

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John A. Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
Marshall Solar, LLC for a Site Permit for the
Marshall Solar Electric Power Generating
Plant in Lyons County, Minnesota

ISSUE DATE: May 11, 2015

DOCKET NO. IP-6941/GS-14-1052

ORDER FINDING APPLICATION
SUBSTANTIALLY COMPLETE,
AUTHORIZING USE OF ALTERNATIVE
PERMITTING PROCESS, AND
GRANTING VARIANCE

PROCEDURAL HISTORY

On March 4, 2015, Marshall Solar, LLC (Marshall Solar) filed an application for a site permit to construct a 62.25 megawatt solar energy facility that would be located near the city of Marshall.

On March 19, 2015, the Department of Natural Resources filed comments on the application recommending that vegetation management at the site include control of invasive and noxious plants to establish and maintain native plantings.

On March 20, 2015, the EERA filed comments recommending that the Commission find the application substantially complete, pending additional filings by the applicant, and recommended use of the alternative permitting process under Minn. Stat. § 216E.04.

On March 20, 2015, joint comments were filed by families objecting to the site permit application. They recommended that the Commission reject the application, stating that the proposed solar project would violate Minn. R. 7850.4400, which prohibits siting power plants on land that includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible or prudent alternative.

On March 27, 2015, Marshall Solar filed reply comments that included the information requested by the EERA, as well as a response to the comments filed objecting to the site permit application.

On April 9, 2015, the application came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Proposed Project

Marshall Solar filed its application for a site permit under Minn. Stat. Chapter 216E and Minn. R. Chapter 7850. Marshall Solar stated that the solar facility meets the definition of a large electric power generating plant under Minn. Stat. § 216E.01, subd. 5.

Marshall Solar stated that it seeks alternative review of its permit application under Minn. Stat. § 216E.04, which sets forth an alternative permitting process for eligible projects. Under the statute, eligible projects include large electric power generating plants powered by solar energy.

Marshall Solar stated that the proposed project would encompass approximately 510 acres of land in Lyon County, approximately four miles east of the city of Marshall. The proposed project would include solar arrays and panels; support structures; an electrical collection system; step-up transformation; a 115 kV generator tie-line and utility interconnection; access roads; an operations and maintenance building; and perimeter fencing. Marshall Solar stated that the proposed project would interconnect to Xcel Energy's Lyon County Substation, which is adjacent to the project area, and that no off-site transmission lines are therefore needed to connect to the electrical grid.

Marshall Solar also stated that the project would operate under a 25-year power purchase agreement with Xcel Energy. The agreement details the size and expected output of the facility, and Marshall Solar's interconnection agreement with Xcel and with the Midcontinent Independent Transmission System Operator places technical limits on the facility's size and generating characteristics.

II. Comments

A. The EERA

On March 20, 2015, the EERA filed comments recommending that the Commission find the application substantially complete pending the filing of additional information by Marshall Solar and that review of the proposed project be conducted using the alternative permitting process under Minn. Stat. § 216E.04.

The EERA requested that Marshall Solar file the following: a statement of 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; a statement identifying the anticipated developed area for the project; and an estimate of construction costs rounded to the \$10 million place, or alternatively, a range of costs. Marshall Solar subsequently filed the information as requested by the EERA.

B. Public Comments

Joint comments were filed by five families objecting to the site permit application.¹ They recommended that the Commission reject the application, stating that the proposed solar project would violate Minn. R. 7850.4400, which prohibits siting power plants on land that includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible or prudent alternative. They stated that the proposed project would have a net generating capacity of 62.26 megawatts and that the project would therefore be limited to the use of 31.125 acres of prime farmland under the rule. Instead, the application states that the proposed project would remove 290 acres of prime farmland.

The families argued that Marshall Solar has not demonstrated that no feasible and prudent alternative to the proposed project exists, and they therefore recommended that the Commission reject the application or appoint an advisory task force to evaluate whether a feasible and prudent alternative exists.

C. Marshall Solar

In response to concerns raised about the use of prime farmland, Marshall Solar stated that those concerns go to the merits of the case and not to the application's completeness and should therefore be developed in the course of this proceeding. Marshall Solar also stated that a number of factors were considered in identifying a location for the proposed project, which was submitted to Xcel as part of a competitive bidding process.

Marshall Solar stated that it had considered other properties that were deemed unsuitable for lack of transmission access, and other reasons, and that the owner of the prime farmland had entered into an agreement to allow use of the land for development. Further, Marshall Solar stated that it had requested in its application that the Commission find that no feasible and prudent alternative exists.

Marshall Solar also argued in favor of a variance to Minn. R. 7850.4400, should the Commission determine that a variance is required.

