatory, Member of the Council or Council staff. Any transcript or other recording of the Hearing that relates to the Confidential Information shall be placed in sealed envelopes or containers and a statement in the following form shall be placed prominently on such envelope or container:

**CONFIDENTIAL-PROPRIETARY**

This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the Protective Order entered by the Connecticut Siting Council in connection with a Constitution Solar, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 20 megawatt AC solar photovoltaic electric generating facility in Plainfield, Connecticut

7. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this Council proceeding or at any hearing or trial. Further, nothing herein shall be considered a waiver of any party's right to assert at a later date that the Confidential Information is or is not proprietary or privileged. A party seeking to change the terms of this Order shall by motion give every other party five (5) business days' prior written notice. No information protected by this Order shall be made public until the Council rules on any such motion to change the terms of this Order. Confidential Information otherwise properly discovered, even though also subject to the terms of this Order, shall not be considered protected by this Order.

8. All copies of such Confidential Information shall be returned to the Company no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding.

CONNECTICUT SITING COUNCIL

By: \_\_\_\_\_

Title:

Dated: \_\_\_\_\_

**REVIEWED AND ACKNOWLEDGED:**

The undersigned hereby acknowledges that he or she has reviewed this Protective Order, and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from Constitution Solar, LLC.

RECIPIENT: \_\_\_\_\_

REPRESENTING:

DATE: \_\_\_\_\_

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**EXHIBIT 1**

**CONSTITUTION SOLAR, LLC**

**NONDISCLOSURE AGREEMENT**

Constitution Solar, LLC (the “Company”) agrees to make available to \_\_\_\_\_ (“Recipient”) confidential and proprietary information filed with the Connecticut Siting Council (“Confidential Information”) subject to restrictions stated herein.

1. Any information provided to Recipient and labeled “Confidential Information” by the Company shall be Confidential Information subject to this Nondisclosure Agreement.
2. The Confidential Information is received by Recipient in confidence.
3. The Confidential Information shall not be used or disclosed by the Recipient except in accordance with the terms contained herein and in the Company’s Motion for Protective Order as filed with the Connecticut Siting Council.
4. Only individuals, and not entities, may be Recipients of Confidential Information under this paragraph. The Recipient must be an attorney or independent expert witness for a party in this Council proceeding. The Recipient acknowledges that he/she now represents or in the future may represent competitors or potential competitors of the Company and that disclosure of confidential and proprietary information of the Company to competitors or use of such information for the benefit of competitors of the Company could adversely affect the Company and its customers. By executing this Nondisclosure Agreement, each Recipient certifies that he/she meets the requirements of this paragraph.
5. The following conditions shall apply to each Recipient:
  - a) Each Recipient shall receive one (1) numbered, controlled copy of the Confidential Information. The Recipient shall not make any copies thereof or provide the Confidential Information to any individual or entity.
  - b) The Recipient shall maintain a log of all persons granted access to the Confidential Information.
  - c) The Recipient, by signing this Nondisclosure Agreement acknowledges that he/she may not in any manner disclose the Confidential Information to any person, and that he/she may not use the Confidential Information for the benefit of any person except in this Council proceeding and in accordance with the terms of the Protective Order.
  - d) The Recipient acknowledges that any violation of this Nondisclosure Agreement may subject the Recipient to civil actions for violation hereof. Additionally, any

Recipient who is an attorney acknowledges his/her ethical obligations under the Rules of Professional Conduct to abide by this Nondisclosure Agreement and to handle properly confidential information that is subject to a protective order.

- e) Within thirty (30) days of the final decision in this Proceeding, Recipient shall return the Confidential Information to the Company.

**RECIPIENT:**

By: \_\_\_\_\_

Dated: \_\_\_\_\_