

June 17, 2022

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 Applications of Hayward Solar LLC, for a Certificate of Need and Site Permit for the up to 150 MW Hayward Solar Project in Freeborn County, Minnesota
Hayward Solar LLC's Exceptions to ALJ Report
Docket No. IP-7053/CN-21-112 and IP-7053/GS-21-113
OAH Docket Number: 5-2500-37666 and 5-2500-37667**

Dear Mr. Seuffert:

Hayward Solar LLC ("Hayward Solar") appreciates the thorough analysis and recommendations contained in the Administrative Law Judge's ("ALJ") Findings of Fact, Conclusions of Law and Recommendation ("ALJ Report") dated June 6, 2022 in the above-referenced matter. Hayward Solar agrees with the ALJ that Hayward Solar has satisfied the legal requirements to be entitled to issuance of a Certificate of Need and Site Permit for the proposed up to 150-megawatt Hayward Solar Project in Freeborn County, Minnesota ("Project"). Overall, the ALJ Report presents a comprehensive and detailed review of the record in this proceeding. As such Hayward Solar submits only limited comments and exceptions regarding the revised special conditions to the Site Permit presented in Findings 217, 220 and 223 and their associated Conclusions 12, 16 and 19, respectively ("Proposed Revisions") of the ALJ Report.

Finding 217 and Conclusion 12 - Decommissioning Plan

The ALJ Report recommended revision of Sample Site Permit Section 9.1 in accordance with the revisions proposed by Department of Commerce, Energy Environmental Review and Analysis ("EERA") staff in its April 15, 2022 written comments. Hayward Solar previously provided that it had no objections to EERA staff's proposed edits, but suggested the ALJ Report include the entirety of the text for Section 9.1 from the Sample Site Permit as amended by EERA staff's proposed edits.

Attorneys & Advisors
Main 612.492.7000
Fax 612.492.7077

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402-1425

USA / China / Mexico
Minnesota, Iowa, North Dakota
fredlaw.com

Hayward Solar recommends that Finding 217 be amended to read:

217. EERA provided suggested changes to Section 9.1, which were clarified by the Applicant, regarding the decommissioning plan, as follows:

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, with to 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.¹ 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.²

EERA made the following additional comments for the benefit of the Applicant:

- Staff recommends that the plan include a site map identifying major components of the project.
- An updated plan should include a discussion of the use of generation output and should describe permits necessary for decommissioning the project.

¹ EERA Hearing Comments (Apr. 15, 2022) (eDocket No. 20224-184798-01).

² Hayward Solar Reply Comments (April 25, 2022) (eDocket No. 20224-185109-02).

- Staff notes that the plan indicates a net financial decommissioning surplus. This surplus is based on what EERA staff believes is a relatively high value for used solar panels at the project's end of life. Staff acknowledges the difficulty in estimating the value of used solar panels 30 years into the future. Staff recommends that the permittee continue to evaluate the value of used solar panels, at a minimum, on the five-year schedule required by the Commission's sample permit. A section should be added to the plan reflecting the Commission's required five-year update schedule. Further, the plan should note that it must be updated with any change of project ownership.
- Consistent with Solar and Wind Decommissioning Working Group recommendations, staff recommends that a financial surety for decommissioning the project be established no later than the tenth year of operation and that the surety provide for full decommissioning costs prior to the expiration of any power purchase agreement. A final, updated plan should discuss the anticipated beneficiary of the surety.³

Hayward Solar recommends that Conclusion 12 be amended to read:

12. 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.

Finding 220 and Conclusion 16- Independent Monitor

The ALJ Report recommended inclusion of a special permit condition requiring an independent monitor as proposed by EERA staff in its April 15, 2022 written comments.⁴ Specifically, finding 220 of the ALJ Report recommended adopting EERA's proposed permit condition Section 5.3 verbatim without acknowledgement of Hayward Solar's proposed revisions.⁵ Hayward Solar has no objection to the inclusion of a special permit condition related to an independent monitor. However, Hayward Solar again reiterates the importance of language that specifically defines the coordination on the scope of the independent third-party monitor's responsibilities, the agencies involved in defining the independent monitor's scope and the agencies responsible for overseeing both the development of the scope of responsibilities as well as the reporting of observations. The independent monitor's scope of responsibilities and the agencies involved with the independent monitor should be project specific depending on the record developed for a particular project. Doing so will aide in ensuring the independent inspector focuses on the important aspects, as determined by the record, and reports to those agencies with oversight and knowledge specific to those focus areas.

