

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Combined Application of
North Star Solar PV LLC for a Site Permit
and Route Permit for the North Star Solar
Electric Power Generating Plant and
Associated 115kV High Voltage
Transmission Line in Chisago County MPUC
Docket No. IP-6943/GS-15-33

PUC IP-6943/GS-15-33

**ARGUMENT IN SUPPORT OF
PETITION FOR RECONSIDERATION**

I. Introduction

Petitioners', six families located on the south side of 367th Street, are about to be surrounded on all sides by solar power producers jointly authorized by PUC and the County. The six families respectfully request that the Commission reconsider the impact of the two projects as it pertains to them. They believe that the result of the combined actions of multiple developers and multiple governments upon their unique circumstances has resulted in a unique injustice that must be reconsidered. Although the project map and the environmental review conducted on behalf of the Commission suggests that their homes will be located in a large rural residential parcel of land, just on the other side of a large array of solar panels, and that to the south the rural character of their neighborhood will be preserved, that is a fundamentally inaccurate description of the effect on their homes and the impacts on human settlement of the two projects which have been developed simultaneously by two solar developers.

In fact, their homes are on the verge of being completely surrounded by power production facilities designed by separate solar developers. Significantly, each of these six families intentionally located in this area because it was developed, zoned and planned for rural residential single family residences. Yet, for the last year, solar power developers have been planning to surround these six homes on all sides with solar arrays. The environmental review,

the Commission's permit map, and the findings of the Commission simply does not adequately address the unique impact upon them. This flaw results from the failure to recognize that cumulative impacts, whether resulting from a single developer or multiple developers must be considered.

For months, these families have been trying to get the PUC, staff and county zoning authorities to listen and consider what is about to happen to them as a result of the combined actions of multiple developers. Although they can hardly afford the cost, they have sought legal counsel in hopes that at last someone at the PUC will actually recognize what is about to happen to them. *Geronimo and North Star are planning to literally surround their homes on both sides with solar arrays.* Their situation is unique: every other family similarly situated is being bought out by one of the power producers. But because in this case, these families are being surrounded by two solar developers acting concurrently, instead of one, their plight has been completely ignored.

For months, they have been pleading with the PUC and County to recognize that these solar power producers are engaging in actions which will have a cumulative impact completely different from the impact shown by the Commission's documents and its decisions. Two sets of solar developers are using the same power delivery infrastructure. They are using the same design personnel. They are conducting their developments in tandem, but each and every time that petitioners have tried to get someone to listen, those with responsibility to protect them have simply washed their hands of this problem and treated as if the combination of these two developments is unimportant and irrelevant. **When the combination of developments authorized by County and PUC is completed, these families will be completely surrounded, yet there is absolutely no mention of this fact, no study, no consideration of what is actually**

happening to them. In the case of others similarly situated, who will be surrounded by a single developer in a similar way, they are being bought out, because surrounding families on all sides is surely intolerable. But because two different developers are doing this simultaneously, these families' circumstances have been ignored and Minnesota environmental law will not tolerate that distinction.

The Commission's proposed action, is arbitrary and capricious, and fundamentally violates MEPA and the environmental requirements for certificates of need. The Environmental Assessment completely ignores the fact that they are being surrounded. This issue has been swept under the rug, surely not as a result of venal intent, but despite the attempt of unrepresented families' time and again to ask that the actions of these two developers be considered as cumulative impacts. They didn't know to use the words "cumulative impact," but that is what they have been saying. The Administrative Law Judge's findings and the Commission's decision makes no mention of the fact that they are being surrounded. There are no findings, no evidence, no data, no investigation of the impact on human settlement that suggests that building solar arrays on both sides of homes in this way is environmentally acceptable, or that it is in any way compatible with planning and zoning principles

II. Petitioners

Petitioners Fred and Tina Carey (10555¹), Rick and Cheryl Ramberg (10775), Paul and Miesha Carpenter (10505), Bob and Patrice Zangs (10711), Glen and Lori Anderson (10655), and Mark and Jill Bossard (10615) have asked us to enter an appearance on their behalf in the request for reconsideration before the Commission to be heard on March 31, 2016. They asked to be heard at the Commission's consideration of the Certificate of Need, but were denied an

¹ The numbers in parenthesis are the respective addresses of each resident on 367th Street.

opportunity to speak. They have limited means: they have asked us to provide a written submission on their behalf to explain their position in hopes that we could get the Commission's attention to their circumstances.

