

March 20, 2015

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: Application Completeness Review
Marshall Solar Energy Project
Docket No. IP6941/GS-14-1052

Dear Mr. Wolf:

Attached are the review and comments of the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff in the following matter:

In the Matter of the Application of Marshall Solar, LLC for a Site Permit for the Marshall Solar Energy Project and Associated Facilities in Lyon County, Minnesota

Marshall Solar, LLC has submitted an application for acceptance pursuant to Minnesota Statute 216E.04 and Minnesota Rule 7850.2800-3900 for a Site Permit to construct a 62.25 MW solar energy generating plant.

This filing was made on March 4, 2015, by:

Brandon Stankiewicz, Director – Development
NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, FL 33408

EERA staff is available to answer any questions the Commission may have.

Sincerely,



Suzanne, Environmental Review Manager
Energy Environmental Review and Analysis
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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS

DOCKET NO. IP6941/GS-14-1052

Date.....March 20, 2015
EERA Staff.....Suzanne Steinhauer (651) 539-1843

In the Matter of the Application of Marshall Solar, LLC for a Site Permit for the Marshall Solar Energy Project and Associated Facilities in Lyon County, Minnesota

Issues Addressed: Application Completeness, disputed issues of fact, and appointment of an Advisory Task Force

Additional documents and information can be found on
<http://mn.gov/commerce/energyfacilities/Docket.html?Id=34083> or on eDockets
<http://www.edockets.state.mn.us/EFilin/search.jsp> (14-1052).

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651) 539-1530.

Introduction and Background

On December 19, 2014, Marshall Solar, LLC (Marshall Solar) filed a letter¹ with the Public Utilities Commission (Commission) indicating its intent to submit a site permit application under the alternative permitting process (Minn. Rule 7850.2800-3900). On March 4, 2015, Marshall Solar submitted an application (Application)² to the Commission for the proposed 62.25 megawatt (MW) Marshall Solar Project (Project) in Lyon County.

Marshall Solar proposes to construct 62.5 MW of photovoltaic (PV) solar generation in Stanley Township in Lyon County, approximately four miles east of Marshall. The Project would generate electricity from solar energy and is therefore eligible under 2014 Minnesota Session Laws, Chapter 254, Section 19 for review under the Alternative Permitting Process. The Project would be operational by the end of 2016.

¹ Notification Site Permit Application under Alternative Siting Process, Marshall Solar, LLC, December 19, 2014, eDocket no. [201412-105584-01](http://mn.gov/commerce/energyfacilities/Docket.html?Id=201412-105584-01)

² Site Permit Application for Marshall Solar Energy Project, Marshall Solar, LLC, March 4, 2015, eDocket ID: [20153-107920-01](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-01), [20153-107920-02](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-02), [20153-107920-03](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-03), [20153-107920-04](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-04), [20153-107920-05](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-05), [20153-107920-06](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-06), [20153-107920-07](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-07), [20153-107920-08](http://mn.gov/commerce/energyfacilities/Docket.html?Id=20153-107920-08); <http://mn.gov/commerce/energyfacilities/Docket.html?Id=34083>

Project Description and Purpose

The Project was proposed in response to Xcel Energy's Solar Request for Proposals (RFP) to help fulfill the Minnesota Solar Energy Standard which requires the company to serve 1.5 percent of its retail load with solar energy by the end of 2020. As a result of the RFP, Xcel Energy negotiated Power Purchase Agreements (PPA) with three of the competing proposals for a total of 187 MW. The three solar projects are (1) Marshall Solar, a 62.25 MW project located near Marshall; (2) MN Solar I, a 24.75 MW project located near Tracy; and (3) the North Star 100 MW Project near North Branch. Xcel Energy's "Solar Portfolio" (see eDocket no. E002/M-14-162) was approved by the Commission at the February 12, 2015, Agenda Meeting.

