

December 21, 2021

**VIA EDOCKETS**

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
Saint Paul, MN 55101-2147

**Re: In the Matter of the Application of Louise Solar Project, LLC, for a Certificate of Need for the 50 MW Louise Solar Project in Mower County, Minnesota  
MPUC Docket No. IP-7039/CN-20-646  
OAH Docket No. 82-2500-37579**

**In the Matter of the Application of Louise Solar Project, LLC, for a Site Permit for the 50 MW Louise Solar Project in Mower County, Minnesota  
MPUC Docket No. IP-7039/CN-20-647  
OAH Docket No. 82-2500-37579**

Dear Mr. Seuffert:

Louise Solar Project, LLC (“Louise Solar” or “Applicant”) appreciates the thorough analysis and recommendations contained in the Administrative Law Judge’s (“ALJ”) Findings of Fact, Conclusions of Law, and Recommendations (“ALJ Report”) dated December 9, 2021 in the above-referenced matters. Overall, the ALJ Report presents a comprehensive and detailed review of the record in this proceeding. As such, Louise Solar submits only limited comments and exceptions regarding: (1) findings and the special permit condition related to security fencing; (2) the special permit condition related to an independent third-party agency monitor; and (3) minor corrections to various findings in the ALJ Report.

**Security Fencing.**

Louise Solar is proposing to install either a 6-foot chain-link fence with top guard angled out and upward at 45 degrees with 3-4 strands of smooth wire (no barbs), or 8-foot chain link fence. These options were designed in accordance with the Minnesota Department of Natural Resources’ (“MDNR”) published *Commercial Solar Siting Guidance* (May 2016).

As the ALJ Report correctly noted, no member of the public has expressed concern about the visual impact of the Project. However, it is important to note that the fence options currently proposed for the Project are six or eight feet tall. The anticipated visual impacts of these fence options are shown on the visual renderings included in the Site Permit Application.<sup>1</sup> Accordingly, with respect to visual impacts from fencing, no member of the public has expressed concern regarding potential impacts from the use of six- or eight-foot-tall fencing.

Attachment A includes the View 3 visual simulation included on page 47 of the Site Permit Application with a visual simulation of a 10-foot fence from the same view. As shown in Attachment A, a 10-foot fence would increase visual impacts to adjacent residences, and it is possible that members of the public may have concerns regarding the visual impacts of a ten-foot fence.

As Louise Solar noted in its reply comments, a 10-foot fence would cost at least 25 percent more than the fencing currently proposed by Louise Solar. Based on recent estimates, a 10-foot fence would cost between \$200,000 - \$250,000 more than a 6-foot fence, representing an increase of approximately 0.3% of the total capital costs for the Project.

Given the balance between addressing concerns related to deer mortality and movement with the potential visual impacts and costs of higher fencing, Louise Solar believes the current fencing proposal is most appropriate at this site and is supported by the record.

Louise Solar proposes the following revisions to the following findings in the ALJ Report:

246. Louise Solar has stated that it will implement MDNR 2016 guidance of wildlife-friendly fencing by installing either a 6-foot chain-link fence with top guard angled out and upward at 45 degrees with three to four strands of smooth wire (no barbs), or eight-foot chain link for security and safety purposes. At the request of MDNR, barbed wire will not be used around the perimeter of the Project. Louise Solar's proposed fencing was designed in accordance with MDNR's 2016 *Guidance for Commercial Solar Projects*.<sup>247</sup> Louise Solar asserted that a ten-foot fence would cost at least 25 percent more than the fencing currently proposed. Louise Solar also noted that a 10-foot fence would increase visual impacts to adjacent residences and would likely require larger/deeper foundations, thereby increasing soil disturbance. Louise Solar also asserted that given balancing concerns related to deer mortality and potential visual impacts it believes its current proposal is most appropriate.<sup>248</sup>

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<sup>1</sup> See Ex. 101 at 45-47 (Site Permit Application).