³ EERA Hearing Comments.

⁴ EERA Hearing Comments.

⁵ See Hayward Solar Reply Comments.

Hayward Solar recommends that Finding 220 be amended to read:

220. EERA proposed adding ~~the following~~ a special permit condition, which was amended by Applicant, requiring an independent monitor:

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.⁶

Hayward Solar recommends that Conclusion 16 be amended to read:

16. 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.

Finding 223 and Conclusion 19 - Project Lighting

The ALJ Report recommended inclusion of a special permit condition, as requested by the Minnesota Department of Natural Resources (“DNR”), requiring the use of shielded, downward facing lighting with minimal blue hues on the Project substation and operations and maintenance (“O&M”) building to mitigate wildlife impacts.⁷ In its reply comments, Hayward Solar suggested a modification of the DNR’s proposed permit condition to clarify

⁶ EERA Hearing Comments, Hayward Solar Reply Comments.

⁷ DNR Hearing Comment Letter (April 15, 2022) eDocket No. 20224-184795-01.

that the requested lighting would be used on the O&M building as well as the Project substation.⁸

Hayward Solar recommends that Finding 220 be amended to read:

223. In its April 14, 2022 comments, DNR recommended adding a special permit condition on lighting at the Project substation and O&M building. In its April 25, 2022 Reply Comments, Applicant proposed a minor modification to DNR's proposed condition. The combined special permit condition is, as follows:

The DNR recommends a special permit condition to minimize visual impacts of the substation, as well as the operations and maintenance building, by using shielded and downward facing lighting and lighting that minimizes blue hue. LED lighting is often high in blue light, which is harmful to birds, insects, and fish. A similar special permit condition was included for the substation associated with the Frazee to Erie 115 kV Transmission Line Project (Docket TL-20-423): *Permittees 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.*⁹

Hayward Solar recommends that Conclusion 19 be amended to read:

19. 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.

Hayward Solar respectfully requests that the Commission adopt the ALJ Report as modified in these exceptions and issue the Site Permit incorporating the permit conditions contained in the Proposed Revisions. Hayward Solar has coordinated with EERA staff who is in agreement with the Proposed Revisions contained in these exceptions.

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.

⁸ See Hayward Solar Reply Comments.

⁹ DNR Hearing Comment Letter, Hayward Solar Reply Comments.

Sincerely,

FREDRIKSON & BYRON, P.A.

/s/ Jeremy P. Duehr

Jeremy P. Duehr

Direct Dial: 612.492.7413

Email: jduehr@fredlaw.com

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**In the Matter of the Applications of
Hayward Solar LLC, for a Certificate of
Need and Site Permit for the up to 150
MW Hayward Solar Project in Freeborn
County, Minnesota**

CERTIFICATE OF SERVICE

**Docket No. IP-7053/CN-21-112 and IP-
7053/GS-21-113
OAH Docket Number: 5-2500-37666 and
5-2500-37667**

Breann L. Jurek certifies that on the 17th day of June 2022, she e-filed on behalf of Hayward Solar LLC, a true and correct copy of the following documents:

- Exceptions to the ALJ Report; and
- Certificate of Service

to the Minnesota Public Utilities Commission, via edockets (www.edockets.state.mn.us). Said documents were also served on the Official Service Lists on file with the Minnesota Public Utilities Commission and as attached hereto