As shown in the Project Overview Map, Marshall Solar proposes to develop the Project on approximately 510 acres of agricultural land east of Marshall in Lyon County. The final Project design is expected to occupy between 360 and 474 acres of the 510-acre development area.



The Project's primary components include PV modules mounted on a fixed racking system and solar inverters. Other Project components include electrical cables, conduit, electrical cabinets, switchgears, step-up transformers, SCADA systems and metering equipment. The solar facility would be fenced and seeded in a low growth seed mix to reduce stormwater runoff and erosion.

Marshall Solar expects to interconnect the Project to the grid at the Lyon County Substation (located in the western portion of the Project Area, at the northeast intersection of Lyon County Road 9 and 290th Street) through a short 115 kV line.

Regulatory Process and Procedures

The size of the proposed Project meets the definition of a large energy facility requiring a Certificate of Need under Minnesota Statute 216B.2421, subd. 2. However, under Minn. Statute 216B.243, subd. 9, the proposed Project is exempt from the Certificate of Need requirement because it is a solar electric generating facility that is intended to be used to meet the obligations of Minn. Statute 216B.1691.

The Project meets the definition of a large electric power generating plant under the Power Plant Siting Act. Minnesota Statute 216E.03, subd. 1 provides that no person may construct a large electric generating plant without a Site Permit from the Commission. A large electric power generating plant is defined as electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more (Minn. Statute 216E.01, subd. 5).

Session Law 254 amended the types of projects that qualify for review under the alternative permitting process under Minn. Statute 216E.04 to include large electric power generating plants powered by solar energy. As a large electric power generating plant powered by solar energy, the Marshall Solar Project qualifies for review under the alternative permitting process. Under Minn. Statute 216E.04, subd. 1, the Applicant has the option of selecting review under the alternative process outlined in Minnesota Statute 216E.04 rather than the procedures for a full process under 216.03. Marshall Solar has chosen to follow the alternative permitting process.

Marshall Solar anticipates that the 115 kV transmission line connecting the Project with the adjacent Lyon County Substation will be less than 1,500 feet in length.³ Due to its anticipated length, the 115 kV transmission line does not meet the statutory definition of a high voltage transmission line. Minn. Statute 216E.03, subd. 2 prohibits construction of a high-voltage transmission line without a route permit from the Commission, but defines a high voltage transmission line as a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length (Minn. Statute 216E.01, subd. 4).

³ Site Permit Application, at p. 14
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Site Permit Application and Acceptance

Site permit applications must provide specific information about the proposed project including, but not limited to, applicant information, site description, environmental impacts, alternatives and mitigation measures (Minn. Rule 7850.3100). The Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information (Minn. Rule 7850.3200).

The review process begins with the determination by the Commission that the application is complete. Application acceptance allows initiation of the public participation and environmental review processes. The Commission has six months to reach a final decision on the site permit application from the date the application is determined to be complete. The Commission may extend this limit for up to three months for just cause or upon agreement of the applicant (Minn. Rule 7850.3900).

Environmental Review

Applications for site permits under the alternative permitting process are subject to environmental review, which is conducted by the Department of Commerce under Minn. Rule 7850.3700. EERA staff will provide notice and conduct a public scoping meeting to solicit public comments on the scope of the environmental assessment (EA). Following the close of the comment period, EERA staff will file comments on any alternative site proposals with the Commission. Based on the information received during the scoping process the Deputy Commissioner of the Department of Commerce will determine the scope of the EA.

An EA is a written document that describes the human and environmental impacts of a proposed project (and selected alternative sites) and methods to mitigate such impacts. The EA will be completed and made available prior to the public hearing.

Public Hearing

Applications for site permits under the alternative permitting process require a public hearing upon completion of the EA. The hearing would be conducted in the project area and in accordance with the procedures provided in Minn. Rule 7850.3800. (The hearing is not a contested case hearing and is not conducted under Office of Administrative Hearings (OAH) Rule 1405.)