247. The MDNR is responsible for all wild animals in the state.<sup>249</sup> ~~While~~ However, neither party provided data on deer fatalities in solar facilities, MDNR is presumed to have greater knowledge of what is necessary to protect wildlife than ~~does the applicant.~~ Louise Solar provided additional estimates demonstrating the higher costs of a ten-foot fence. ~~Moreover, the applicant's concern with the cost of a higher fence, while unsupported with specific data on the costs, seems likely to be relatively small when compared to the over 62-million-dollar cost of the Project.~~<sup>250</sup> Also, ~~while~~ Louise Solar raises ~~visual~~ concerns that a 10-foot fence would increase visual impacts to adjacent residences. While no member of the public has expressed concern about the visual impact of the project, the fence options currently contemplated for the Project are six or eight feet tall. Members of the public may have concerns regarding the visual impacts of a ten-foot fence. Additionally, the concern that deer may be trapped within the fencing will be mitigated by the fact that operations and maintenance personnel will be onsite weekly and will be able to identify any wildlife within the fenced area and take appropriate action to safely remove any deer from the fenced area. Given the balance between addressing concerns related to deer mortality and movement with the higher cost and potential visual impacts of higher fencing, Louise Solar's proposed fencing options, designed in accordance with the MDNR's published Commercial Solar Siting Guidance (May 2016), are reasonable and supported by the record. ~~It is possible that injured birds and animals, which MDNR is trying to prevent, would be more distressing to the surrounding community than fence height. Given that these concerns are speculative, the MDNR's expertise should be given deference and~~ Special permit condition Section 5.5 of the Draft Site Permit should reflect the ten-foot high fence recommended by MDNR that the fencing installed for the Project should be consistent with the MDNR's published Commercial Solar Siting Guidance (May 2016).

Louise Solar proposes the following revision to special permit condition Section 5.5:

#### 5.5 Security Fencing

The security fence surrounding the facility shall be designed to minimize the visual impact of the project while maintaining compliance with the National Electric Safety Code. The Permittee shall install a fence consistent with the MDNR's published Commercial Solar Siting Guidance (May 2016). The Permittee shall coordinate with the MDNR to further refine the appropriate fence design, identify ways to preclude wildlife entanglement in the security fence, and to ensure adequate deer escape technology exists at the facility. The results of the coordination shall be submitted to the Commission with the site plan pursuant to Section 8.3.

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**Independent Monitor.**

Louise Solar has no objections to the special permit condition Section 5.8 regarding an independent monitor. Louise Solar understands that the Commission and EERA Staff are moving towards having independent monitors on most, if not all, projects, and Louise Solar appreciates the language in special permit condition Section 5.8 regarding the “scope of work” for the independent monitor being specific to the Project. This language acknowledges that an independent monitor’s scope of work will depend upon the particular project – in other words, the scope of work on a large linear project will be different than the scope on a 50 MW solar project such as the Louise Solar Project.

**Minor Corrections to Draft Site Permit References.**

Louise Solar has reviewed the ALJ Report’s findings in detail and notes that minor corrections are needed to consistently reference the corrected and renumbered Draft Site Permit conditions. These corrections are listed in Attachment B.

**Conclusion.**

Louise Solar respectfully requests that the Commission adopt the ALJ Report with the revisions noted herein and grant the Site Permit and Certificate of Need for the Project.

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

Sincerely,

*/s/ Christina K. Brusven*

Christina K. Brusven  
**Direct Dial:** 612.492.7412  
**Email:** cbrusven@fredlaw.com

**Attachment A**

**Visual Simulations Comparing 6' and 10' Fences**

**View 3: Proposed condition looking northwest from 690<sup>th</sup> Avenue.**



**PHOTO SIMULATION VIEW 3 : 10' FENCE**



## Attachment B

### Minor Corrections to Draft Site Permit References.

78. Louise Solar deferred to ~~DEREERA~~ [DEREERA](#) to address comments by the MPCA.<sup>94</sup> It appears that section 5.2 of the Draft Site Permit addresses some of MPCA's concerns by addressing buffers around water bodies and sediment controls.<sup>95</sup>

[Finding 194] Footnote 189: *Id.*; see also ~~Sample Site Permit, included with Briefing Papers—April 8, 2021 Agenda (Sample Site Permit) (Mar. 31, 2021) (eDocket No. 20213-172442-02).~~ [Draft Site Permit \(Nov. 9, 2021\) \(eDocket No. 202111-179620-06\).](#)

202. Section 4.3.~~16~~[20](#) of the draft site permit addresses roads.<sup>197</sup> Section 4.3.~~16~~[20](#) of the Draft Site Permit requires the Applicant to inform road authorities of roads that will be used during construction and acquire necessary permits and approvals for oversize and overweight loads. Section 4.3.4 of the Draft Site Permit also requires the Applicant to minimize disruption to public services and public utilities and to restore service promptly if disrupted by the Applicant.

