STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

Elk Creek Solar, LLC,

Plaintiff,

v.

Minnesota Department of Labor and Industry, Commissioner Nicole Blissenbach, in her official capacity,

Defendants.

Case No.: 62-CV-25-8802
The Honorable Leonardo Castro

ORDER
PLAINTIFF'S PETITION FOR PRELIMINARY INJUNCTION AND DECLARATORY RELIEF
AND
DEFENDANTS' MOTION TO DISMISS

On January 14, 2025, the above-captioned matter came before the Honorable Leonardo Castro, Judge of District Court, on Plaintiff's Petition for a Preliminary Injunction Issuing Declaratory Judgment Relief [1], and Defendants' Motion to Dismiss. Alethea Marie Huyser, Esq., and Ryan Young, Esq., appeared on behalf of Plaintiff Elk Creek Solar, LLC ("Plaintiff" or "Elk Creek"). Richard Dornfeld and Katherine Arnold, Minnesota Assistant Attorneys General, appeared on behalf of Defendants, Minnesota Department of Labor and Industry, and Commissioner Nicole Blissenbach, in her official capacity (collectively, "DLI"). Based upon the pleadings, files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. Defendants' Motion to Dismiss is **DENIED**.
2. Plaintiff's Petition for Preliminary Injunction Issuing Declaratory Judgment Relief is **GRANTED**.

[1] Elk Creek's Petition and Complaint also seek relief by Writ of Mandamus and Writ Quo Warranto. Because this Court grants Elk Creek's Petition for Preliminary Injunction Issuing Declaratory Judgment Relief, it need not address the writs.

3. The Elk Creek Project, as permitted by the Minnesota Public Utilities Commission, is on the "supply side" of the service point, governed by the NESC, and is beyond the Minnesota Department of Labor and Industry's jurisdiction.
4. The Exemption as outlined in Minn. Stat. § 326B.33, subd. 21(e), is applicable to the Elk Creek Project.
5. The Minnesota Department of Labor and Industry is enjoined from bringing enforcement actions against the Elk Creek Project and other non-public utilities undertaking installations that comply with the plain language of the Exemption.

SO ORDERED.

Dated: April 13, 2026

BY THE COURT:

Castro, Leonardo (Judge)
Apr 13, 2026 8:02 AM

Leonardo Castro
Judge of District Court

Memorandum

Factual Background

Elk Creek proposes to construct and operate a 160-megawatt (MW) utility-scale solar photovoltaic generation facility in Vienna and Magnolia Townships, Rock County, Minnesota (the "Project"). The facility is designed to interconnect with the Midcontinent Independent System Operator ("MISO") regional transmission system and to sell electricity at wholesale, not to retail customers in any exclusive service territory. To support its permit application, Elk Creek executed interconnection agreements with MISO and ITC Midwest for 160 MW of service, resulting in the Minnesota Public Utilities Commission ("MPUC") issuing a 2024 site permit[2] that mandates compliance with North American Electric Reliability Corporation ("NERC"), the Institute of Electrical and Electronics Engineers ("IEEE"), and the National Electrical Safety Code ("NESC") standards while preempting local zoning ordinances. The Project is expected to supply electricity equivalent to approximately 27,600 homes annually, employ over 250 union craft workers at peak construction, injecting roughly $190 million into the regional economy, and generate approximately $650,000 per year in production taxes for local jurisdictions. By 2025, Elk Creek stated it had invested over $11 million in the Project.

State law requires the Minnesota Electrical Code, based on the National Electrical Code ("NEC"), apply on the "load side" of the service point, while NESC governs line-side utility-controlled facilities, the "supply side." Minnesota's electrical licensing and inspection statutes require that covered electrical work be performed by licensed electricians and contractors,

[2] The application for a site permit requires the submission of extensive information, including "the engineering and operational design at each of the proposed sites for the proposed large energy infrastructure facility," and identification of any "transportation, pipeline, and electrical transmission systems that are required to construct, maintain, and operate the facility." Minn. Stat. § 216I.05, subd. 3(b)(8). Prior to any decision by the MPUC on the issuance of a site permit, the application goes through review by technical staff at the MPUC and the Minnesota Department of Commerce, along with other agencies, as well as public hearings.

that inspection requests be submitted to the Department of Labor and Industry ("DLI") before work begins, and that DLI inspect completed work for NEC compliance. However, work on the "supply side" of the service point, is governed by the NESC, is beyond DLI's jurisdiction. Minn. Stat. § 326B.33, subd. 21(e), addresses when licensing requirements do not apply to employees and contractors of an electrical utility under specified conditions (the "Exemption").