Petitioners all reside on the Southerly side of 367th Street. Their homes were built in a region of the county zoned rural residential and guided for single family residential homes. Each family located here to find a quiet, rural, family friendly environment. They believed that the comprehensive plans and zoning for this area made it safe to assume that as time passed, they would be part of a family friendly rural residential neighborhood. Indeed, Minnesota's Chapter 462, and the principles of *Euclid v. Ambler Realty* were designed to provide some measure of comfort to families, that they could safely invest their life savings in homes and expect to live in a neighborhood reflecting the duly adopted zoning and comprehensive plan. What is about to occur to them, in terms of the radical destruction of the planning and zoning to their community is of constitutional significance. The joint actions of Minnesota government so deeply undermines the planning and zoning as to constitute a taking. Effectively, the properties in which they live has summarily rezoned from single family residential to power production.

III. The Commission Erred in Failing to Consider the Cumulative Effects of Multiple Solar Producers Who Intend Jointly to surround these Families with Solar Arrays, and that Failure Uniquely impacts petitioners.

Because neither the CEA, nor the ALJ, explained why petitioner's request to consider the combined effect on their homes of two simultaneous solar array developments on either side, we feel it necessary to suggest that possibly staff has mistakenly seen this as a question of whether the actions are connected or phased in some way. The issue is not whether they are connected or phased, although they have clearly been connected in the sense that the two projects are sharing the same designer and are integrating into the same power network. The issue here is

more straightforward. The entire process violated the requirement that the Commission consider the *cumulative impact* of multiple projects. See Minn Rules 4410.1200(E), 4410.2300 (H) (Environmental, economic, employment, and sociological impacts: for the proposed project and each major alternative there shall be a thorough but succinct discussion of potentially significant adverse or beneficial effects generated, be they direct, indirect, or cumulative.)² *Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm'rs*, 713 N.W.2d 817 (Minn. 2006) (a cumulative potential effects inquiry requires inquiry into whether a proposed project could have a significant effect when considered along with other projects that are already in existence or planned for the future, are located in the surrounding area, and might reasonably be expected to affect the same natural resources).

To ignore the fact that two solar developers intended to wall these families in from both sides, is to ignore the actual impact on their homes. It was error to ignore these facts, because the impacts on the families is markedly different from the circumstances of any other impacted landowners, and it is the obligation of the CEA and the Commission's ultimate findings, to examine the impact on human development. If two developers each removed 50% of the water from a single lake, leaving the lake dry, an environmental assessment could not assert that neither developer was drying up the lake, because they are acting separately. If two developers simultaneously combined to cause 2000 new vehicles a day on a roadway, the environmental assessment for these projects could not claim that the burden of the developments was only 1000 vehicles per day, because, well, you can't look at what both developers are doing together.

² The cumulative impact principle under MEPA derives from NEPA. Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 CFR 1508.7.

It may be argued that, well, the development that is about to occur to the South is not yet set in stone: that it may turn out to be larger or smaller, closer or further, or may get cancelled altogether. These are not arguments against considering the potential impact of the development; they are arguments that cry out with even greater force, that these issues should have been compressively addressed in the environmental review. Geronimo's plans are not mere figments of our imagination. Geronimo has announcements of its intentions posted on its website. Those intentions are grandiose, to say the least. They have retained a designer, the same designer who did the design work for North Star project. There are various designs that show these families with solar arrays backed up to their back yard.

