

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

In the Matter of:

Electronic 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)	

ORDER

This matter is before the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board) upon the motion for clarification filed on August 2, 2022 (Motion) of Caldwell Solar, LLC (Caldwell Solar) requesting clarification of certain mitigation requirements imposed by the April 8, 2022 Order (Final Order).

On October 12, 2021, Caldwell Solar filed an application requesting a Certificate of Construction to construct an approximately 200-megawatt alternating current solar photovoltaic electric generating facility (Project) to be located in Caldwell County, Kentucky. The Siting Board’s Final Order conditionally authorized a Certificate of Construction to construct the proposed solar facility subject to Caldwell Solar complying with the mitigation measures set forth in Appendix A to the Final Order.

Caldwell Solar states that “[c]larification of the [Final] Order is needed to resolve ambiguities, internal inconsistencies, or clerical errors and to give [Caldwell Solar] due notice of the conditions and how it can comply with them.”¹ Caldwell Solar seeks clarification of mitigation measures 9, 13, 16, 26 and 29, as provided in the Final Order. In each instance, it proposes alternative, clarified language for the mitigation measure.

¹ Motion at 1.

Caldwell Solar seeks clarification of mitigation measure 9, as provided in the Final Order, which stated therein:

Caldwell Solar shall implement planting of the native evergreen species American Holly, Eastern Red Cedar, or white pine as a visual buffer to mitigate visual viewshed impacts, in areas where those viewshed impacts occur from residences or roadways directly adjacent to the project and there is not adequate existing vegetation. Eastern Arborvitae and the deciduous plantings listed in the application are not acceptable. If the visual buffer is not adequate, to the reasonable satisfaction of the affected adjacent property owners, then additional vegetation ten feet thick reaching six feet at maturity (in four years) will be added by Caldwell Solar between Project infrastructure and residences or other occupied structures with a line of sight to the facility. Such planting shall be done prior to construction of panel arrays commencing in any phase of development identified in the record.

Caldwell Solar requests that this measure be clarified to apply only to situations in which the planned visual buffer “is not adequate, to the reasonable satisfaction of [an] affected adjacent property owner[,],” and to provide a default vegetative screen in the event that Caldwell Solar and the property owner do not reach a written agreement as to a satisfactory modification of the planned visual buffer.² It proposes an alternative, clarifying measure 9 as requested.³ The Siting Board find that this clarification is reasonable.

In addition, Caldwell Solar moves for clarification of mitigation measure 13, as provided in the Final Order, which stated in full:

Caldwell Solar is required to limit the construction activity, process, and deliveries to the hours between 8 a.m. and 6 p.m. local time, Monday through Saturday. The Siting Board directs that construction activities that create a higher level of noise, such as pile driving, will be limited to the hours of 9 a.m. to 5 p.m. local time, Monday through Friday. Non-noise-causing and non-construction activities can take place on the site between 7 a.m. and 10 p.m., Monday through Sunday, including field visits, arrival, departure, planning meetings, mowing, surveying, etc.

² Motion at 3.

³ Motion at 6-7.

In its Motion, Caldwell Solar notes that the majority of ESB certificate grants do not limit construction activity beyond the general condition restricting it to 8 a.m. to 6 p.m. local time, Monday through Saturday,⁴ and that neither it nor the Siting Board consultant proposed a narrower range for any category of construction activity.⁵ It proposes that the second sentence of this mitigation measure be clarified to set an objective, clearly defined standard (distance from a non-participating residence of 1000 feet or fewer) for limiting pile-driving activity to 9:00 a.m. to 5:00 p.m. on weekdays.⁶ The Siting Board find that the clarification proposed to measure 13 is reasonable and will replace the restrictive limitation as requested.

The third request for clarification by Caldwell Solar is to mitigation measure 16, as provided in the Final Order, which sets conditions (including setbacks) for the generating facility equipment. In addition to suggesting greater specificity for the reference to its commitments and clarifying reorganization of the distance requirements, Caldwell Solar seeks to clarify the setback requirements in the Condition's third sentence.⁷ In its Motion, Caldwell Solar states that the 100-foot setback "from any exterior property line," is without support in the case record and confusing or at odds with other distances set in this mitigation measure.⁸ It also suggests that the phrasing relating to the grant of its requested deviation from the statutory 2000-foot standard more closely track the underlying motion and ordering paragraph 2 of the Order. Caldwell Solar

⁴ Motion at 8 & footnote 9.

⁵ Motion at 7-8.

⁶ Motion at 8-9, citing phrasing in Case No. 2020-00208, *Electronic Application of Northern Bobwhite Solar LL, for a Certificate of Construction for an approximately 96 Megawatt Merchant Electric Solar Generating Facility in Marion County, Kentucky pursuant to KRS 278.700 and 807 KAR 5:110* (K.S.B. June 18, 2021), Apx. A at 6 (condition #32), and Case No. 2020-00206, *Electronic Application of AEUG Fleming Solar, LLC, for a Certificate of Construction for an approximately 188 Megawatt Merchant Electric Solar Generating Facility in Fleming County, Kentucky pursuant to KRS 278.700 and 807 KAR 5:110* (K.S.B. Nov. 12, 2021), at 11 (ordering ¶ 10).

⁷ Motion at 10-12.

⁸ Motion at 10-11.

proposes an alternative measure 16 that clarifies the conditions for placement of generating facility equipment.⁹ The Siting Board finds that the requested clarification is reasonable.

In addition, Caldwell Solar moves for clarification of mitigation measure 26, as provided in the Final Order, which stated in full:

If any person shall acquire or transfer ownership of, or control, or the right to control the project, by sale of assets, transfer of stock, or otherwise, or abandon the same, Caldwell Solar or its successors or assigns shall request explicit approval from the Siting Board with notice of the request provided to the Caldwell County Fiscal Court. In any application requesting such abandonment, sale, or change of control, Caldwell Solar shall certify its compliance with KRS 278.710(1)(i).

Caldwell Solar requests that the measure be clarified to require written notice to the Siting Board and the Caldwell County Fiscal Court of transfers of ownership, control, or right to control the certificated Project or of abandonment of the Project.¹⁰ It proposes clarified phrasing for measure 26, patterned after a certificate order condition in another case.¹¹ The Siting Board finds that the clarification of this measure to specify written notice is reasonable. The Siting Board does not address or rule on the legal positions taken by Caldwell Solar in the Motion, and this grant of the principal request for clarification moots Caldwell Solar's alternative request as to measure 26.¹²

Caldwell Solar also requests a clarification of mitigation measure 29, as provided in the Final Order, which requires financial security for the full cost of the decommissioning plan. In its Motion, Caldwell Solar seeks to clarify that the requirement is for a comprehensive financial

⁹ Motion at 12.

¹⁰ Motion at 14-15.

¹¹ Motion at 15 & footnote 21, citing to Case No. 2021-00029, *Electronic Application of Martin County Solar, LLC for a Certificate of Construction for an approximately 200 Megawatt Merchant Electric Solar Generating Facility in Martin County, Kentucky pursuant to KRS 278.700 and 807 KAR 5:110* (K.S.B. Nov. 15, 2021) Order Apx. A at 6 (condition #28).

¹² See Motion at 14-15.

security in a form acceptable to the Caldwell County Fiscal Court that covers the full cost of decommissioning.¹³ It proposes an alternative, clarifying measure 29 as requested.¹⁴ The Siting Board finds that this clarification is reasonable and should be granted.

IT IS THEREFORE ORDERED that:

1. Caldwell Solar's motion for clarification filed on August 2, 2022, is granted.
2. The ninth mitigation measure in the Siting Board's Final Order of April 8, 2022,

is hereby replaced with the following mitigation measure:

9. Caldwell Solar will contact adjacent property owners prior to construction and provide a description of the proposed screening plan. As to any adjacent property with a residence or other occupied structure with a line of sight to Project infrastructure, if the visual buffer planned by Caldwell Solar is not to the reasonable satisfaction of the owner of the property, Caldwell Solar will attempt to reach an agreement with the owner about a visual buffer for viewshed impacts on the residence or other occupied structures. Any agreement reached will be in writing and filed with the ESB. If Caldwell Solar and the affected adjacent property owner do not reach an agreement, then Caldwell Solar will implement planting of (i) evergreen trees of the American Holly, Eastern Red Cedar, or White Pine species (ii) to form a buffer at least 10 feet thick and reaching at least six (6) feet in height within four (4) years of planting (iii) to mitigate viewshed impacts that would occur from any residence or occupied structure on the affected property. This buffer for the affected adjacent property will be planted prior to operation of the facility.