Unlike the NEC enforced by DLI, the NESC, IEEE Standard, and NERC are specifically designed for utility electrical operations. DLI has recognized that the NEC applies to load-side commercial or residential "premises wiring systems." The NEC expressly states that it does not apply to electrical installations owned exclusively by a utility. (Art. 90.2, Art. 691.1.) However, DLI has stated that, for purposes of the Exemption, it would treat solar generation facilities built by non-public utilities differently from those built by public utilities. In presentations given in 2024 and 2025, DLI asserted that solar facilities like Elk Creek's Project are subject to the NEC and would not qualify for the Exemption.

In January 2025, Elk Creek and DLI discussed whether the Project qualified for the Exemption. On April 28, 2025, Plaintiff formally notified Defendant of its intent to construct the facility and to invoke the Exemption. Elk Creek also filed the notice with the MPUC. In a letter dated May 16, 2025, DLI responded through its Assistant Director and Chief Electrical Inspector, Dean Hunter, rejecting Elk Creek's exemption request and reiterating its interpretation of the Exemption. DLI concluded that the Project "does not appear to qualify for a licensing exemption." DLI stated Elk Creek could provide additional information explaining how the Exemption applies to the proposed facility.

On May 30, 2025, Elk Creek replied seeking additional information on DLI's position, and asked DLI to refer to their prior discussions and to provide the facts and standards used in past exemption determinations. Elk Creek noted that DLI had previously treated other utility-scale

projects like Xcel's Sherco Solar Project, Blazing Star and Pleasant Valley, as eligible for the Exemption.

On June 12, 2025, DLI responded that its denial was based on its belief that Elk Creek was on the load side of the serving utility service point. According to DLI, the Sherco Solar Project had qualified for the Exemption because it was fully owned and operated by Xcel, a public utility company. On July 11, 2025, Elk Creek again asserted the Exemption applied to the Project by detailing the facility's generation-side characteristics and its wholesale-market role under federal and regional reliability standards. Elk Creek relied on the plain language of Minn. Stat. § 326B.33, subd. 21(e), to demonstrate that the Exemption applies to all qualifying utilities, not just public ones like Xcel.

On August 21, 2025, DLI again denied Elk Creek's Exemption request but changed its reasoning, now stating the Project did not meet the Exemption under a different criterion in the statute. It stated that because the wholesale generation may benefit persons other than the utility, it did not meet the Exemption. Elk Creek noted that these facts would also have been true of other previously exempted renewable energy facilities, like Sherco, Blazing Star, and Pleasant Valley.

Elk Creek argues that DLI's reasoning establishes an inconsistent application of the Exemption that is not supported by the plain language of Minn. Stat. § 326B.33, subd. 21(e). In support of their argument, Elk Creek compares its Project to that of the Sherco Solar Project and provides that both projects would be built using nationally recognized general contractors and staff, using the best-available labor to complete the work. It further explains the similarities of both facilities. Specifically, both are:

- utility-scale solar generation projects permitted under Minn. Stat. § 216E.10;
- generating electricity for sale to meet customer demand;
- interconnected to the MISO transmission system under FERC-jurisdictional GIAs;

• subject to NERC BES standards;

• fenced and access-controlled;

• operating in the MISO RTO wholesale market; and

• using auxiliary station power for internal operations.

Elk Creek attempted to engage contractors to oversee the hiring and supervision of all laborers who will build the Project and initiated the bidding process for construction. However, contractors declined to submit bids, citing the legal interpretation by DLI as an obstacle. Contractors reported that DLI's position on the Exemption created uncertainty and risk. Contractors rely on the Exemption to staff utility-scale projects with a qualified and available workforce. Without the flexibility afforded by the Exemption, contractors stated they could not secure enough qualified electricians to complete the Project.

