

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 post-hearing 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 Post Hearing Request for Information (“Post-Hearing ESB ___”).

2. Caldwell seeks confidential treatment for the entirety of the Phase I Environmental Site Assessments (dated June 4, 2020, and August 19, 2021; hereinafter collectively “ESA”) provided in response to Post-Hearing ESB 03. As instructed by 807 KAR 5:001 Section 13(2)(a)(3)(b), the entirety of the ESA—since confidential—is filed only under seal and not publicly as attachments to the Response in lieu of the otherwise required highlighting and redactions.

3. The non-party property owners and other individuals identified in the ESA 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 ESA has filed a request for intervention or otherwise requested to be a party.

4. Additionally, the ESA should also be kept confidential because it is 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, creating additional reports beyond those required for the Application in this matter. 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. 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.

5. Caldwell’s proprietary processes contained within the ESA 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. 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 documents 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.

6. 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.

7. In compliance with 807 KAR 5:110, §5 and 807 KAR 5:001 § 13(2)(a)(3)(b), Caldwell is filing the ESA 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.

8. 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 documents 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 under seal, and shown as redacted in the publicly-filed Response to Siting Board Staff's First Request for Information No. 1.

Respectfully submitted,

/s/ Kathryn A. Eckert

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