

April 23, 2015

VIA ELECTRONIC FILING

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

**Re: In the Matter of Aurora Distributed Solar, LLC's Application for a Site Permit to Construct a 100 MW Distributed Solar Energy Project at Multiple Facilities in Minnesota
MPUC No. IP-6928/ GS-14-515 and OAH 82-2500-31886**

Dear Mr. Wolf:

Enclosed please find Aurora Distributed Solar, LLC's Exceptions to the ALJ's Findings of Fact, Conclusions of Law and Recommendation that were filed today via eDockets.

A copy of this filing is also being served upon the persons on the Official Service List. Please let me know if you have any questions regarding this filing.

Sincerely,

/s/ Jeremy P. Duehr

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**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Aurora Distributed Solar,
LLC's Application for a Site Permit to
Construct a 100 MW Distributed Solar
Energy Project at Multiple Facilities in
Minnesota

**EXCEPTIONS TO THE ALJ'S FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATION**

**OAH 82-2500-31886
PUC No. IP-6928/GS-14-515**

I. INTRODUCTION

Aurora Distributed Solar, LLC ("Aurora" or the "Applicant") agrees with, and recommends that the Minnesota Public Utilities Commission ("Commission") adopt the Administrative Law Judge's ("ALJ") comprehensive Findings of Fact, Conclusions of Law and Recommendation filed on April 9, 2015 in the above-referenced docket ("ALJ Report")¹ for the Aurora distributed solar energy generation project ("Project"), subject to the two exceptions discussed below related to siting within shoreland areas and timing of certain pre-construction compliance filings.

II. DISCUSSION

A. Siting within Shoreland Areas

¹ Findings of Fact, Conclusions of Law and Recommendation, *In the Matter of Aurora Distributed Solar, LLC's Application for a Site Permit to Construct a 100 MW Distributed Solar Energy Project at Multiple Facilities in Minnesota* Docket No. IP-6928/GS-14-515 (April 9, 2015).

The ALJ Report accurately states that shoreland zoning does not prohibit development activities from occurring within a shoreland area, but instead provides an additional layer of standards that development activities permitted at the city and county level must follow to reduce impacts on shoreland areas and associated surface waters.² Most of the Aurora facility locations are currently in agricultural land uses subject to periodic cultivation and land disturbance, which result in the erosion of soil, nutrient runoff into adjacent surface waters, and relatively unabated stormwater runoff.³ As stated in the Environmental Assessment for the Project and in the ALJ Report, in general, water quality will be improved by the Project because the land will be vegetated and uncultivated after the facilities are constructed.⁴ Based on this finding, the ALJ Report recommended that, rather than prohibiting construction in shoreland areas as recommended by DOC-EERA, the Project follow local shoreland ordinances with a provision in the Site Permit for potential exceptions on a location-by-location basis.⁵

While Aurora appreciates the ALJ's recognition that a prohibition of construction in shoreland areas is not supported by the record and that the Project is an allowable use within shoreland areas, Aurora takes exception to the ALJ's recommended condition. Particularly for a distributed energy facility like the Aurora Project, application of a suite of local ordinances with differing requirements, some prohibiting solar, and the implementation and oversight of Aurora's compliance with such varied local ordinances, impedes the efficient use of resources. Moreover, many local shoreland ordinances rely on references to underlying zoning districts that may prohibit or otherwise require a local permit for a solar facility within a shoreland area. Requiring compliance with local shoreland ordinances could lead a local jurisdiction to believe it has site

² ALJ's Findings No. 200 at p. 38.

³ ALJ's Findings No. 203 at p. 39.

⁴ ALJ's Findings No. 205 at p. 39.

⁵ Conclusions of Law No. 13 at p. 52.

permitting authority over the respective facility or could otherwise deem the Project to be incompatible with its local ordinances. Furthermore, requiring Aurora to seek exceptions to certain local shoreland ordinances on a location-by-location basis will further serve to complicate the implementation and compliance oversight of local shoreland ordinances.

Following issuance of the ALJ's Report, Aurora and DOC-EERA staff met and have reached an agreement on a revised permit condition that acknowledges that the Project is an allowable use within shoreland, but that the Project should abide by setback and vegetative clearing restrictions typically required for development activities within shorelands.