At oral argument, this Court asked Defendants' counsel, "who has the authority to grant the exemption?", to which counsel replied, "no one has the authority." Counsel went on to explain that:

> [T]he statute uses the term exemption, but it's fundamentally -- it curbs the scope of the agency's enforcement jurisdiction. There is no provision in state law that allows anyone to grant an exemption. What it does is -- if D[O]LI were to exercise its enforcement authority under 326B.082 that would be essentially an affirmative defense that someone could bring if D[O]LI were to erroneously bring an enforcement action against someone whose project was subject to the exemption.

Thus, if contractors proceed under the assumption that the Exemption applies, DLI could issue a stop-work order and initiate enforcement proceedings based on its interpretation. Elk Creek and its contractors would then be forced to absorb the costs of defending against such enforcement actions and bear the financial burden of halted construction, which some estimate could cost $200,000 per day. As a result, contractors have been unwilling or unable to bid on the Project, effectively stalling progress on a state-permitted energy project. The position taken by DLI does

not only impact Elk Creek. Other independent power producers seeking to develop MPUC-permitted generation facilities in Minnesota are similarly constrained by DLI's position, threatening the viability of multiple clean energy projects across the state.

Elk Creek argues that DLI's refusal to recognize the Exemption has caused Elk Creek immediate and substantial harm. DLI's refusal to recognize the Exemption has halted the Project from proceeding because, absent applicability of the Exemption, Elk Creek is unable to secure a workforce to complete the Project. Elk Creek has reached out to solicit general contractors but has received no bids due to DLI's position regarding the Exemption. Without a contractor guarantee, Elk Creek also cannot obtain the necessary funding to build the Project.

DLI's position has also created the risk that Elk Creek's Generator Interconnection Agreements ("GIAs") will be terminated. As part of the Project, Elk Creek has executed GIAs with MISO and ITC Midwest LLC. The GIAs require commercial operation by December 1, 2027, and October 31, 2028, respectively. Without immediate resolution, the Project faces the potential termination of its GIAs and possible abandonment of the Project. To date, Elk Creek has invested over $11 million in the Project, including costs for interconnection deposits, land acquisition, environmental and engineering studies, and procurement of major equipment.

On October 14, 2025, after months of correspondence in which DLI maintained that the Project did not qualify for the Exemption, Elk Creek commenced this action and filed a Verified Petition for Writ of Mandamus, Writ of Quo Warranto and seeking to compel application of the Exemption, declaratory and injunctive relief, and damages. On November 4, 2025, Defendants filed their Notice of Motion and Motion to Dismiss, and argue the claims are not justiciable because DLI lacks statutory authority to grant exemptions from Minn. Stat. § 326B's electrical licensing and inspection requirements and has not taken or threatened enforcement action against

Elk Creek. It further argues that any exemptions in Minn. Stat. § 326B operate as limits on enforcement, not as affirmative determinations to be issued by DLI, and that any review of final enforcement would lie by certiorari to the Court of Appeals. Finally, DLI reaffirms their contention that the Project is on the "load side" of the service point and therefore subject to licensing and inspection.

Elk Creek argues that the plain language of Minn. Stat. § 326B.33, subd. 21(e) applies to utilities constructing electrical generation facilities without limiting the exemption to public utilities or to utilities with exclusive retail service territories, and that DLI has added extra-statutory conditions, including requirements related to "serving utility" status and auxiliary power. Elk Creek sought expedited relief, asserting immediate and irreparable harm from the inability to obtain bids and financing and the risk of the Project cancellation and dissolution.

On December 23, 2025, with leave of this Court, Clean Grid Alliance and EDF Power Solutions, Inc. filed amicus curiae briefs supporting Elk Creek, asserting that DLI interprets the electrician-licensing exemption to apply only to public utilities and not to IPPs, which amici argued creates disparate, anti-competitive treatment of functionally identical generation projects and impedes IPP development. Amici urged the Court to require consistent application of the Exemption and contended that utility-scale IPP projects meet the Exemption's criteria, including that they are used exclusively for generation and are not on the load side of the service point.