Executed on: June 17, 2022

Signed: /s/ Breann L. Jurek

Fredrikson & Byron, P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
A	Branam	abranam@arevonenergy.com	Arevon	8800 N Gainey Center Dr Ste 250 Scottsdale, AZ 85258	Electronic Service	No	OFF_SL_21-112_Official List
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_21-112_Official List
Jeremy	Duehr	jduehr@fredlaw.com	Fredrikson & Byron, P.A.	200 South Sixth Street Suite 4000 Minneapolis, Minnesota 55402-1125	Electronic Service	No	OFF_SL_21-112_Official List
Kate	Fairman	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_21-112_Official List
Annie	Felix Gerth	annie.felix-gerth@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_21-112_Official List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-112_Official List
Jacqueline	Foley	jfoley@arevonenergy.com	Arevon Energy	8800 N Gainey Center Dr Ste 250 Scottsdale, AZ 85258	Electronic Service	No	OFF_SL_21-112_Official List
Kyle	Gerking	kgerking@tenaska.com	Tenaska, Inc.	14302 Fnb Pkwy Omaha, NE 68154	Electronic Service	No	OFF_SL_21-112_Official List
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_21-112_Official List
Breann	Jurek	bjurek@fredlaw.com	Fredrikson & Byron PA	200 South Sixth St Ste 400 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-112_Official List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_21-112_Official List
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_21-112_Official List
Chris	Matthews	cmatthews@arevonenergy.com	Arevon	8800 N Gainey Center Dr Ste 250 Scottsdale, AZ 85258	Electronic Service	No	OFF_SL_21-112_Official List
James	Mortenson	james.mortenson@state.mn.us	Office of Administrative Hearings	PO BOX 64620 St. Paul, MN 55164-0620	Electronic Service	Yes	OFF_SL_21-112_Official List
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-112_Official List
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_21-112_Official List
Michael	Roth	MRoth@tenaska.com	Tenaska, Inc.	14302 Fnb Pkwy Omaha, NE 68154	Electronic Service	No	OFF_SL_21-112_Official List
Joe	Sedarski	joe.sedarski@westwoodps.com	Westwood	12701 Whiewater Dr Ste 300 Minnetonka, MN 55343	Electronic Service	No	OFF_SL_21-112_Official List
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-112_Official List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	Yes	OFF_SL_21-112_Official List
Sean	Sosa	ssosa@arevonenergy.com	Arevon	8800 N Gainey Center Dr Ste 250 Scottsdale, AZ 85258	Electronic Service	No	OFF_SL_21-112_Official List
Suzanne	Todnem	suzanne.todnem@state.mn.us	Office of Administrative Hearings	600 Robert St N PO Box 64620 St. Paul, Minnesota 55164	Electronic Service	Yes	OFF_SL_21-112_Official List
Suzanne	Todnem	suzanne.todnem@state.mn.us	Office of Administrative Hearings	600 Robert Street North PO Box 64620 St. Paul, MN 55164	Electronic Service	Yes	OFF_SL_21-112_Official List
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_21-112_Official List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
A	Branam	abranam@arevonenergy.com	Arevon	8800 N Gainey Center Dr Ste 250 Scottsdale, AZ 85258	Electronic Service	No	OFF_SL_21-113_Official List
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Jeremy	Duehr	jduehr@fredlaw.com	Fredrikson & Byron, P.A.	200 South Sixth Street Suite 4000 Minneapolis, Minnesota 55402-1125	Electronic Service	No	OFF_SL_21-113_Official List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-113_Official List
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Kyle	Gerking	kgerking@tenaska.com	Tenaska, Inc.	14302 Fnb Pkwy Omaha, NE 68154	Electronic Service	No	OFF_SL_21-113_Official List
Breann	Jurek	bjurek@fredlaw.com	Fredrikson & Byron PA	200 South Sixth St Ste 400 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-113_Official List
Chris	Matthews	cmatthews@arevonenergy.com	Arevon	8800 N Gainey Center Dr Ste 250 Scottsdale, AZ 85258	Electronic Service	No	OFF_SL_21-113_Official List
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Joe	Sedarski	joe.sedarski@westwoodps.com	Westwood	12701 Whiewater Dr Ste 300 Minnetonka, MN 55343	Electronic Service	No	OFF_SL_21-113_Official List
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-113_Official List
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	Yes	OFF_SL_21-113_Official List
Sean	Sosa	ssosa@arevonenergy.com	Arevon	8800 N Gainey Center Dr Ste 250 Scottsdale, AZ 85258	Electronic Service	No	OFF_SL_21-113_Official List
Suzanne	Todnem	suzanne.todnem@state.mn.us	Office of Administrative Hearings	600 Robert Street North PO Box 64620 St. Paul, MN 55164	Electronic Service	Yes	OFF_SL_21-113_Official List
Suzanne	Todnem	suzanne.todnem@state.mn.us	Office of Administrative Hearings	600 Robert St N PO Box 64620 St. Paul, Minnesota 55164	Electronic Service	Yes	OFF_SL_21-113_Official List
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_21-113_Official List