III. Commission Action

The Commission has reviewed the application, the comments, and the additional information filed by Marshall Solar in response to the Department's request and will accept the application as substantially complete. The Commission will authorize review of the application under the alternative permitting process set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900.

To facilitate development of the record and consideration of alternatives, as well as the development of issues concerning the use of prime farmland, the Commission will refer the matter to the Office of Administrative Hearings (OAH) for summary proceedings and will request that the Administrative Law Judge adapt the existing procedural framework set forth in Minn. R. 7850.3800 and incorporate the following:

¹ The families include John and Janelle Geurts, Ron and Donna Weidauer, Tom and Jeanne Alex, Dan and Becky Pofliet, and Chuck and Rosalie Muller.

- a. emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties to adhere to a schedule that conforms to the statutory time frame;
- b. ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100.
- c. prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project and alternatives to the proposed project applying the criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit;
- d. make findings and a recommendation on whether the applicant has sufficiently demonstrated that no feasible or prudent alternative exists under Minn. R. 7850.4400, or in the alternative, whether the applicant has demonstrated that a variance should be granted by the Commission to Minn. R. 7850.4400 under Minn. R. 7829.3200;

Under Minn. R. 7850.3700, the Department is required to prepare an environmental assessment that evaluates the potential human and environmental impacts of the proposed project. Under the rule, the Department is required to hold a public scoping meeting where members of the public have the opportunity to provide comments. After the close of the public scoping meeting, the Department is required to provide a written comment period of at least seven days. Within 10 days of the close of the comment period, the Department must determine the scope of the environmental assessment. To ensure that the Department has sufficient time to evaluate comments and make a determination, the Commission will extend the 10-day timeline.

Under Minn. R. 7829.3200, the Commission must vary its rules upon making the following findings:

- (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) granting the variance would not adversely affect the public interest; and
- (3) granting the variance would not conflict with standards imposed by law.

The Commission finds that enforcement of the rule would impose an excessive burden on those affected by the rule by jeopardizing the Department's ability to fully consider comments and make an informed decision on the scope of the environmental assessment. Further, granting the variance would not adversely affect the public interest, and would, in fact, serve the public interest by providing the Department with sufficient time to make a scoping decision. And finally, granting the variance would not conflict with standards imposed by law.

The Commission will also request that the EERA present to the Commission comments on the scope of the environmental assessment for Commission input prior to the issuance of the final scoping decision by the Department.

Further, the Commission will direct its staff to contact relevant state agencies to request their participation in the development of the record and in public hearings under Minn. Stat. § 216E.10, subd. 3, The Commission will request that state agencies submit comments prior to the last day of the public hearings.

Upon acceptance of an application for a site permit, the Commission is to designate a staff person to act as the public advisor on the project under Minn. R. 7850.3400. The public advisor is available to answer questions from the public about the permitting process. The Commission will designate Tracy Smetana of Commission staff to serve as the public advisor. Further, the Commission will delegate administrative authority to the Executive Secretary, including the authority to establish or vary time periods, as provided under Minn. R. 7829.3100. The Commission will also direct Marshall Solar to place a printed and electronic copy of the application and any supplements in at least one government center or public library in each city where the proposed project is located.

ORDER

1. The Commission hereby accepts the application as substantially complete and authorizes review of the application under the alternative permitting process under Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900.
2. The Commission designates Tracy Smetana of Commission staff to serve as the public advisor.
3. The Commission hereby refers the matter Administrative Hearings (OAH) for summary proceedings and requests that the Administrative Law Judge adapt the existing procedural framework set forth in Minn. R. 7850.3800 and incorporate the following:
 - a. emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties to adhere to a schedule that conforms to the statutory time frame;
 - b. ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100.
 - c. prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project and alternatives to the proposed project applying the criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit; and

- d. make findings and a recommendation on whether the applicant has sufficiently demonstrated that no feasible or prudent alternative exists under Minn., R . 7850.4400 or whether the applicant has demonstrated that a variance should be granted by the Commission to rule .4400 under part 7829.3200.
4. The Commission hereby grants a variance to Minn. R. 7850.3700 to vary the ten-day timeline for determining the scope of the environmental assessment.
5. The Commission requests that the EERA present to the Commission comments on the scope of the environmental assessment for Commission input prior to the issuance of the final scoping decision by the Department.
6. Further, the Commission will delegate administrative authority to the Executive Secretary, including the authority to establish or vary time periods, as provided under Minn. R. 7829.3100.
7. The Commission hereby directs its staff to contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subd. 3, and requests that state agencies submit comments prior to the last day of the public hearings.
8. The Commission hereby directs Marshall Solar to place a printed and electronic copy of the application and any supplements in at least one government center or public library in each city where the proposed project is located.
9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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