Also on December 23, 2025, the North Central States Regional Council of Carpenters ("The Carpenters Union") filed an amicus curiae brief in support of Elk Creek. The Carpenters Union argued that the Exemption is unambiguous and applies to utilities constructing electrical generation facilities without distinguishing between public and non-public utilities, and that DLI's interpretation improperly denies the Exemption to non-public utilities. The Carpenters' Union

asserted that requiring licensed electricians to perform non-electrical, structural work, racking and material placement typically done by carpenters and other trades, would arbitrarily narrow the statute and restrict the skilled workforce available for renewable-energy projects. The Carpenters Union also referenced prior treatment of Xcel Energy's Sherco Solar project under the Exemption and asserted that similar work has been performed by carpenters in neighboring states without expansive licensed-electrician requirements, while DLI's interpretation in Minnesota has delayed or prevented projects and caused economic harm to its members.

Legislative Mandate

In 2023, Minnesota enacted binding legislation requiring the state to reach 100% carbon-free electricity by 2040, with interim targets of 80% carbon-free by 2030 and at least 55% renewable by 2035. Minn. Stat. § 216B.1691. These statutory mandates depend on the timely deployment of utility-scale generation and storage resources and their integration into the MISO grid.

Elk Creek argues that by rendering projects like theirs non-biddable by contractors, DLI removes essential carbon-free capacity from the state's energy portfolio and obstructs the integration of such projects into the grid, contrary to Minnesota's established public policy framework. If the Project is canceled, it would eliminate 160 MW of carbon-free capacity from Minnesota's near-term energy mix. The chilling effect on future development would be significant, particularly at a time when state policy calls for rapid acceleration of clean energy deployment.

Additionally, Elk Creeks points out that recent federal developments further underscore the urgency. On October 2, 2025, the U.S. Department of Energy announced the termination of 321 financial awards supporting 223 clean energy projects,[3] placing additional pressure on states

[3] U.S. Dep't of Energy, Energy Department Announces Termination of 223 Projects, Saving Over $7.5 Billion, https://www.energy.gov/articles/energy-department-announces-termination-223-projects-saving-over-75-billion.

like Minnesota to advance viable, near-term generation projects to maintain grid reliability amid shifting federal support. They argue that the Project is the type that will help mitigate fuel price volatility, enhance competition in wholesale energy markets, and bolster grid reliability. To reject the Project by not allowing the Exemption, would be to undermine Minnesota's goals for energy affordability and reliability, threatening to destabilize the policy and regulatory consistency essential to the state's clean energy future.

Elk Creek seeks to obtain a declaration of rights as it relates to Minn. Stat. § 326B.33, subd. 21(e) and the Project's Exemption status.

Conclusions of Law

Declaratory Relief

A declaratory judgment is a declaration of rights or a determination of "whether or not further relief is or could be claimed." Minn. Stat. § 555.01. Under the statute, any person may seek construction of a statute and may "obtain a declaration of rights, status, or other legal relations thereunder." Minn. Stat. § 555.02. As our supreme court explained in *Montgomery v. Minneapolis Fire Dep't Relief Assn,* "[t]he main characteristic of the declaratory judgment, which distinguishes it from other judgments, is the fact that, by the act authorizing it, courts are empowered to adjudicate upon disputed legal rights whether or not further relief is or could be claimed." 218 Minn. 27, 30, 15 N.W.2d 122, 124 (1944) (internal citations removed). The only prerequisite for a court's exercise of jurisdiction in declaratory judgment actions is the presence of a "justiciable controversy." *Seiz v. Citizens Pure Ice Co.,* 207 Minn. 277, 290 N.W. 802, 804 (1940); *Graham v. Crow Wing County Bd. of Comm'rs,* 515 N.W.2d 81, 84 (Minn. Ct. App. 1994) *review denied* (June 2, 1994). Therefore, a declaratory judgment is proper when the court is

"merely declaring the complainant's rights so as to relieve [them] from a present uncertainty and insecurity." *Holiday Acres No. 3 v. Midwest Fed. Sav. and Loan Ass'n,* 271 N.W.2d 445, 448 n. 3 (Minn. 1978).

