

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 second 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 Second Request for Information (“2 ESB __”).
2. Caldwell seeks confidential treatment for the entirety of the following documents: Figure 2 ESB 01 Caldwell Karst Report Phase I and Figure 2 ESB 01 Caldwell Karst Report Phase II (hereinafter collectively “Karst Reports”), which are both responsive to 2 ESB 01, and Caldwell Solar Site Plan Karst Feature Overlay (hereinafter “Site Plan Overlay”), responsive to 2 ESB 02. As instructed by 807 KAR 5:001, § 13(2)(a)(3)(b), the entire documents – since confidential – are filed only under seal (and not publicly as attachments to the Response) in lieu of the otherwise required highlighting and redactions.
3. Confidential treatment is being sought for the entirety of the Karst Reports because each contains confidential and propriety information regarding the Project site. The report reveals information regarding the internal ability and workings of Caldwell and its

affiliates — in particular, how National Grid Renewables selects and evaluates potential project sites and how various issues in its planned solar projects are addressed.

4. The Karst reports should also be kept confidential because these are propriety. Directly or indirectly (through National Grid Renewables), Caldwell expended funds with a third party as part of the due diligence in investigating this site. Caldwell should not be forced to share this information publicly to its possible detriment. Especially if the Application is denied, public accessibility would cause Caldwell and its affiliates harm because disclosure would give other potential purchasers and competitors a “leg-up” regarding the sites discussed in the report and lessen competition in a subsequent bidding process. Such disclosure would also be costly in the future when attempts to develop other sites for solar projects are made and Caldwell’s ability to negotiate terms specific to a particular site and its circumstances has been compromised.

5. Confidential treatment is also needed for the entirety of the Site Plan Overlay because it shows the karst features locations from the confidential Karst Reports, imposed over the site plan map from Amended Exhibit J. This showing of the information from the Karst Reports should be confidential for the same reasons listed in paragraph 3 and 4 above. Additionally, confidential information that would need to be redacted occurs throughout the Site Plan Overlay in such a way that redaction is not feasible; proprietary and confidential business information is intertwined with other material throughout the documents. Information in the documents that might not merit confidential treatment has already been filed publicly in this proceeding, whether in text form or through maps and diagrams.

6. The information in the Karst Reports and Site Plan Overlay for which Caldwell here seeks confidential treatment is not publicly disseminated, and public disclosure of this information would harm Caldwell for various reasons discussed in the previous paragraphs.

7. Caldwell's proprietary processes contained within the Karst Reports and Site Plan Overlay 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. 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.

9. 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.

10. If the Siting 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.

11. In compliance 807 KAR 5:110, §5 and 807 KAR 5:001 § 13(2)(a)(3)(b), Caldwell is filing the Karst Reports and Site Plan Overlay only under seal. These are filed entirely under seal pursuant to the instructions regarding confidential filings in the 3/24/20 Order issued in KY. PSC Case No. 2020-00085.

12. 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 Siting Board grant confidential treatment of the information described herein, filed only under seal.

Respectfully submitted,

/s/ Kathryn A. Eckert

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