Nor can the Commission credibly argue that boxing in these families is not a big deal. The homes that they build were in a residential neighborhood. That meant that families could reasonably expect that the neighborhood would grow in accordance with the comprehensive plan, bringing more residential neighborhoods. Families with children would be living next to families with children. Municipal services would be supported in accordance with the residential character of the neighborhood. With a solar development to the north, it could still be said that these family homes would at least experience residential growth the south. But now, when these homeowners attempt to sell their homes, buyers are essentially buying into a non-conforming use. Their neighbors will be families who have, for some reason, no choice but to buy a home in the middle of a sea of solar panels. It defies imagination that this neighborhood is going to retain its residential character: there will be blighting conditions on all sides. The environmental assessment fails to consider these issues: and it was not resident's job to author a complete and compliant environmental assessment.

IV. The Families.

One of the fundamental principles of our Constitutional republic is that individual citizens should not be required to carry the cost of government action that is designed to serve the general public welfare. Energy security is an important national and state objective. Combatting climate change is a worthy state, national and international objective. But the cost of that objective cannot be shifted onto individual families, and that is precisely what is happening here. There are times when the extraordinary popularity of a venture causes those who seek to facilitate it causes regulators to overlook the consequences on individuals. The legislature granted the PUC the power to override local zoning, but it did not grant the PUC the power to destroy neighborhoods and shift the cost of that destruction onto individual homeowners. The fabric of our zoning system is that it encourages sound development by making a covenant with property owners that they can rely upon a regulatory common plan. The covenant with the State is that you can invest your life's savings, locate your home here, and rely on the comprehensive plan and zoning. This covenant is a covenant that all of us rely on, and surrounding homes built in a rural residential zone guided for residential development fundamentally that covenant. The fact that this is a great liberal cause; that we are all excited with the goodness of the enterprise, does not justify taking six homeowners and turning their lives upside down.

We asked one of our client families to give you a sense of what being surrounded by solar panels means to them. Bob and Patrice Zangs write:

Bob and I are two middle aged middle income parents with three children and two grandchildren. We bought our property after many years of looking for a property where we could afford to build a home, raise our family, and have horses and acreage.

We chose this prime property in Sunrise township over nineteen years ago based on our objectives - to raise our family in an environment that would be healthy, in the country, with fellow neighbors who would move here for the same/similar purpose –peace from city life and living with nature. We wanted acreage in the country on a gravel road to ride our horses, yet within close proximity to a county road, close to church, school, and town.... a place to raise our children, and horses, dog and cats, etc...

The benefits of our property allows us walking distance to Kost Dam, kayaking, picnics and swings at the park, watching the otters in the Spring on the lake, fish and turtles, the geese and ducks... This includes the solitude of walking down our country road. This includes the joy of nature surrounding us – with deer, wild turkeys, pheasants, eagles and hawks, hummingbirds, and blue birds nesting in our yards. This includes the surprise of nature with deer out our window, with an occasional bear running down our road, and the otter crossing our yard on its way down to the river. Yes, this includes nature surrounding us, and surprising us every day with new beginnings.

We chose this property to allow us the vast openness – like the range out west - Seeing every sunrise and sunset. Watching the various patterns of weather coming from the north, south, east and west. We chose this property to allow our families a healthy environment with clean air, clean water, private property – yet with neighbors a short distance away. We chose this property with little to no noise yet the occasional farmer in the fields. We chose this property to celebrate with our large families for every holiday from Easter egg hunts to fourth of July cook outs, with space for all to run and explore. We chose this property to build our home. Not a house. Our home. One where we had enough room for everyone – family, friends, and gatherings of all sorts. One that has a south facing back porch and front porch to enjoy the outdoors even when the weather is not sunny.

We placed much time and several years of hard work on our property in finally growing grass over all the sand burs so our children could walk barefoot outside. We dug every hole and set the posts for our horses paddock and gates, and fencing. We planted every tree in our yard from small sprouts to now grown up– in just the right placement! Bob’s dad shared with him how to make the wooden doors on the pole building. Our daughter and sons helped us make the “kids room” in the pole building for their teen gatherings, and we made each of the stalls for the horses. We planted four apple trees to make many canned, dried and frozen apple dishes/desserts/jams and plenty to share with family, friends and our church. We’ve planted large

vegetable gardens each year for fresh produce. We've invested much of "ourselves" and "our lives" into our home, and into our property. Our neighbors have done the same. Over the past 19 years, we have formed a community together. Our "neighborhood" cannot be replaced. Placing two Power Plant on either side of our homes will destroy all that we have invested in and established for the past 19 years.

