

June 17, 2022

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: EERA Exceptions to ALJ Report
Hayward Solar Project
OAH Docket Nos. 5-2500-37666, 37667
Docket Nos. IP7053/CN-21-112, GS-21-113

Dear Mr. Seuffert,

Department of Commerce, Energy Environmental Review and Analysis (EERA) staff has reviewed the administrative law judge's report (ALJ report) issued June 6, 2002, for the Hayward Solar Project. EERA staff provides the following exceptions.

EERA staff's exceptions are limited solely to the use of the phrase "with consultation with the Applicant," as this phrase appears in the conclusions of the ALJ report. EERA staff finds that the meaning of this phrase is unclear. EERA staff suggests the following edits to clarify the conclusions and the appropriate permit conditions for the project.

1. Conclusion 12 – Decommissioning Plan. Conclusion 12 of the ALJ report states:

It is reasonable to amend the Sample Site Permit to include the changes to Section 9.1 of the Sample Site Permit as proposed by EERA, with consultation with the Applicant.

EERA staff recommends that the conclusion be amended to read:

It is reasonable to amend the Sample Site Permit to include the changes to Section 9.1 of the Sample Site Permit as proposed by EERA, ~~with consultation~~ with and clarified by the Applicant.

In its hearing comments, EERA staff proposed edits to Section 9.1 of the sample site permit regarding the decommissioning plan for the project.¹ EERA staff included in its comments only those portions of Section 9.1 for which it suggested edits. In its reply comments, Hayward Solar indicated that it had no objections to EERA staff's proposed edits.² For purposes of clarity, Hayward Solar included in its reply comments the entirety of the text for Section 9.1 with EERA staff's proposed edits:³

9.1 Decommissioning Plan

The Permittee shall comply with the provisions of the most recently filed and accepted decommissioning plan. The initial version of the decommissioning plan was submitted for this project as part of the May 5, 2021, site permit application. The Permittee shall file ~~submit~~ an updated decommissioning plan, incorporating comments and information from the permit issuance process and any updates associated with final construction plans, to ~~to~~ with the Commission at least fourteen 14 days prior to the ~~pre-operation~~ pre-construction meeting. ~~and provide updates to the plan every five years thereafter.~~ The decommissioning plan shall be updated every five years following the commercial operation date.

The decommissioning plan shall provide information identifying all surety and financial securities established for decommissioning and site restoration. The decommissioning plan shall provide an itemized breakdown of costs of decommissioning all project components, which shall include labor and equipment. The plan shall identify cost estimates for the removal of solar panels, racks, underground collection cables, access roads, transformers, substations, and other project components. The plan may also include anticipated costs for the replacement of panels or repowering the project by upgrading equipment.

The Permittee shall also submit the decommissioning plan to the local unit of government having direct zoning authority over the area in which the project is located. The Permittee shall ensure that it carries out its obligations to provide for the resources necessary to fulfill its requirements to properly decommission the project at the appropriate time. The Commission may at any time request the Permittee to file a report with the Commission describing how the Permittee is fulfilling this obligation.

The record supports this text as the appropriate text for Section 9.1 of the site permit.

¹ EERA Hearing Comments, April 15, 2022, eDockets Number [20224-184798-01](#) [hereinafter EERA Hearing Comments].

² Hayward Solar Reply Comments, April 25, 2022, eDockets Number [20224-185109-02](#) [hereinafter Hayward Solar Reply Comments].

³ Id.

2. **Conclusion 16 – Independent Monitor.** Conclusion 16 of the ALJ report states:

It is reasonable to amend the Sample Site Permit to include the special permit condition regarding the independent monitor as proposed by EERA, with consultation with the Applicant.

EERA staff recommends that the conclusion be amended to read:

It is reasonable to amend the Sample Site Permit to include the special permit condition regarding the independent monitor as proposed by EERA, ~~with consultation with~~ and modified by the Applicant.

In its hearing comments, EERA staff proposed a special permit condition (Section 5.3) requiring an independent, third-party monitor.⁴ In its reply comments, Hayward Solar indicated it did not believe that an independent monitor was necessary for the project; however, if a monitor were required by the Commission, Hayward Solar suggested edits to EERA staff’s proposed permit text:⁵

5.3 Independent Monitor

~~The Permittee shall employ an independent, third-party monitor to ensure compliance with this site permit. Prior to construction, and in consultation with Department of Commerce, Energy Environmental Review and Analysis (EERA) staff and the Minnesota Department of Agriculture (MDA), the Permittee shall identify one independent, third party monitor for the construction phase and develop a scope of work for the monitor. If the monitor will report to several agencies (e.g., the Minnesota Department of Agriculture and Commerce) the The scope of work must be developed in coordination with and approved by EERA staff and the MDA. all agencies. The scope of work must be approved by EERA and all agencies receiving monitoring reports. This third-party monitor will report directly to and will be under the control of the EERA staff and MDA, in coordination with the Permittee.~~ All costs for the monitor will be borne by the Permittee.

The Permittee shall file an approved scope of work for the monitor with the Commission 30 days prior to commencing construction. The Permittee shall file the name, address, email, phone number, and emergency phone number of the third-party monitor 14 days prior to commencing construction.

In its post-hearing comments, EERA staff noted no objection to Hayward Solar’s suggested edits regarding an independent monitor.⁶ The record supports Hayward Solar’s modified text as the appropriate text for Section 5.3 of the site permit.

⁴ EERA Hearing Comments.

⁵ Hayward Solar Reply Comments.

⁶ EERA Post-Hearing Reply Comments, May 5, 2022, eDockets Number [20225-185556-01](#).

3. **Conclusion 19 – Project Lighting.** Conclusion 19 of the ALJ report states:

It is reasonable to amend the Sample Site Permit to include the special permit condition regarding lighting at the Project substation and O&M building as proposed by DNR, with consultation with Applicant.

EERA staff recommends that the conclusion be amended to read:

It is reasonable to amend the Sample Site Permit to include the special permit condition regarding lighting at the Project substation and O&M building as proposed by DNR, ~~with consultation with~~ and modified by the Applicant.

In its hearing comments, the Minnesota Department of Natural Resources (DNR) proposed a special permit condition requiring the use shielded, downward-facing lighting with minimal blue hues to mitigate wildlife impacts.⁷ In its reply comments, Hayward Solar indicated no objection to this proposed special permit condition.⁸ Hayward Solar suggested a modification to DNR’s proposed text to clarify that the lighting would be used on the project substation and the O&M building:⁹

Permittee must use shielded and downward facing lighting and LED lighting that minimizes blue hue at the project substation and O&M building. Downward facing lighting must be clearly visible on the plan and profile submitted for the project.

The record supports Hayward Solar’s modified text as the appropriate text for a special condition addressing project lighting in the site permit.

EERA staff has conferred with Hayward Solar regarding the ALJ report. Staff and Hayward Solar are in agreement regarding the above-noted exceptions and permit language.

EERA staff appreciates the opportunity to provide these exceptions.

Sincerely,



Ray Kirsch
Environmental Review Manager

⁷ DNR Hearing Comment Letter, April 15, 2022, eDockets Number [20224-184795-01](#).

⁸ Hayward Solar Reply Comments.

⁹ Id.