Aurora and DOC-EERA have agreed that application of the State's model shoreland ordinance provides a reasonable compromise. It provides transparent and consistent standards for setbacks and vegetation management within applicable shoreland areas. We respectfully request that the Commission require that Aurora follow the MDNR's minimum shoreland standards contained in Minn. R. 6120.3300 and that Aurora demonstrate such compliance for the Annandale, Chisago, Lake Emily, Lake Pulaski, Pine Island, West Waconia and Zumbrota facilities when it submits its site plans in accordance with Section 6.1 of the site permit. A consistent application of state standards for solar large electric power generating plants would lead to greater certainty for proponents of such facilities and will lead to consistent preservation and efficient use of resources.

Aurora and DOC-EERA have agreed upon the following revised permit conditions 5.2 and 8.7 contained within Commission staff's Site Permit Template, as originally modified by Aurora and DOC-EERA, as well as the addition of special condition 14.3.

5.2 Wetlands and Shoreland

Solar panels and associated facilities including foundations, access roads, underground cable and transformers, shall not be placed in public waters wetlands as shown on the public water inventory maps prescribed by Minnesota Statute 103G

except that electric collector or feeder lines may cross or be placed in public waters or public waters wetlands subject to permits and approvals by the [Minnesota Department of Natural Resources \(DNR\)](#) and the United States Army Corps of Engineers (USACE), and local units of government as implementers of the Minnesota Wetlands Conservation Act. Solar panels and associated facilities including foundations, access roads, underground cable and transformers, shall ~~not be placed in shoreland as defined in Minnesota Statutes, section 103F.205, subdivision 4~~ except that that electric collector or feeder lines may cross shoreland be located in compliance with the minimum standards for development of the shorelands of public waters as identified in Minnesota Rules 6120.3300.

8.7 Equipment Storage

The Permittee shall not locate temporary equipment staging areas on lands not under its control unless negotiated with affected landowner. Temporary equipment staging areas shall not be located in wetlands, ~~shoreland~~, or native prairie as defined in Sections 5.2 and 5.3. Temporary equipment staging areas shall be sited to comply with minimum standards for development of the shorelands of public waters as identified in Section 5.2.

14.3 Shoreland

The Permittee shall demonstrate compliance with the minimum standards for development of shoreland areas as specified in section 5.2 of this permit, in the site plans filed in accordance with Section 6.1 of this permit, for the following facilities: Annandale, Chisago, Lake Emily, Lake Pulaski, Pine Island, West Waconia, and Zumbrota.

We also request that the ALJ's findings of fact and conclusions of law related to shoreland ordinances be revised as follows:

Findings of Fact

206. The Project is an allowable use in shorelands. Requiring compliance with a numerous and differing local shoreland regulations will be an inefficient use of resources due to the complexity and difficulty of implementation and oversight of the Project's compliance with the local ordinances. Local shoreland permitting should not be required for the Project. As recommended by the MnDNR, A Site Permit condition providing that requiring compliance with local ~~the MnDNR's minimum structure setback, vegetation clearing and stormwater standards for development of shorelands of public waters~~ ordinances is a reasonable method of assuring the consideration of shorelands. A consistent application of state standards for solar large electric power generating plants will lead to consistent preservation and efficient use of resources.

207. The permit should also include a condition providing that if Aurora demonstrate compliance with any specific local the MnDNR's minimum structure setback, vegetation clearing and stormwater standards for development of shorelands of public

waters ordinances will be impracticable due to the impact on the Project and Aurora believes there is no feasible and prudent alternative, Aurora may apply to the Commission for an exception to the permit requirement governing shorelands on a location-by-location basis for the Annandale, Chisago, Lake Emily, Lake Pulaski, Pine Island, West Waconia, and Zumbrota Facilities due to the location of portions of the facilities within areas mapped as shoreland.

Conclusions of Law

14. It is reasonable and appropriate for the Site Permit to require compliance with the MnDNR's minimum standards for development of local shorelands of public waters as outlined in Minnesota Rules 6120.3300 ~~ordinances with a provision for potential exceptions to the permit requirement governing shorelands on a location-by-location basis and to require demonstration of such compliance for those facilities that appear to be partially located within mapped shoreland areas.~~

B. Agricultural Impact Mitigation Plan and Vegetation Management Plan Compliance

Filings

The ALJ Report adopted DOC-EERA's recommendation of the addition of Sections 6.4 and 6.5 to the Site Permit Template. Sections 6.4 and 6.5 require the filing of an Agricultural Impact Mitigation Plan ("AIMP") and Vegetation Management Plan ("VMP") prior to construction. We note, however, that there is a discrepancy between the compliance filing deadline presented in Section 6.5 Vegetation Management Plan and the compliance filing deadline presented in the pre-construction compliance filing table presented by DOC-EERA.⁶ After discussing the discrepancy with DOC-EERA, it was agreed that the AIMP and VMP should both be filed 14 days prior to submitting the site plan, required by Section 6.1, for any portion of the Project. Aurora requests that Sections 6.4 and 6.5 of the Site Permit Template be modified as follows:

6.4 Agricultural Impact Mitigation Plan

The Permittee shall, with the cooperation of the Minnesota Department of Agriculture, develop an Agricultural Impact Mitigation Plan (AIMP). The purpose of the AIMP shall be to identify measures to minimize potential impacts to agricultural uses of the land upon the decommissioning of the Project. The Permittee shall submit

⁶ Schedule 3 to DOC-EERA Comment Letter (March 10, 2015)

the AIMP to the Commission fourteen (14) days prior to submitting the first ~~pre-construction meeting~~ site plan for any portion of the Project. The AIMP shall include:

- (a) Measures that will be taken to segregate topsoil from subsoil during grading activities and the removal of topsoil during construction of the Project to the extent that such actions do not violate sound engineering principles or system reliability criteria.
- (b). Measures that will be taken to minimize impacts to and repair drainage tiles damaged during construction of the Project.
- (c). Measures that will be taken to prevent the introduction of non-native and invasive species.
- (d). Measures that will be taken to re-vegetate disturbed areas with appropriate low-growing vegetation to the extent that such actions do not violate sound engineering principles or system reliability criteria.
- (e) Measures that will be taken to maintain established vegetation at the facilities throughout the operational life of the facility.

6.5 Vegetation Management Plan

The Permittee shall, in cooperation with the Minnesota Department of Commerce and the Minnesota Department of Natural Resources, develop a Vegetation Management Plan for the Project and submit it to the Commission fourteen (14) days prior to submitting the first Site Plan required by Section 6.1 of this permit. The purpose of the Vegetation Management Plan is to minimize tree clearing, prevent the introduction of noxious weeds and invasive species, revegetate disturbed areas at each Facility with appropriate low-growing species, and maintain appropriate vegetation at each Facility throughout the operating life of the Project. The Vegetation Management Plan shall:

- (a) Identify measures taken to minimize tree removal and minimize ground disturbance.
- (b) Identify a comprehensive re-vegetation plan for disturbed areas.
- (c) Identify methods to maintain appropriate vegetation throughout the operating life of the Project.
- (d) Identify vegetation control methods to be used during the operation and maintenance of the Project.
- (~~e~~) Identify measures to prevent the introduction of noxious weeds and invasive species on lands disturbed by construction activities.

The pre-construction compliance filing table should be revised to reflect the same deadlines.

III. CONCLUSION

Aurora respectfully requests that the Commission adopt the ALJ Report in its entirety, with the exception of the changes to the Site Permit Conditions 5.2, 6.4, 6.5, 8.7, and 14.3 and Findings of Fact 206 and 207 and Conclusions of Law 14. In addition, Aurora respectfully requests that the Commission issue a site permit to Aurora incorporating the clarifications provided above.

Dated: April 23, 2015

Respectfully submitted,

/s/ Jeremy P. Duehr
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AFFIDAVIT OF SERVICE

*In the Matter of the Application of Aurora
Distributed Solar, LLC for a Site Permit for an up
to 100 MW distributed solar energy project to be
constructed at up to 24 different locations
throughout Xcel Energy's Minnesota Service
Territory*

MPUC Docket No. E6928/GS-14-515
OAH Docket No. 82-2500-31886

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Karen F. Brewer, of Minneapolis, Hennepin County, in the State of Minnesota, being duly sworn, says that on the 23rd day of April, 2015, she e-filed with the Minnesota Public Utilities Commission the following:


1. **Exceptions to the ALJ's Findings of Fact, Conclusions of Law and Recommendation; and**
2. **Affidavit of Service.**

A copy has also been served in accordance with the attached service lists of record.



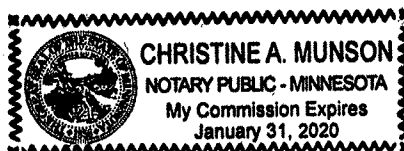
Karen F. Brewer

Subscribed and sworn to before me this 23rd day of April, 2015.



Notary Public, Hennepin County, Minnesota
My Commission Expires 1/31/20

(SEAL)



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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