Fred and Tina Carey write:

We are the Careys, Fred, Tina, Andy, Samantha, Nick and Ted. We have lived at 10555-367th St. North Branch since October 1998. Fred is an elevator mechanic: Tina is a homemaker. Fred drives 50 miles to work each day because we wanted a quiet peaceful place to live away from the city and industrial urban areas. We enjoy planting a garden each spring. We enjoy walks on our roads, bike rides to the Kost dam, where we like to fish. We planted every tree shrub and blade of grass that is on our property We pulled every sandbur weed with our own hands. ... Our kids have had many years of playing in our back yard and we had planned on having this same back yard for our grandkids to play in.

At the first meeting in Lent Township, we were told by a realtor that when solar goes in we would lose 30 to 40 percent of our property value. We have repeatedly tried to explain to the two governments, PUC and local government, that they should recognize that surrounding us on three sides with solar panels is fundamentally different from putting a single development on the opposite side of the road. We have been told over and over again, that because these are two different developers and two different government agencies, that neither can consider the impact of the other. We relied on the planning and zoning established for our neighborhood when we moved here. We believe that the combined impact of these two developments is fundamentally different from what we were shown as the future development for this area.

V. Conclusion

We ask that the Commission grant the petition for reconsideration. We ask that the record be reopened to consider the cumulative impacts on these families of putting solar arrays on three sides of these families as the CARD decision and MEPA regulations require. We ask that the Commission recognize that these families are uniquely harmed by the combination of

two simultaneously planned solar array developments that will remove them from the residential neighborhood that planning and zoning promised them, and immerse them, instead inside a power production plant which has fundamentally changed the entire character of their homes and neighborhood.

VI. Exhibits

We have attached the following exhibits for your reference.

- **Exhibit A** is a copy of the Site Permit map which appears to show the petitioners homes as being bordered on the north and east by solar arrays. The agricultural land to the south is shown as undeveloped.
- **Exhibit B** is a copy of an article showing that in fact a second solar farm project is “in the works” in Chisago County. This is the project that is about to be installed on the land just to the south of these same landowners.
- **Exhibit C** is a diagram of the boundaries of the Sunrise Solar project which will be located immediately to the south of these six families, but which is nowhere referenced in the environmental review considered by the Commission.
- **Exhibit D** is a picture of the Carey home.
- **Exhibit E** is the City of North Branch’s Comprehensive Plan Map showing these families properties guided for single family residences.
- **Exhibit F** is the zoning map showing that these families zoned rural single family residential.