Justiciability generally requires (1) a genuine or present controversy (2) presented by persons with truly adverse interests and (3) capable of specific rather than advisory relief by a decree or judgment. *Graham,* 515 N.W.2d at 84. In declaratory judgment actions, the "present controversy" requirement of justiciability is viewed leniently and is satisfied if there is a controversy of "sufficient immediacy and reality" to warrant issuance of a judgment. *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan,* 271 N.W.2d 445, 448 (Minn. 1978); *see also* Minn. Stat. § 555.12 (stating that declaratory judgment statute is remedial: "its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and [it] is to be liberally construed and administered"); *Harrington v. Fairchild,* 235 Minn. 437, 440–41, 51 N.W.2d 71, 73 (Minn. 1952).

As Minnesota courts have phrased it, a "ripening seeds" inquiry replaces the usual "present controversy" justiciability inquiry in declaratory judgment situations: if a declaratory judgment claimant possesses "a bone fide legal interest which has been, or with respect to the ripening seeds of a controversy is about to be, affected in a prejudicial manner," jurisdiction exists. *State v. Haveland,* 223 Minn. 89, 92, 25 N.W.2d 474, 477 (1946); *see also Holiday Acres,* 271 N.W.2d at 448; *Minneapolis Fed'n of Men Teachers v. Board of Education,* 238 Minn. 154, 157, 56 N.W.2d 203, 205 (Minn. 1952).

Based on the facts and circumstances presented in this, this Court concludes that the parties have a genuine and present controversy, with truly adverse interests, and capable of specific rather than advisory relief by decree or judgment.

The Exemption Applies to All Utilities

Under Section 326B.33, subd. 21(e), the "employees of any electrical, communications, or railway utility, cable communications company as defined in section 238.02, or a telephone company as defined under section 237.01 or its employees, or of any independent contractor performing work on behalf of any such utility, cable communications company, or telephone company" are exempted from the requirements under Sections 326B.31 through 326B.399, including the master electrician requirements if:

> The employees or subcontractors are performing work on installations, materials, or equipment that are owned or leased, and operated and maintained by the utility in the exercise of that utility's function and:
>
> (i) The installations, materials, or equipment are used exclusively for the generation, transformation, distribution, transmission, or metering of electric current . . . and do not have as a principal function the consumption or use of electrical current . . . by or for the benefit of any person other than such utility;
>
> (ii) are generally accessible only to employees of such utility . . . or persons acting under its control or direction; and
>
> (iii) are not on the load side of the service point.

Minn. Stat. § 326B.33, subd. 21(e).

DLI's interpretation, that the statute only applies to public utilities who provide sale of electricity to retails consumers, is erroneous. Also, DLI's representations that non-public utilities do not qualify under the first criteria because they "consume" auxiliary electricity and generate it for the benefit of third parties, and that non-public utilities do not qualify for the third criteria because they are on the "load side of the service point," are simply wrong.

This case presents an issue of statutory interpretation, which is a question of law. *State v. Boss*, 959 N.W.2d 198, 203 (Minn. 2021). The goal of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Gen. Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791,

795 (Minn. 2019); *see also* Minn. Stat. § 645.16 ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."); Minn. Stat. § 645.17(3) ("the legislature does not intend to violate the Constitution of the United States or of this state."). Courts first look to see whether the statute's language, on its face, is clear or ambiguous. A statute is ambiguous only if "the language therein is subject to more than one reasonable interpretation." *Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 687 (Minn. 2018) (internal quotation omitted). When determining whether a statute is ambiguous, "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2018). If "the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and [we] apply the statute's plain meaning." *State v Stay*, 935 N.W.2d 428, 430 (Minn. 2019) citing *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). "Every law shall be construed, if possible, to give effect to all its provisions." *Id.*

As a matter of law, this Court concludes that the Exemption applies to all utilities and is not limited to public utilities. DLI's first justification for refusing the application of the Exemption fails because Minnesota law is clear and unambiguous that the term "utility" is broader than "public utility," and covers all utilities including IPP's like Elk Creek.