[Finding 202] Footnote 197: *Id.* at 57; [see also Draft Site Permit \(Nov. 9, 2021\) \(eDocket No. 202111-179620-06\).](#)

216. The Draft Site Permit contains conditions to address public safety. For example, Section 4.3.~~23~~[7](#) of the Draft Site Permit addresses public safety, including landowner educational materials, appropriate signs and gates, etc. Section 8.10 requires permittees file an emergency response plan with the Commission prior to operation. Section 8.11 requires disclosure of extraordinary events, such as fires, etc.<sup>214</sup>

[Finding 216] Footnote 214: *Id.* at 56; [see also Draft Site Permit \(Nov. 9, 2021\) \(eDocket No. 202111-179620-06\).](#)

241. Section 4.3.~~14~~[21](#) of the ~~sample permit~~ [Draft Site Permit](#) addresses archeological and historic resources. If previously unidentified archaeological sites are found during construction, the Applicant would be required to stop construction and contact SHPO to determine how best to proceed. Ground disturbing activity will stop and local law enforcement will be notified should human remains be discovered. Because impacts to archeological and historic resources are not anticipated, additional mitigation is not proposed.<sup>238</sup>

[Finding 241] Footnote 238: *Id.*; [see also Draft Site Permit \(Nov. 9, 2021\) \(eDocket No. 202111-179620-06\).](#)

255. As set out in the Draft Site Permit Section [4.3.16](#), any further revisions to the Vegetation Establishment and Management Plan must be done in coordination with MDNR, BWSR, ~~MDA~~, MPCA, and the Minnesota Department

of Commerce. The vegetation management plan and documentation of the coordination efforts between the permittee and the coordinating agencies shall be filed at least 14 days prior to the preconstruction meeting.<sup>261</sup>

[Finding 255] Footnote 261: *Id.*; [see also Draft Site Permit \(Nov. 9, 2021\) \(eDocket No. 202111-179620-06\)](#).

259. Sections 4.3.15 and 4.3.1~~3~~6 of the Draft Site Permit address Beneficial Habitat and the Vegetation Management Plan. Seed mixes must be developed and approved in coordination with MDNR and BWSR before submitting the plan 14-days prior to pre-construction. Section 4.3.14 of the Draft Site Permit requires that vegetation clearing be limited to only the extent necessary for construction access and safe operation and maintenance of the Project. Section 4.3.15 requires that site restoration and management practices provide for native perennial vegetation. Section 4.3.16 discusses development of the Vegetation Management Plan, to be prepared in coordination with the Department of Commerce, MDNR, BWSR, and MPCA. Section 4.3.17 addresses application of pesticides and notice to landowners of pesticide application. Section 4.3.18 addresses invasive species and best management practices to avoid the potential introduction and spread of invasive species on lands disturbed by Project construction. Section 4.3.19 requires permittees to take all reasonable precautions against the spread of noxious weeds during all phases of construction.

264. Sections 4.3.8, 4.3.9, 4.3.10, and 4.3.15 of the Draft Site Permit address soil-related impacts: 4.3.8 requires protection and segregation of topsoil; 4.3.9 requires measures to minimize soil compaction; and 4.3.10 requires the permittee to “implement erosion prevention and sediment control practices recommended by the [MPCA]” and to “obtain a Construction Storm Water [CSW Permit].” A CSW Permit requires both temporary and permanent stormwater controls. Section 4.3.~~3~~10 also requires implementation of reasonable erosion and sediment control measures, contours graded to provide for proper drainage, and all disturbed areas be returned to pre-construction conditions. Section 4.3.~~8~~15 requires that “site restoration and management” practices enhance “soil water retention and reduces storm water runoff and erosion”.<sup>268</sup>

[Finding 264] Footnote 268: *Id.* at 70; [see also Draft Site Permit \(Nov. 9, 2021\) \(eDocket No. 202111-179620-06\)](#).

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**In the Matter of the Applications of Louise Solar Project, LLC for a Certificate of Need and a Site Permit for the 50 MW Louise Solar Project in Mower County, Minnesota**

**CERTIFICATE OF SERVICE**

**OAH Docket No. 82-2500-37579  
MPUC Docket Nos. IP-7039/CN-20-646 and  
IP-7039/GS-20-647**

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Breann L. Jurek certifies that on the 21st day of December 2021, she served true and correct copies of the following documents by electronic filing or by depositing the same enveloped with postage paid in the United States mail at Minneapolis, Minnesota:

1. Exceptions to the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendations;
2. Certificate of Service

to the parties on the attached Official Service Lists as attached hereto.

Executed on: December 21, 2021

*Signed: /s/ Breann L. Jurek*  
\_\_\_\_\_  
*Fredrikson & Byron, P.A.*  
*200 South Sixth Street*  
*Suite 4000*  
*Minneapolis, MN 55402*



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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-646_Official Service List 20-646
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