CLEAN GRID
ALLIANCE

November 17, 2021

Will Seuffert, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101

Re: **In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minn. R., Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, Minn. R., part 7829.2550**
Docket No. E, ET, IP-999/R-12-1246

Dear Mr. Seuffert,

Clean Grid Alliance (CGA) and the underlying signatories appreciate the opportunity to provide comments on the notice of intent to adopt proposed rule amendments governing certificate of need and site and route permits for large electric power plants and high voltage transmission lines.

The underlying signatories respectively request that the Commission hold a public hearing on this rulemaking docket to address the following issues.

Prime Farmland Exclusion Rule

As the Commission is aware, in1981 the Minnesota Environmental Quality Board adopted the prime farmland exclusion rule in an attempt to limit the permanent loss of productive agriculture land with expansion of large fossil fuel electric generating stations. The intent of the rule was to limit the construction of new power plants on prime agriculture land unless it could be shown that it was the best option without imposing excessive burdens on the utility. However, the rule was never designed for the advent of utility scale solar development and has created regulatory uncertainty for future development in Minnesota. While the Commission has been able to navigate the rule for a few solar projects, there still lacks a clear framework for determining whether a solar developer has met the "no feasible or prudent alternative" threshold under the rule. In 2019, the Minnesota Department of Commerce issued guidance for evaluating prudent and feasible alternatives for developers to follow when determining site selection for a solar project. While this guidance is helpful for developers in understanding how to develop a record to determine whether an exemption to the prime farmland exclusion is warranted, it still does not address the fact that the rule remains intact and could be enforced in a different way by a future Commission.

Proposed Modifications to the Rule

In early 2017, the Commission proposed creating an exemption to the rule that would allow solar to be sited on prime farmland if an applicant receives a Commission approved farmland mitigation plan developed in consultation with the Department of Agriculture. In early 2018, the Dept. of Agriculture submitted a letter

objecting to this change citing state policy to preserve productive agriculture land from conversion to other uses. They further argued that the amendment is useful for prudent decision making because it requires thorough consideration of alternatives to long-term conversion of prime farmland.

In August 2018, the Commission held an agenda meeting that included this docket. The Commissioners engaged in extensive discussions about the proposed prime farmland exclusion rule changes, but ultimately did not include a prime farmland exemption for solar in the proposed rules. However, in its August 2, 2018 agenda meeting, members of the Commission did comment that additional effort was needed to find a solution to the prime farmland exclusion rule. Since that time, as mentioned above, the Department of Commerce has issued guidance, but the Commission has not undertaken any additional record development nor action in this matter to address the issue.

Support to Modify the Rule

CGA and the underlying signatories are concerned that the Commission is missing an important opportunity to reconsider the prime farmland exclusion rule in this rulemaking. We encourage the Commission to take action and adopt in Minnesota Rules a clear variance or exemption language for solar development on prime farmland. The Commission has evaluated sufficient solar project applications in recent years to have established a track record of evidence that solar development can both coexist and improve prime farmland in Minnesota when paired with agricultural impact and mitigation plans, as well as vegetation management plans. Additionally, it is important to recognize that every acre of every solar project represents voluntary land leases by private property owners, almost all of whom are farmers, who want to put their lands into solar. The prime farmland exclusion rule unnecessarily restricts this this type of development, but there are few restrictions on developing the same lands for other more harmful and permanent developments (housing development, industrial parks, etc…).

Adopting a rule that eliminates the prime farmland exclusion rule for solar, or provides clear variance criteria at this time will create significant efficiencies in processing solar project applications and allow the Commission, state agencies, project developers and other stakeholders to focus more time and attention on key solar development issues facing the public as projects enter the permitting phase. The current rule forces applicants, the Commission and the public to determine whether "no feasible and prudent alternative [site] exists," which is a very subjective standard. While the Department of Commerce guidance provides some good direction, the final decision ultimately falls to the Commission to determine whether applicants have met that standard.

We are concerned that over time, the Commission could take a restrictive approach to prime farmland and jeopardize the development of solar in much of Minnesota's agricultural regions. Eliminating the rule for solar and/or adopting clear exemption criteria in Minnesota Rules will foster a stable, predicable permitting environment for solar to grow and meet Minnesota's carbon free, and renewable energy needs.

Sincerely,

Peder Mewis
Regional Policy Manger – West
Clean Grid Alliance

Chris Kunkle
Director of State Affairs, MISO
Apex Clean Energy

Jeff Danielson
Central States Director
American Clean Power Association

Melissa Schmidt
Director, Permitting
National Grid Renewables

Barb Jacobs
Manager – Policy, Regulation and Markets
Avangrid Renewables