Chapter 326B expressly distinguishes between a "utility" and a "public utility." Minn. Stat. § 326B.36, subd. 8 offers additional requirements for inspection exemptions, distinguishing between the Exemption's application to an "electric utility other than a public utility as defined in section 216B.02, subd. 4, only." As recognized by Minn. Stat § 216B.02, subd. 4, public utilities are a specific subsection of the utility industry that engages in "retail" electric services. Electrical utilities are necessarily a broader category. In its interpretation of the Exemption, DLI adds the

limiter "public" before utility—which the Legislature refused to do. *See State v. Boecker*, 893 N.W.2d 348, 355 (Minn. 2017) (noting that one cannot interpret a provision by "impermissibly add[ing] words to the statute"). Where, as here, the Legislature "uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9(2004) (internal quotation omitted)). Notably, the Legislature's distinction between a "utility" and "public utility" in Chapter 326B is consistent with its use of the term "utility" in statutes that govern MPUC's regulation of Elk Creek as a utility-scale generation facility. Minn. Stat.§ 216I.02, subd. 19.[4]

Additionally, this reading is confirmed by the ordinary and plain meaning of the word *utility*. "Utility" means "a company that provides a service, such as an electricity or gas supply." *See Utility,* Cambridge Dictionary Online.[5] This definition of "utility" is consistent with the purpose of the Exemption, i.e., to recognize that certain entities build and operate electrical facilities as their core business, subject to strict regulatory oversight, and have the requisite expertise to conduct or oversee the work safely.

In fact, DLI has accepted that the language of the statute requires the Exemption to be applied to all utilities, both public and non-public. During the 2025 Legislative session, DLI sponsored a proposed change to the law attempting to amend Minn. Stat. § 326B.31, subd. 21(e) so that the Exemption would apply only to "employees of an electrical utility that sells electric

[4] The Minnesota Energy Infrastructure Permitting Act, Minn. Stat. Ch. 216I, the chapter under which Elk Creek was granted a site permit by the MPUC, defines a utility as, "any entity engaged or intending to engage in generating, transmitting, or distributing electric energy in Minnesota. Utility includes but is not limited to a private investor-owned utility, cooperatively owned utility, and public or municipally owned utility." Minn. Stat. § 216I.02, subd. 19. Likewise, in Minn. Stat. § 216C.06, subd. 18, "utility" is defined as "any entity engaged in this state in the generation, transmission or distribution of electric energy and any entity engaged in this state in the transmission or distribution of natural or synthetic natural gas, including, but not limited to, a private investor-owned utility or a public or municipally owned utility."

[5] https://dictionary.cambridge.org/dictionary/english/utility

service to or for the public at retail." H.F. 1671, 94th Leg., Reg. Sess. (Minn. 2025) *and* S.F. 2149, 94th Leg., Reg. Sess. (Minn. 2025). In other words, DLI asked the Legislature to change Subd. 21(e) expressly to state that it applies only to public utilities.[6] The Legislature rejected DLI's proposed change. DLI is now trying to do what the Legislature refused to do.

The Project's Principal Function: Generate Electricity

DLI has taken the position that the Project failed to meet the requirement of an "installation" that is "exclusively for the generation . . . of electric current" and does not have "as a principal function the consumption or use of electrical current or provided service by or for the benefit of any person other than such utility…." Minn. Stat. § 326B.33, subd. 21(e)(i). DLI explained in its August 21, 2025, letter that the facility's use of de minimis auxiliary power—*i.e.*, the power used to keep the facility's lights on, etc.—makes the facility's principal function the consumption or use of electrical current, and that Elk Creek's wholesale generation of electricity may "benefit" third parties. Both arguments rely upon an interpretation of the statute that would render the Exemption meaningless and impossible. *See* Minn. Stat. §§ 645.08(1); 645.17(1), (2).