There are two options to proceed in regard to the public hearing. In either option, the Commission's regular course is to have an Administrative Law Judge (ALJ) preside at the hearing. In complicated proceedings, the Commission forwards the docket to OAH to conduct the hearing and prepare comments and recommendations. In other cases, the Commission more simply chooses to have the ALJ preside at the hearing and transfer the record back to the Commission. Whether there are competing alternatives or a significant number of human and environmental issues in dispute are two determinants for electing to have the ALJ create a report and recommendation.

Requesting an ALJ report can extend the length of the proceeding (see comparative tentative schedules below). This would require the Commission to extend the expected six month timeframe for a final decision up to three months for just cause (Minn. Statute 216B.03, subd. 7).

Public Advisor

Upon acceptance of an application for a site permit, the Commission must designate a person to act as the public advisor on the project (Minn. Rule 7850.3400). The public advisor is available to answer questions for the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

Advisory Task Force

The Commission may appoint an advisory task force (Minn. Statute 216E.08, subd. 1). Minn. Rule 7850.3600 directs the Commission to determine whether to appoint a task force as early in the process as possible. Should the Commission appoint a task force, the Commission must specify in writing the charge to the task force. The charge to the task force includes, at minimum, identification of additional sites or specific impacts to be evaluated in the EA. A task force would terminate upon completion of its charge, designation of alternate sites to be included in the EA, or upon a specific date set by the Commission. An advisory task force appointed to evaluate sites considered for designation must, at minimum, include at least one representative from the applicable Regional Development Commission, county, municipalities and one town board member (Minn. Statute 216E.08, subd. 1).

The Commission is not required to assign an advisory task force for every project. In the event that the Commission does not name a task force, a citizen may request appointment of a task force (Minn. Rule 7850.3600). If such a request were made, the Commission would then need to determine at a subsequent meeting whether a task force should be appointed.

The decision whether to appoint an advisory task force does not need to be made at the time of accepting the application; however, it should be made as soon as practicable to ensure its charge can be completed prior to the EA scoping decision by the Department.

EERA Staff Analysis and Comments

As requested in the Commission's Notice of Comment Period on Marshall Site Permit Application Completeness, EERA staff provides the following comments on completeness of the application, disputed issues of fact, and appointment of an Advisory Task Force.

Application Completeness

EERA staff conferred with Marshall Solar about the project as the site permit application was developed and provided comments on a draft of the application. Subsequently, EERA staff has conducted a completeness review of the Marshall Solar Distributed Solar Project application filed with the Commission on March 4, 2015, relative to the application content

requirements specified in Minn. Rule 7850.3100, and, by references, Minn. Rule 7850.1900. Marshall Solar has included a Completeness Checklist table on pages vii through viii of the application, which summarizes the required information and where the information can be found within the document.

EERA staff believes that its comments on the draft application have largely been addressed. However, with respect to certain information required under Minn. Rule 7850.1900, EERA staff recommends that Marshall Solar provide additional information prior to the Commission's determination of completeness.

- With respect to the information required under Minn. Rule 7850.1900, subp. 1A, EERA staff believes that the application lacks a clear statement as to proposed ownership of the facility as of the day of filing and after commercial operation. Marshall Solar is the applicant, and Section 1.2.1 of the Application implies that Marshall Solar, a wholly-owned subsidiary of NextEra Energy Resources, LLC, will be the owner of the project, but there is no affirmative statement as to Project ownership as of the date of filing and once the Project enters commercial operation.
- With respect to the information required under Minn. Rule 7850.1900, subp. 1D, EERA staff recommends that Marshall Solar provide a statement identifying the accredited capacity of the proposed facility and the anticipated annual generation in megawatt hours (MWh).
- With respect to the information required under Minn. Rule 7850.1900, subp. 1D and subp. 3, EERA staff believes that the application would benefit from more clarity about the anticipated developed area for the Project: Page 36 of the document states that approximately 474 acres of farmed fields will be converted from agricultural use for the Project, while other sections of the document (pp. 49, 50, and 54) indicate that approximately 360 acres of farmland will be removed.
- With respect to the information required under Minn. Rule 7850.1900, subp. 1H, EERA staff believes that the application should contain more information on the construction cost than the statement that construction costs are "expected to be in excess of \$100 million" provided in Section 2.5 of the Application. EERA staff is aware of the sensitivity that Applicants may have in divulging cost information, but believes that it is reasonable for Marshall Solar to provide an estimate rounded to the \$10 million place or, alternatively, a range of costs.

Disputed Issues of Fact

EERA staff is not aware at this time of any disputed issues of fact with respect to the representations in the Site Permit Application. However, issues may be identified during the Environmental Assessment scoping process that could affect the Commission's decision on whether to request findings of fact and a recommendation from the ALJ.

Advisory Task Force

In analyzing the merits of establishing an Advisory Task Force for the project, EERA staff considered four project characteristics: size, complexity, known or anticipated controversy and sensitive resources. The proposed design information and preliminary environmental data contained in the site permit application were used to complete the following evaluation.

Project Size

Although of moderate size in terms of total nameplate capacity (62.25 MW), the Marshall Solar project is large in terms of total land requirements. Marshall Solar has identified a total preliminary development area of approximately 360 to 474 acres, or approximately 5.8 to 7.6 acres per MW. The fixed tilt system in Marshall Solar's proposal requires less land than the 8 to 9 acres per MW identified for the Aurora and North Star facilities, which both use single-axis tracking systems.

Complexity

EERA staff does not believe the proposed project is complex in comparison to many of the linear projects or large electric generating plants permitted by the Commission in other proceedings. The proposed site is located entirely in Stanley Township in Lyon County. Site preparation and construction for photovoltaic facilities are relatively straight-forward. Construction of the project would not entail large-scale excavation or deep foundations.

Known/Anticipated Controversy

EERA staff is aware of some level of controversy associated with the Project. Concerns with the Project have been profiled in local and regional news media. EERA staff is aware of concerns related to aesthetic impacts, impacts to property values, agricultural impacts, land use, planning and zoning, and the large amount of energy infrastructure in the general project area. The public will have ample opportunity to raise these and other issues in meetings and public hearings, and to get responses to them from the Applicant and in the Department's EA. EERA also notes that Marshall Solar does not have the authority to exercise eminent domain to acquire the land necessary for the solar generation or transmission and must acquire the necessary land through negotiated purchase or lease from directly impacted landowners.

Sensitive Resources

Approximately 97 percent of the land in preliminary development areas is currently in agricultural use.⁴ A records search of the facility locations has identified documented occurrences of three endangered, threatened, or special concern species within five miles of the Project, but none within the Project Boundary. The Project has no biologically significant areas (e.g. Regionally Significant Ecological Areas, Native Plant Communities, or Sites of Biodiversity Significance) located within or adjacent the Project boundary. DNR staff concurred with Marshall Solar's assessment that impacts to known occurrences of rare features are not anticipated.⁵

⁴ Site Permit Application, at p. 44

⁵ Site Permit Application, at Appendix F

Due to the lack of eminent domain and the necessity for the Applicant to obtain easements to construct and operate the Project, there are inherent difficulties in suggesting alternative site locations (e.g., would landowners in the suggested area be willing to host the Project).

The statutory definition of an advisory task force (Minn. Statute 216E.08, subd. 1) requires participation of a cross-section of local and regional governmental entities. Because the Project is entirely located in Stanley Township in Lyon County, EERA staff can easily communicate with the relevant entities throughout the process, or even convene ad hoc meetings to address any specific issues that may arise.

EERA staff believes that the alternative permitting process will provide adequate opportunity for residents and state and local governmental units to identify issues (or alternatives) to be addressed in the EA. As it has in prior projects, EERA staff will assist citizens and governmental units in understanding the scoping process and the process for identifying issues to be addressed and site and alignment alternatives to be considered.

Commerce EERA Recommendations

Commerce EERA staff recommends that the Commission accept the site permit application for the Marshall Solar Distributed Solar Project as substantially complete, pending the submission of the supplemental material identified in EERA's comments above:

- A clear statement as to proposed ownership of the facility as of the day of filing and after commercial operation.
- A statement identifying the accredited capacity of the proposed facility and the anticipated annual generation in megawatt hours (MWh).
- A statement identifying the anticipated developed area for the Project.
- An estimate of construction costs rounded to the \$10 million place or, alternatively, a range of costs.

EERA staff recommends that the Commission take no action on an advisory task force at this time.

EERA staff has not identified disputed issues of fact at this time, so findings and a recommendation developed by an ALJ would not necessarily be required. At the same time, given the identified interest in the Project from the public and local governments, the Commission may find that ALJ findings and a recommendation are warranted in this proceeding.

The Commission may wish to delay its decision on whether to request ALJ comments and recommendations until it has considered EERA's comments on alternatives following the public information/scoping meeting. Since solar site permitting is new in the state, this will also give the Commission further time to evaluate the complexity of any issues raised by the public, agencies and local governments. The Commission may then choose to request comments and a recommendation from an ALJ, even if there are no alternative sites to consider. The Commission should consider that the choice to request an ALJ report would

impact the length of review. It is not logistically possible to complete the alternative process in 180 days if an ALJ report is required.

The following table provides a hypothetical comparison of schedules without and with an ALJ report. EERA staff does not recommend the tentative schedule for adoption; the milestones identified in the schedule are dependent upon a number of factors including personnel and site availability and the approximate dates are intended to illustrate a hypothetical schedule. The tentative schedule already includes what EERA considers to be an aggressive time period in which to prepare the EA. Even so, requesting an ALJ's comments and recommendation would require the Commission to extend the six month requirement for a decision for just cause.

Marshall Solar Site Permit Application – EERA Tentative Schedule and Process

Approximate Date	Day	Permit Application Process Step	Responsible Actor
March 4, 2015		Application Submitted	Marshall Solar
March 20, 2015		Application Completeness Comments	Agencies/Public
March 27, 2015		Reply Comments	Marshall Solar
April 9, 2015		Commission considers Application Acceptance	Commission
April 10, 2015		Public Information Meeting and EA Scoping Notice	Commission/EERA
Acceptance through Environmental Assessment			
April 22, 2015	0	Application Acceptance Order	Commission
April 28, 2015	10	Public Information/Scoping Meeting	Commission/EERA
May 12, 2015	20	EA Scoping Comment Period Closes	EERA
May 21, 2015	30	Memo to Commission on alternative sites	EERA
June 11, 2015	50	Commission considers alternative sites for EA scope	Commission
June 18, 2015	60	Scoping Decision Issued	Department
August 20, 2015	120	EA Issued/Public Hearing Notice	EERA/Commission
Alternative Process – no ALJ Report			
September 1, 2015	130	Public Hearing	OAH
September 11, 2015	140	Public Hearing Comment Period Closes Draft Findings of Fact	OAH Marshall Solar
September 21, 2015	150	ALJ Transmits Record	OAH
September 25, 2015	155	Comments on Draft FOF/Technical Analysis Response to Hearing Comments	EERA Marshall Solar
October 15-22, 2015	180	Commission considers Site and Route Permits Issuance	Commission
Alternative Process with ALJ Report			
September 1, 2015	130	Public Hearing	OAH
September 11, 2015	140	Public Hearing Comment Period Closes Draft Findings of Fact	OAH Marshall Solar
September 25, 2015	155	Comments on Draft FOF/Technical Analysis Response to Hearing Comments	EERA Marshall Solar

October 26, 2015	185	ALJ Findings of Fact and Recommendation	OAH
November 9, 2015	200	Exceptions to ALJ Report	EERA Marshall Solar
Nov. 23-Dec. 3, 2015	225	Commission considers Site and Route Permits Issuance	Commission