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November 15, 2023

VIA ELECTRONIC MAIL AND HAND DELIVERY

Melanie Bachman
Executive Director/Staff Attorney
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: PETITION NO. 1591 – KCE CT 5, LLC petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 5.0-megawatt AC battery energy storage facility located at Village Hill Road, Stafford (Parcel No. 71-6) and Willington (Parcel No. 52-001-00), Connecticut, and associated electrical interconnection. Council Interrogatories to Petitioner.

Dear Ms. Bachman:

I am writing on behalf of my client, KCE CT 5, LLC, in connection with the above-referenced Petition. With this letter, I am including a Motion for Protective Order, Affidavit, Non-Disclosure Agreement, Request for Information, and Proposed Order in support of the protective order in connection with KCE CT 5, LLC's response to Interrogatory Number 4, requesting information regarding the project's costs, cost recovery mechanisms, and energy pricing.

Should you have any questions concerning this submittal, please contact me at your convenience.

Sincerely,

Lee D. Hoffman
Enclosures

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

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| | November 15, 2023 |

MOTION FOR PROTECTIVE ORDER

KCE CT 5, LLC, (“KCE”) respectfully requests that the Connecticut Siting Council (“Council”) issue a Protective Order to protect certain confidential information which will be provided in response to the Council’s request for interrogatories dated October 25, 2023. Specifically, interrogatory request No. 4, seeks information regarding the project’s costs, cost recovery mechanisms, and energy pricing.

The information contained in this response includes commercially sensitive, confidential financial and proprietary information, which KCE uses for competitive bidding, internal planning and business purposes, and which is vital to its operations and interests. Further, public disclosure of this information would harm KCE’s ability to effectively engage in the highly competitive emerging energy storage market by injuring its competitive positions. As such, KCE considers this information to consist of trade secrets.

Compelling disclosure of this information would constitute an illegal mandate for disclosure of confidential and proprietary information which is protected under both state and federal law. *See*, 5 U.S.C. §552; Conn. Gen. Stat. §1-210(5).

Instead, KCE would like to provide this information directly to the Council under seal, pursuant to the Council’s instructions.

WHEREFORE, KCE requests that any review or reference to the above-requested information be conducted pursuant to a Protective Order.

Respectfully submitted,

KCE CT 5, LLC,

By: Lee D. Hoffman

Lee D. Hoffman

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Its Attorneys

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

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AFFIDAVIT OF TAYLOR QUARLES


I, Taylor Quarles, do state and declare under penalty of perjury as follows:

1. I am over the age of eighteen and understand the obligation of an oath.
2. I submit this Affidavit in support of the Request for Protective Order as it relates to confidential information which shall be provided by KCE CT 5, LLC (“KCE”) in response to the Connecticut Siting Council’s (“Council”) request for interrogatories within the above-referenced docket.
3. I am employed by Key Capture Energy as Vice President, Development. In that position, I have ultimate responsibility for all aspects of the project that is the subject of this docket as KCE CT 5, LLC is a wholly owned subsidiary of Key Capture Energy.
4. I have personal knowledge of the facts set forth herein unless otherwise stated, in which case, I understand those facts to be true based on information and belief.
5. Specifically, KCE seeks to protect from public disclosure non-public information regarding the project’s costs, cost recovery mechanisms, and energy pricing. (the “Confidential Information”).
6. The Confidential Information is used by KCE for competitive bidding, internal planning and business purposes. The Confidential Information contains cost and price information related to KCE’s project, that is critical, commercially sensitive, and competitively significant.
7. The Confidential Information constitutes commercial or financial information given in confidence and is exempt from disclosure under both state and federal law. *See*, 5 U.S.C. §552; Conn. Gen. Stat. §1-210(5)(B).
8. Public disclosure would harm KCE’s ability to compete in this very competitive emerging energy storage market. As such, KCE considers this information to be trade secrets and protects this information from public disclosure. *See*, 5 U.S.C. §552; Conn. Gen. Stat. §1-210(5)(A).

9. To the best of my knowledge, no agency of the state of Connecticut, nor any other state of federal agency or court of competent jurisdiction, has previously made a confidentiality determination relevant to the Confidential Information.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Affidavit as of the date set forth above.

KCE CT 5, LLC,

By: 
Name: Taylor Quarles
Title: Vice President, Development

STATE OF New York)
COUNTY OF Rensselaer) SS: _____

On this 13th day of November, 2023, before me, the undersigned officer, personally appeared Taylor Quarles, the Director of Development of **KCE CT 5 LLC**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Instrument and acknowledged that he executed the same as his free act and deed and the free act and deed of the limited liability company for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

My commission expires:
[SEAL]


Notary Public



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PROTECTIVE ORDER

WHEREAS, KCE CT 5, LLC (“KCE” or the “Applicant”) is willing to submit an unredacted copy of a description of project costs, cost recovery mechanisms, and energy rates (the “Confidential Information”).

WHEREAS, KCE considers the Confidential Information to be confidential commercial or financial and proprietary information given in confidence and is exempt from disclosure under both state and federal law. *See*, e.g., 5 U.S.C. § 552; Conn. Gen. Stat. § 1-210.

WHEREAS, KCE has indicated its willingness to provide the Confidential Information to the Council subject to a protective order.

NOW THEREFORE, it is hereby ordered, that the following procedure is adopted for the protection of the Confidential Information:

1. The Confidential Information shall be governed by the terms of this Order.

This Order is applicable to all such Confidential Information, regardless of format.

2. All Confidential Information shall be subject to this Order and shall be given solely to the Council its staff. It is understood that and agreed that said information is confidential, subject to trade secrets, and constitutes commercial or financial information given in confidence.