It is difficult to understand how a facility that is being built to generate 160 MW of power has, as its "principal function," the consumption or use of electrical current. Pursuant to Elk Creek's MPUC-issued Site Permit, the federal interconnection requirements under both the MISO Tarriff and FERC jurisdiction, its GIAs, and its obligation to comply with NERC Bulk Electrical System ("BES") standards, the Project's principal and exclusive purpose is the generation and sale of 160 MW electrical current for distribution through MISO. As a MISO-connected utility-scale generation facility, Elk Creek simply does not have the "consumption or use" of electrical current

[6] On February 27, 2025, Senators Pinto, Hanson, and Berg introduced HF 1671 with the proposed change. A companion bill, SF 2149, was introduced on March 3, 2025, by Senators McEwen, May Quade, and Boldon, seeking to amend Minn. Stat. § 326B.33 with identical language. Neither bill passed.

(or any other service) as its principal function. A generation facility's need for some auxiliary power also does not, as a matter of law, disqualify it from the Exemption. All utility-scale renewable energy generation facilities must at times consume or use some auxiliary power to operate lights or machinery during non-generation periods. However, the auxiliary power Elk Creek will consume is minimal compared to power they are designed to generate as their principal function. Elk Creek's use of minimal auxiliary power is for its own use and not for the benefit of another. As such, DLI's interpretation fails to apply Subd. 21(e)(1)(i) in accordance with its plain and unambiguous language.

DLI also argues that because Elk Creek may enter into contracts to sell its generated power through the transmission system, this is "for the benefit" of a third-party and, therefore, does not meet the criteria in Subd. 21(e)(1)(i). However, this criterion is only relevant if the "principal function is the consumption or use of electrical current." In this case, it is not. Minn. Stat. §645.17(2) (requiring the statute be read as a whole).

Finally, DLI's position that generating power for sale to third parties is disqualifying is flawed. The purpose of an electrical generation facility is to generate electricity that is transferred through the MISO transmission system to be consumed by end users. DLI's "sale to third parties" interpretation would effectively nullify the existence of an Exemption for all electrical generation utilities, regardless of the utility's organizational structure i.e., those operated by public utilities, cooperatives, municipal power companies, and private-owned developers.

Accessibility of the Project

DLI has not contested that Elk Creek meets the criteria in Subd. 21(e)(1)(ii). The Project will be a fenced, access-controlled generation plant, with installations accessible only to Elk Creek employees or contractors.

The Project is on the Supply Side

DLI claims that Elk Creek does not meet the Exemption because the Project is "on the load side of the serving utility service point." Minn. Stat. § 326B.33, subd. 21(e)(1)(iii). DLI further claims the Sherco Solar Project, to which it granted the Exemption, is not load side because it "was fully owned and operated" by a public utility. The terms "load side" and "service point" are not defined by Chapter 326B. This Court looks to the NEC and NESC for guidance that is consistent across both codes. The codes reflect a clear distinction: residential and commercial "premises" are on the load side and governed by the NEC, and utilities are on the supply side and governed by the NESC. Because Elk Creek is a utility generator, it is on the supply side of the service point, not the load side.

The NEC governs facilities on the "load side of the service point" and expressly states that it does not apply to utility-owned facilities. Specifically, Article 90.2 defines the scope of the NEC's authority and states that the code does not apply to electrical installations if one of several circumstances is met, including if the project is "on property owned or leased by the electric utility for the purpose of . . . generation," if the project is "located in legally established easements or rights-of-way," or, if the project is "located by other written agreements either designated by or recognized by public service commissions, utility commissions, or other regulatory agencies." Article 90.2(B)(5).) All three of these circumstances apply to Elk Creek.

