

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

In the Matter of:

<i>Electronic</i> Application of Caldwell Solar, LLC)	Case No.
for Certificate of Construction for an up to 200)	2020-00244
Megawatt Merchant Electric Solar Generating)	
Facility in Caldwell County, Kentucky)	

Caldwell Solar’s Petition for Confidential Treatment of Information

Caldwell Solar, LLC (“Caldwell”) respectfully submits this Petition pursuant to 807 KAR 5:110, § 5, for confidential treatment of certain information responsive to the initial data requests in this case. In support of this Petition, Caldwell states as follows:

1. On this date, Caldwell filed with the Siting Board its Response to Siting Board Staff’s First Request for Information (“1 ESB __”).
2. Caldwell seeks confidential treatment for the material terms contained in the lease agreements (“Agreements”) which were produced in response to 1 ESB 01. Material terms include information such as the lease amounts; escalation of lease payments; remedies available to the parties of the lease for nonperformance of the terms; 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; the structure of the lease term including the outside date for the rent commencement date; and so forth – items that are not simply boilerplate and are uniquely essential to negotiation of each Agreement. The publicly-filed Agreements have been redacted; unredacted copies with material terms highlighted have been provided under seal.

3. Confidential treatment is also needed for the narrative in the Response to 1 ESB 20 (“1 ESB 20”) and the Parcel Map attached to the Response to 1 ESB 74 (“Parcel Map”). These contain personal information as defined in 807 KAR 5:001 Section 4(10). Confidential treatment is sought for the entirety of the Parcel Map, and as instructed by 807 KAR 5:001, § 13(2)(a)(3)(b), the entire document, since confidential, are filed only under seal (and not as an attachment to the Response) in lieu of the otherwise required highlighting and redactions.

4. The information in the Agreements for which Caldwell here seeks confidential treatment is not publicly disseminated, and public disclosure of this information would harm Caldwell, as well as other persons identified in the Agreements, for various reasons discussed in the following paragraphs.

5. The non-party property owners and other individuals named in the Agreements, 1 ESB 20, and the attachments in 1 ESB 74 are covered by the provisions of 807 KAR 5:001, § 4(10)(a), which require privacy protection for filings that include an individual’s first name or first initial and last name in combination with the individual’s address or telephone number, if that individual is not a party and has not requested to be a party. 807 KAR 5:001, § 4(10)(a)(7). None of the property owners or other individuals named or shown in the Agreements has filed a request for intervention or otherwise requested to be a party.

6. The information in the Agreements is not publicly disseminated and public disclosure of this information would harm Caldwell. The Agreements reveal commercially sensitive information regarding the internal ability and workings of Caldwell and its affiliates — in particular, how they evaluate certain land areas for projects, evaluate potential projects, and respond to various issues that arise in merchant solar projects, including the negotiated prices and terms for property rights. Price terms, negotiated and form provisions, and related

acquisition strategy then demonstrate innovative and proprietary processes developed through experience and used by Caldwell and its affiliates to develop these facilities and networks.

7. Such processes are “trade secrets” as defined by KRS 365.880(4) and fall within the scope of the KRS 61.878(1)(c)(1) exemption from disclosure. If the trade secrets do not receive confidential treatment, the risk of harm would be unnecessarily increased that Caldwell and its affiliates would suffer a serious business injury and these trade secrets would be misappropriated by developers and other competitors in the merchant solar industry.

8. Caldwell should not be forced to share information in the Agreements publicly to its possible detriment. Especially in the event that the Application is denied, public accessibility would cause Caldwell harm because disclosure would give other developers and potential competitors a competitive advantage regarding the areas discussed in the Agreements and lessen competition in subsequent bidding processes. Such disclosure would also be costly in the future when attempts to develop other similar projects are made and Caldwell’s ability to negotiate terms specific to the circumstances has been compromised.

9. Agreement information could be used by competitors to the business injury of Caldwell and its affiliates, including National Grid Renewables, in other ways as well. For example, if disclosed, the Agreements would give competitors sensitive information about, *e.g.*, (a) acquisition strategy and capability and (b) analysis of projects, their problems, and potential.

10. Under KRS 61.878(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permit competitors an unfair commercial advantage. Public disclosure of the information in the identified attachments may cause competitive harm to Caldwell and its affiliates as well as the neighboring landowners and could cause a reduction in competition relating to similar merchant solar plants.

11. The information for which confidential treatment is sought in this Petition is treated as confidential by Caldwell and its affiliates; even among employees it is not disseminated to those who do not have a business reason to use the information.

12. If the Sitting Board's tentative assessment is that any of the information identified herein is not exempt from disclosure as confidential commercial information, it must hold an evidentiary hearing to protect Caldwell's due process rights and permit an opportunity to create a complete record enabling the Siting Board to decide this confidentiality request.

13) In compliance 807 KAR 5:110, §5 and 807 KAR 5:001 § 13(2)(a)(3), Caldwell is filing with the Siting Board one copy of the identified Agreements, entirely unredacted and with highlighting of the material for which confidential treatment is sought. The unredacted copies are filed under seal pursuant to the instructions regarding confidential filings in the 3/24/20 Order issued in KY. PSC Case No. 2020-00085; redacted pages have been publicly filed with the electronic copy of Caldwell's Response to Siting Board Staff's First Request for Information. In compliance with 807 KAR 5:110 Section 5 and related regulations, Caldwell is providing the Parcel Map only under seal.

14) Section 13(2)(a)(2) of 807 KAR 5:001 provides that a petition for confidential treatment shall state the time period in which the material should be treated as confidential and the reasons for this time period. Caldwell respectfully submits that five (5) years from the date of the filing of the Application is a reasonable period of time for the material in these attachments to be treated as confidential in the light of competitive conditions in the merchant solar industry.

WHEREFORE, Caldwell respectfully requests that the Sitting Board grant confidential treatment of the information described herein in the Agreements, 1 ESB 20, and 1 ESB 74, filed

under seal, and shown as redacted in the publicly-filed Response to Siting Board Staff's First Request for Information.

Respectfully submitted,

/s/ Kathryn A. Eckert

Jason R. Bentley

Katherine K. Yunker

Kathryn A. Eckert

McBrayer PLLC

201 East Main St., Suite 900

Lexington, KY 40507

(859) 231-8780

jbentley@mmlk.com

kyunker@mcbayerfirm.com

keckert@mcbayerfirm.com

*Counsel for Applicant,
Caldwell Solar, LLC*