3. Confidential Information shall be marked as such and delivered in a sealed envelope to the Council.

4. All recipients shall be bound by this Order.

5. In the event that the Confidential Information is to be used in any manner in any proceeding or hearing before the Council, such proceeding or hearing shall not be held before, nor any record of it made available, to any other party, intervenor, or other person or entity. Presence at such proceeding or hearing shall be limited to the Council, its staff and representatives of KCE. No record shall be disclosed, or communication made of the information at any time to any person or entity. Any transcript or other recording of the Confidential Information shall be placed in a sealed envelope or containers and a statement in the following form placed on such envelope or container:

CONFIDENTIAL INFORMATION

**This envelope is not to be opened or the contents
Thereof to be displayed or reveled except pursuant to the
Protective Order issued in Docket 1591.**

6. No copies shall be made of the Confidential Information unless expressly ordered by the Council.

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

8. No Recipient shall use or disclose the Confidential Information for purposes of business or competition, or for any other purpose, other than the purpose of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall in good faith take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Order.

9. All copies of such Confidential Information shall be returned to KCE 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: _____

Dated: _____

REQUEST FOR INFORMATION

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that the undersigned has reviewed this Protective Order and hereby agrees to abide by the terms thereof, in exchange for receipt of confidential information provided by Petitioner KCE CT 5, LLC in Petition 1591.

This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original but all of which together shall constitute one and the same agreement. This agreement shall be valid and enforceable as to any signing party.

By: _____

Dated: _____, 2023

NON-DISCLOSURE AGREEMENT

WHEREAS, KCE CT 5, LLC (“KCE”) has filed with the Connecticut Siting Council certain materials and information in response to Council’s Interrogatories issued in Petition 1591; and

WHEREAS, the information contained in said materials provided in response to the Interrogatories contains confidential and proprietary business information of KCE (“Confidential Information”); and

WHEREAS, disclosure of the Confidential Information would result in the disclosure of confidential, proprietary information to KCE and thus harm its ability to compete in a competitive marketplace; and

WHEREAS, KCE desires to protect the Confidential Information from disclosure to the public.

NOW, THEREFORE, it is hereby agreed, that the following procedure is adopted for the protection of Confidential Information:

1. All Confidential Information provided by KCE to the Siting Council in response to the Interrogatories will be governed by the terms of this Non-Disclosure Agreement (“Agreement”). The Agreement is applicable to all such Confidential Information, whether in hard copy or electronic, and whether in the form of notes, analyses, documents, transcripts, data, studies, computer tapes or discs, or oral communication.

2. Signatories to this Agreement agree to be bound by its terms and shall not use the Confidential Information except for purposes of evaluating KCE’s proposed project in Petition 1591. All parties, including consultants, in receipt of the Confidential Information under

the Agreement shall maintain a written log of all individuals granted access to said Confidential Information. All persons granted access to the Confidential Information shall neither use nor disclose the Confidential Information for purposes of business or competition, or for any other purpose, other than for purposes of the evaluation of KCE's submittals in Petition 1591 as contemplated herein and shall in good faith take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of the Agreement.

3. If the Confidential Information is used in any manner in any interrogatory, letter, petition, brief or other writing ("Document"), then 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 a protective order to be issued by an applicable regulatory agency or court; or
- (b) solely by title or exhibit reference, in a manner reasonably calculated not to disclose the Confidential Information.

4. If the Confidential Information is used in any manner in any proceeding or during the course of a public hearing before a regulatory agency or court ("Hearing"), then the Hearing shall not be held before, nor any record of it made available to, any party, intervenor, or other person or entity not a signatory to this Agreement, other than as directed by that agency or court.

5. All persons granted access to Confidential Information shall take all reasonable precautions to keep this information secure in accordance with the purposes and

intent of this Agreement. No copies shall be made of the Confidential Information unless expressly agreed to by KCE.

6. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence at any hearing or trial. Confidential Information otherwise properly discovered, even though also subject to the terms of this Agreement, shall not be considered protected by this Agreement.

7. If Confidential Information is disclosed to any person other than in the manner authorized by this Agreement, then the party responsible for such disclosure shall immediately upon learning of the disclosure, inform KCE of all pertinent facts relating to such disclosure and shall make every effort to prevent disclosure by each unauthorized person who received such information.

8. Each party hereto acknowledges that a breach of the provisions of this Agreement cannot reasonably or adequately be compensated in damages in an action at law and that a breach of any of the provisions contained in such section will cause irreparable injury and damage. By reason thereof, the parties hereby agree that KCE shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of this Agreement; provided, however, that no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against the pursuing of other legal or equitable remedies in the event of such a breach. Each party further agrees to indemnify the other for, and hold it harmless from, all loss, cost, damage and expense (including reasonable compensation, fees, and out-of-pocket expenses of legal counsel) that may be sustained or incurred as a result of any breach of this Agreement by such party.

9. The terms of this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Connecticut, but without regard to those of such laws as may rely upon or refer to the law of any other jurisdiction in the resolution of conflicts of law.

10. This Agreement constitutes the entire agreement between the parties hereto covering the disclosure of Confidential Information, and supersedes all previous communications, whether oral or written, between the parties, and no modifications or amendments shall be binding upon any party hereto except by the mutual agreement of the parties in writing.

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**NONDISCLOSURE AGREEMENT AND AGREEMENT
TO BE BOUND BY THE TERMS OF THE NON-DISCLOSURE AGREEMENT**

The undersigned hereby acknowledges review of the Agreement with respect to the Confidential Information provided by KCE CT 5, LLC and hereby agrees to be bound and abide by the terms thereof in exchange for being given access to such Confidential Information.

Name of Company: _____

Name & Title: _____
(Print)

(Signature)

Date: _____