The NESC, is the "definitive standard" that "sets the ground rules and guidelines for practical safeguarding of utility workers and the public during the installation, operation, and maintenance of electrical supply, communications lines and associated equipment." IEEE.org, The NESC, at https://standards.ieee.org/products-programs/nesc/. As explained by IEEE: "From a code enforcement perspective, the NESC differs substantially from the National Fire

Protection Association's National Electrical Code® (NEC®)." *Id.* The NESC is intended to be applied by "the nation's electric and communications utilities" and is "adopted by state regulatory commissions for investor-owned utilities." *Id*. By contrast, the NEC "applies to installations of nonutility electrical equipment, such as in-building wiring and is "enforced largely by local building and electrical inspectors, who are tasked with approving building electrical systems." *Id., see https://standards.ieee.org/wp-content/uploads/import/documents/other/NESC_overview.pdf.*

The NESC Sect. 1.011 adopts the same distinction recognized by the NEC, explaining the code expressly applies to:

> "The generation . . . of electricity . . . through public or private utility systems that are installed and maintained under the exclusive control of utilities or their authorized representatives," and
>
> "Utility facilities that . . . generate energy by conversion from some other form of energy such as . . . solar."

In 2013, the IEEE specifically addressed the application of its standards to utility-scale solar projects and warned that misapplying NEC standards to these utility-scale facilities could result in unsafe conditions and create economic hardship for owners and operators. In its formally issued interpretation, IEEE observed that because "many large-scale PV systems are not constructed or owned by traditional [public] utilities," local and state authorities had incorrectly concluded that the NEC is germane to Utility Scale PV Generating Systems. The 2013 Interpretation emphasized that officials should not try to apply "NEC 690 requirements" to such facilities.

The MPUC issued Elk Creek a Site Permit authorizing construction of the Project. As part of the Site Permit, Elk Creek "shall be designed to meet or exceed all relevant local and state codes, Institute of Electrical and Electronics Engineers (IEEE) standards, the National Electric Safety

Code (NESC), and North American Electric Reliability Corporation (NERC) requirements." (Huyser Decl., Ex. A, Site Permit, p. 18, Section 4.5.1.) These are all "supply side" standards.

This Court concludes that Elk Creek is a utility-scale "supply side" generator of electricity, and as such the NEC does not apply.

Preliminary Injunction

To be entitled to injunctive relief, a party must show that it will suffer irreparable harm without an injunction and that it has no adequate remedy at law. *Queen City Const., Inc. v. City of Rochester*, 604 N.W.2d 368, 372 (Minn. Ct. App. 1999) (citing *Cherne Indus. Grounds & Ass'n*, 278 N.W.2d 81, 92 (Minn. 1979)). In addition, to merit injunctive relief, a party must demonstrate its entitlement under the five factors set forth in *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965). These factors are: (1) the nature and background of the relationship between the parties prior to the request; (2) the harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) the administrative burdens involved in judicial supervision and enforcement. *Id.* Based on review of the record, this Court concludes that Elk Creek's motion satisfies each factor.

As previously noted, if DLI fails to properly apply the Exemption, Elk Creek will suffer irreparable harm as it will be forced to wind down the Project and dissolve the entity. The loss of business can constitute irreparable harm, in part because loss of business is often difficult to measure and may not be easily cured by an award of money damages. *See Ludgate v. Affordable Granite & Cabinetry Inc.,* No. 27-CV-21-6030, 2021 WL 8775411, at *2 (Minn. Dist. Ct. May 18, 2021) ("the loss of business can constitute an irreparable harm, in part because loss of business is often difficult to measure and may not be easily cured by an award of money damages"). In this

case, Elk Creek stands to lose the entire Project before even opening the plant. This factor weighs in favor of granting the injunction.

Elk Creek's Petition seeks a declaratory judgment under Minn. Stat. § 555.02 to resolve an actual and ongoing controversy regarding the interpretation of Minn. Stat. § 326B.33, subd. 21(e). Specifically, Elk Creek requests a judicial determination that the Exemption applies to its Project, notwithstanding DLI's contrary interpretation that limits the Exemption to "public utilities." For the reasons set forth above, Elk Creek is likely to prevail on this claim as well. This factor weighs in favor of granting the injunction.

DLI's position will directly undermine Minnesota's statutory renewable and carbon-free electricity goals, including the Legislature's mandate for 100% carbon-free electricity by the year 2040. By making utility-scale projects non-biddable by contractors, DLI removes needed carbon-free capacity from the resource mix. