

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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

**ORDER REGARDING
REQUEST FOR ISSUANCE OF A
SUBPOENA *DUCES TECUM***

This matter is pending before Administrative Law Judge Barbara J. Case pursuant to a referral by the Minnesota Public Utilities Commission (Commission).

Brian M. Meloy, Stinson Leonard Street LLP, represents Marshall Solar LLC (Applicant).

On August 14, 2015, Court J. Anderson, attorney with the law firm of Henson Efron P.A., requested issuance of a subpoena *duces tecum* requiring production of certain documents by Applicant on behalf of a group of people who have filed an objection to Applicant's site permit application (Objectors). On August 18, 2015, Applicant responded to the request, and the record closed.

Based on the record and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED THAT:

The request for the subpoena *duces tecum* is **DENIED**.

Dated: September 10, 2015

s/Barbara J. Case

BARBARA J. CASE
Administrative Law Judge

MEMORANDUM

Background

This matter was initiated by Applicant's notice to the Commission that it intended to file a site permit application for an "up to 62.25 MW photovoltaic solar energy generating project to be constructed at a single site in Lyon County, Minnesota...."¹ In the initial filing, Applicant informed the Commission that the project was eligible to proceed pursuant to the alternative siting permit process set forth in Minn. R. 7850.2800-.3900 (2015).²

On March 4, 2015, Applicant filed its application for a site permit (Application).³ Subsequently, various entities submitted comments regarding the Application, including:

On March 20, 2015, joint comments were filed by five 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 included more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible or prudent alternative.⁴

Applicant responded that "th[e] concerns go to the merits of the case and not to the [A]pplication's completeness[,] and should therefore be developed in the course of this proceeding."⁵

On May 11, 2015, the Commission authorized review of the Application under the alternative permitting process set forth in Minn. Stat. § 216E.04 (2014) and Minn. R. 7850.2800-.3900. The Commission referred the matter to the Office of Administrative Hearings for summary proceedings and requested adoption of the existing procedural framework set forth in Minn. R. 7850.3800.⁶

Subpoena Request

Objectors consist of five families who filed an objection to the Application. On August 14, 2015, citing Minn. Stat. § 14.51 (2014), Objectors requested that the Administrative Law Judge issue a subpoena *duces tecum* for "all documents that evidence, memorialize, record, or discuss any alternatives to" the site project.⁷

¹ NOTICE OF INTENT TO FILE SIT PERMIT APPLICATION UNDER ALTERNATIVE PERMITTING PROCESS at 1 (Dec. 19, 2014).

² *Id.*

³ SITE PERMIT APPLICATION (March 4, 2015).

⁴ ORDER FINDING APPLICATION SUBSTANTIALLY COMPLETE, AUTHORIZING USE OF ALTERNATIVE PERMITTING PROCESS, AND GRANTING VARIANCE at 3 (May 11, 2015).

⁵ *Id.*

⁶ *Id.*

⁷ LETTER at 2 (August 14, 2015).

Objectors do not have standing as parties in this matter, but they are interested persons and have the right to submit public comments regarding Applicant's project.

The Commission referred this matter to the Office of Administrative Hearings for summary proceedings and requested that "the Administrative Law Judge adapt the existing procedural frame work set forth in Minn. R. 7850.3800."⁸ The description of the Administrative Law Judge's responsibilities in this case under the alternative permitting process does not appear to include the issuance of subpoenas. Rather it is limited to conducting the public hearing, receiving written public comments, and preparing a report for the Commission. However, the Administrative Law Judge is aware that it is common practice in Commission proceedings to allow parties and participants to request information through the use of "Information Requests."⁹ Minn. R. 7843.0300 (2015), though not referenced in Minn. Stat. § 216E.04 or Minn. R. 7843.2800 (2015), provides a template for information requests by interested parties.

The issue focused on by Objectors, the use of prime farmland, is included within the issues that the Commission's Order asks to be addressed at the public hearing for this proceeding.¹⁰ In order to give the interested members of the public an opportunity to address the proposed project and any alternatives to the proposed project, Objectors should make an information request to the Applicant. To ensure a complete record, the Applicant should respond to the request within 10 days of receipt.

B. J. C.

⁸ ORDER FINDING APPLICATION SUBSTANTIALLY COMPLETE, AUTHORIZING USE OF ALTERNATIVE PERMITTING PROCESS, AND GRANTING VARIANCE at 3 (May 11, 2015).

⁹ See, e.g., Minn. R. 7843.2800, subp. 8 (2015).

¹⁰ Minn. R. 7850.4400, subp. 4 (2015).