3. The thirteenth mitigation measure in the Siting Board's Final Order of April 8,

2022, is hereby replaced with the following mitigation measure:

13. Caldwell Solar is required to limit construction activity, process, and deliveries to the hours between 8 a.m. and 6 p.m. local time, Monday through Saturday. Pile driving within 1000 feet of non-participating residences shall be limited to the hours of 9 a.m. to 5 p.m. local time, Monday through Friday. Non-noise-causing and non-construction activities can take place on the site between 7 a.m. and 10 p.m., Monday

¹³ Motion at 16-17.

¹⁴ Motion at 18.

through Sunday, including field visits, arrival, departure, planning meetings, mowing, surveying, etc.

4. The sixteenth mitigation measure in the Siting Board’s Final Order of April 8, 2022, is hereby replaced with the following mitigation measure:

16. a. Caldwell Solar shall place panels, inverters, and substation equipment consistent with the minimum setback distances to noise receptors to which it committed in its 3/11/22 supplemental response to 1 ESB 31, unless a greater minimum distance is set by subpart b or c of this Condition or a shorter distance is allowed pursuant to subpart d.

b. Caldwell Solar shall set back any panel or string inverter at least 200 feet from residences. In addition, it shall not place any panel or string inverter less than 150 feet from a church or school, 25 feet from a non-participating adjoining parcel, or 50 feet from an adjacent roadway. Furthermore, any central inverter or energy storage must be placed at least 450 feet from any adjacent residence, church, or school.

c. Any solar panel or string inverter must be at least 300 feet from a residence in either of the two clusters of residences identified in the Motion for deviation as possibly qualifying as “residential neighborhoods.”

d. The setbacks in subpart b above are not required as to residences owned by landowners participating in the project that explicitly agree to lesser setbacks in writing. Any such agreement by a participant landowner must include language advising the landowner of the setbacks otherwise required by this Condition and must be filed with the Siting Board prior to commencement of construction of the project.

5. The twenty-sixth mitigation measure in the Siting Board’s Final Order of April 8, 2022, is hereby replaced with the following mitigation measure:

26. The Siting Board and the Caldwell County Fiscal Court shall be notified in writing of any (a) abandonment of the Project or (b) acquisition or transfer of ownership, control, or the right to control the Project (whether by sale of assets, transfer of stock, or otherwise). The notice shall update the environmental compliance history provided in Caldwell Solar’s application pursuant to KRS 278.706(2)(i).

6. The twenty-ninth mitigation measure in the Siting Board’s Final Order of April 8, 2022, is hereby replaced with the following mitigation measure:

29. a. "Bond" as used in this Condition means a form of financial security in writing, including a deed or pledge of property, letter of credit, etc., or a combination of forms or securities, acceptable to the Caldwell County Fiscal Court.

b. By the time of commencement of operation of the project, Caldwell Solar shall have in place a bond or bonds (collectively, "the Bond") equal to the amount necessary to effectuate the explicit or formal decommissioning plan. The Bond should name Caldwell County Fiscal Court as an express obligee or beneficiary, so that the County will have the authority to draw upon the Bond to effectuate the decommissioning plan.

c. The Bond shall be filed with the Caldwell County Fiscal Court, through the County Treasurer, or (alternatively) with a title company, bank, or other financial institution reasonably acceptable to the County. The County's acceptance of an alternative shall be in writing, including by a letter from the Judge-Executive, the Fiscal Court, or the County Attorney.

d. The Bond amount shall be reviewed at Caldwell Solar's expense every five years from the filing of the decommissioning plan required by Condition No. 28, to determine and update the costs of decommissioning. This review shall be conducted by an individual or firm with experience or expertise in the costs of removal or decommissioning electric generating facilities. By letter to the Siting Board and the Caldwell County Fiscal Court, Caldwell Solar shall certify that this review was conducted, the current amount of the Bond, and any change in the estimated costs of removal or decommissioning since the filing of the full decommissioning plan required by Condition No. 28.

By the Kentucky State Board on Electric
Generation and Transmission Siting