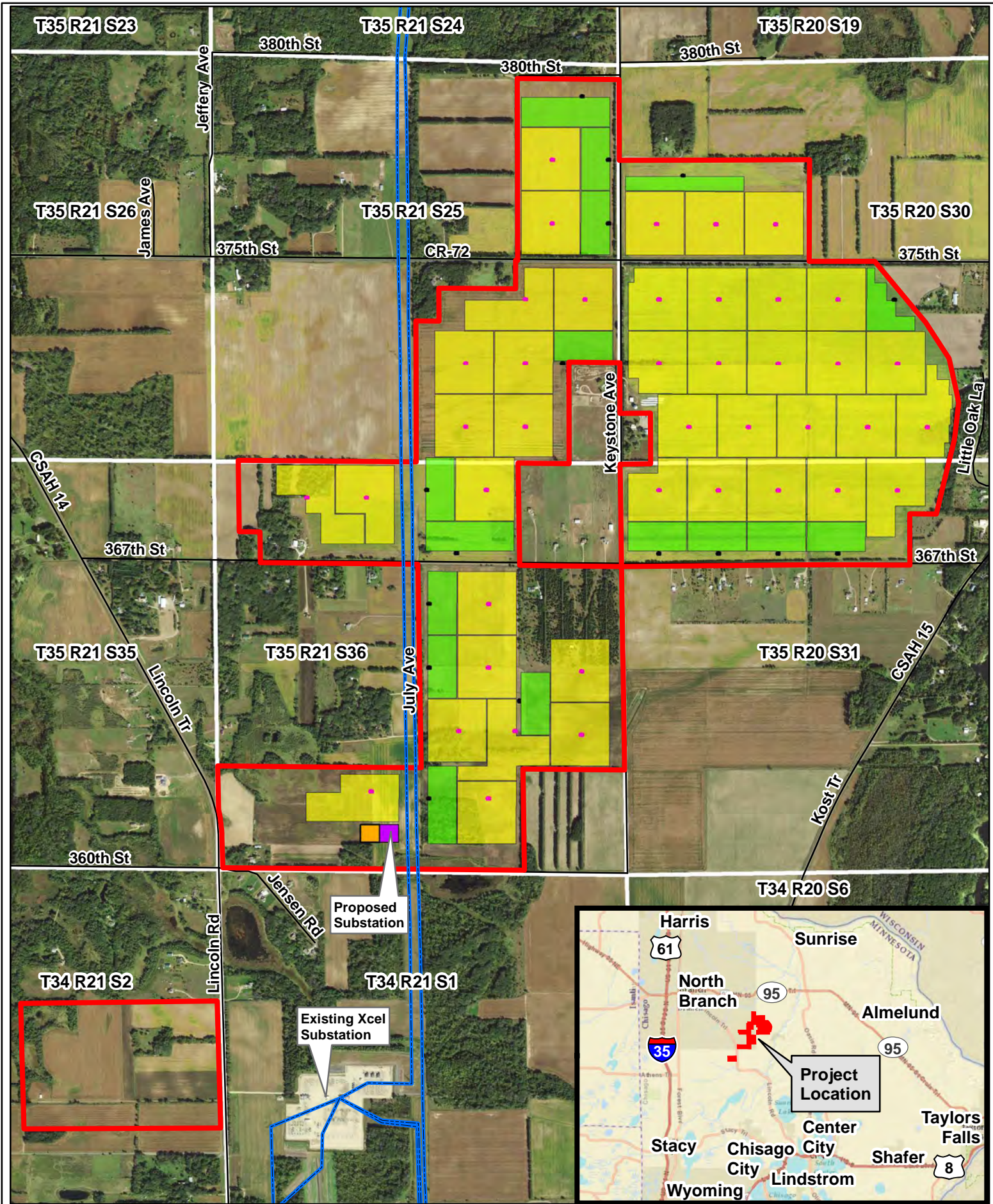
Dated: March 29, 2016

RINKE NOONAN

/s/ Gerald W. Von Korff

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RICK AND CHERYL RAMBERG, PAUL
AND MIESHA CARPENTER (10505),
BOB AND PATRICE ZANGS, GLEN AND
LORI ANDERSON, AND MARK AND
JILL BOSSARD



Data Source(s): Data and map are approximate. MNDOT Basemap (2014); Chisago County GIS (2015); ESRI (2012); ESRI Online Basemap Service (2015); Minnesota NAIP Imagery (2015); North Star Solar PV, LLC (2015).

- Site Boundary
- Existing Transmission Line
- Existing Road
- Section Boundary
- Proposed Substation
- Proposed Operations and Maintenance Facility
- Proposed 1MW Inverter
- Proposed 1MW Array
- Proposed 2MW Array
- Proposed 2MW Inverter

SITE PERMIT MAP

North Star Solar Energy Generating Facility

PUC Docket IP-6943/GS-15-33

EXHIBIT A

Solar farm project in the works in Chisago County

by Greg Lucid | Posted: Thursday, June 26, 2014 1:31 pm

Two energy development companies have submitted bids to Xcel Energy to build a solar farm/power plant facility for economic development in Chisago County.

Chisago County officials were briefed at a June 4 Board of Commissioners meeting by representatives from Geronimo Energy, an Edina-based renewable energy developer proposing to construct a solar farm in Chisago County.

“It is a competitive proposal they’re [Geronimo] submitting,” said Kurt Schneider, Chisago County director of Environmental Services and Zoning.

If approved, the 305-acre solar farm project, Sunrise Solar, could be sold by Geronimo Energy to Xcel Energy. The project would feature an estimated 50-megawatt power plant, creating temporary and permanent jobs and tax relief for the area.

The Sunrise Solar site would span an area of Keystone Avenue to 367th Street to Kost Trail that touches Chisago Lakes Township, Lent Township, Sunrise Township and the city of North Branch.

Nathan Franzen, director of solar for Geronimo Energy, gave a presentation to the board June 4, noting the project is in the beginning phase, and he wanted to introduce it to county officials to get their input before going forward. He added it would take about a year to even go through the bidding and permitting phases.

Chisago County officials unanimously supported the project.

According to a letter of support written by Chisago County Board Chairman Rick Greene, “Chisago County supports and encourages the development of clean, renewable energy projects.” Greene cited the “economic growth” and “increase in tax base” as incentives benefiting the county.

Greene added: “If selected, Chisago County looks forward to working with all parties involved including Xcel Energy and the Minnesota Public Utilities Commission.”

Councilman Mike Robinson said while he supported the project, he wasn’t sure Geronimo Energy would get complete community support because some people in the community like to disagree no matter what.

North Branch Mayor Ron Lindquist said the city of North Branch welcomes power plant projects, adding they would benefit the economic well-being of the region.

So far two companies have reportedly expressed interest in establishing power plants in such parts of Minnesota.

The other company is Community Energy Solar Inc. of Boulder, Colo. Few specifics are known about its project at this time. Community Energy officials could not comment on a Request for Proposal (RFP) application its company also submitted to Xcel Energy by the June 20 bid submittal deadline.

EXHIBIT B

Community Energy asked to meet with Chisago County officials, and a meeting occurred a few weeks ago.

“It is understood they may be submitting a 50-megawatt to 100-megawatt-size solar farm project involving as much as 600-plus acres of site area,” Schneider said in a written statement regarding Community Energy Solar.

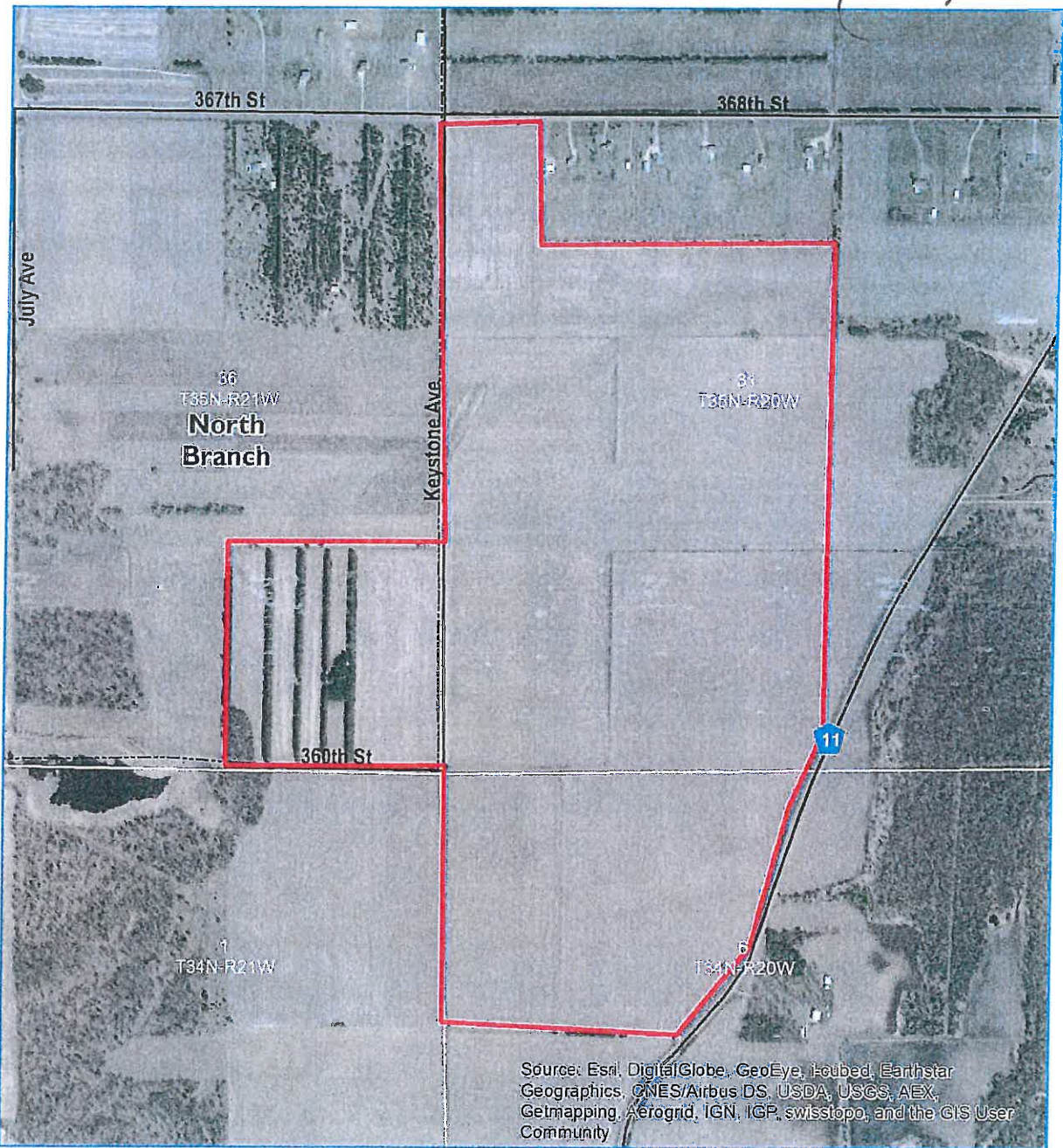
Because of both solar farm project sizes, each “would fall under the purview of the Minnesota Public Utilities Commission,” Schneider said.

Chase Whitney, an official from Community Energy Solar, was contacted earlier in the week, but could not comment on project specifics. He deferred questions to a company principal assigned to the project who had been on vacation prior to press time.

No announcement will be made about which project Xcel Energy accepts until a decision is reached by the company sometime in August, following the bid evaluation period, according to xcelenergy.com.



Figure 2: Site Detail
 Phase I ESA



Legend

- Project Boundary
- Road
- City Boundary

0 1,000 Feet

Source: ESRI, MnDOT
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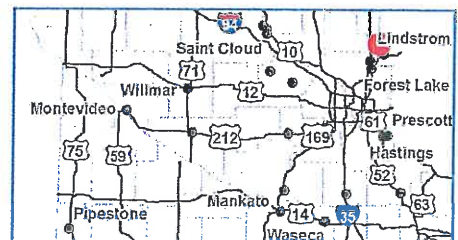
















EXHIBIT D

CITY OF NORTH BRANCH

6408 ELM ST
 NORTH BRANCH, MN 55056
 Phone: (651) 674-8113/ Fax: (651) 674-8262
 Hours: 8:00 am - 4:30 pm (Monday - Friday)
<http://www.ci.north-branch.mn.us>

Comprehensive Land Use

-  AG - Agricultural Rural
-  C - Commercial
-  CB - Central Business
-  CL - Commercial Limited
-  CR - Commercial Residential
-  IP - Industrial Park
-  LU1 - Single Family
-  LU2 - Medium Density Residential
-  LU3 - High Density Residential
-  LU4 - Manufactured Housing
-  P - Park/Open Space
-  PUB - Public/ Semi Public

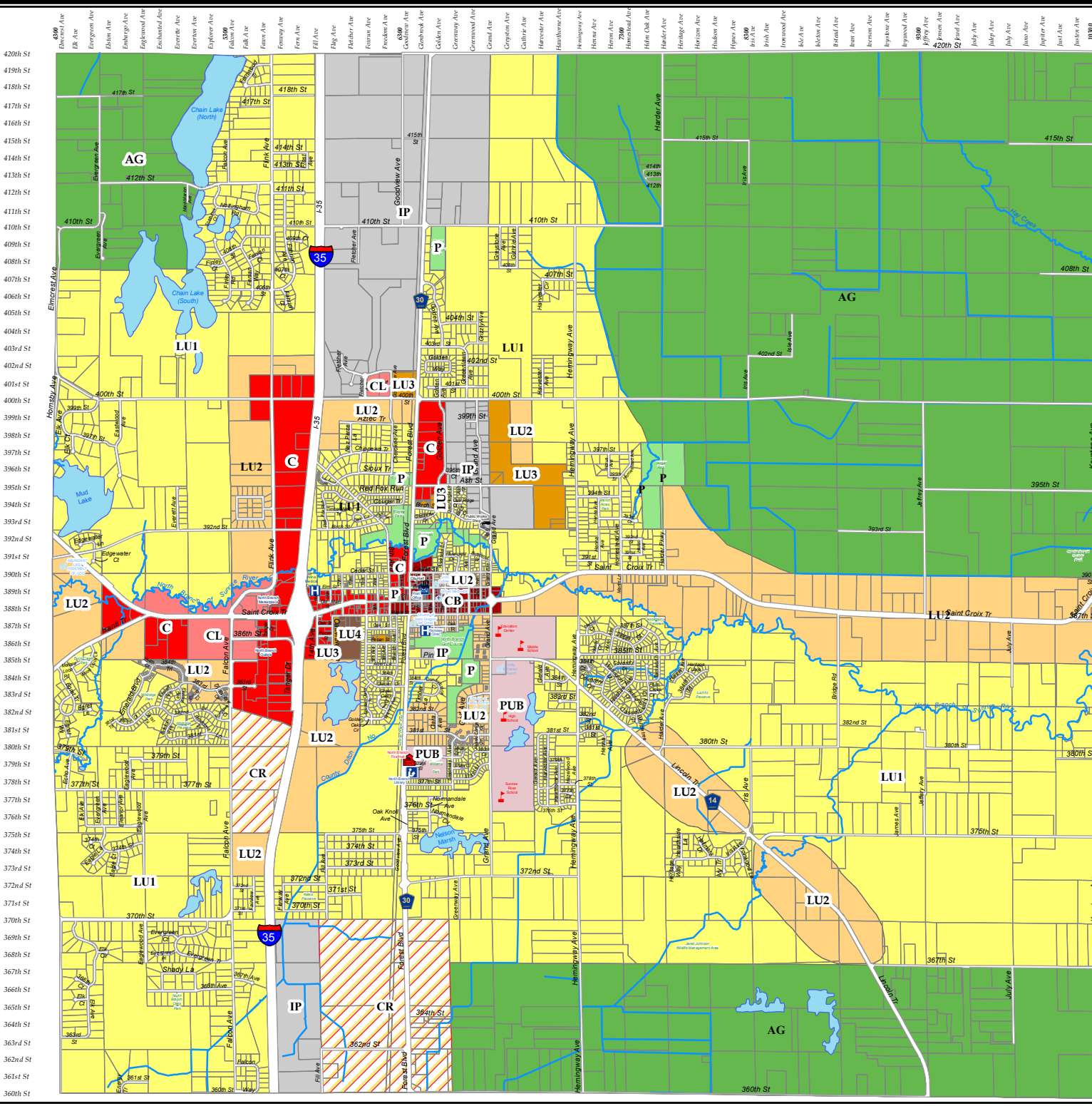


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















EXHIBIT E



CITY OF NORTH BRANCH

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Hours: 8:00 am - 4:30 pm (Monday - Friday)
<http://www.ci.north-branch.mn.us>

Zoning Map (Industrial Districts)

-  Industrial Zoning Districts
-  AG1 Agricultural
-  AG2 Agricultural Preserve
-  B2 Limited Business
-  B3 Regional Business
-  CBD Central Business District
-  I2 General Industrial
-  I3 Planned Industrial District
-  I4 Industrial
-  P Park/Open Space
-  R1 Single-Family Residential
-  R1A Single-Family Residential
-  R2 Medium Density Residential
-  R3 High Density Residential
-  R4 Manufactured Home Residential
-  RR Rural Residential



Scale: 1:50000

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Date: 02-DEC-2013



EXHIBIT F

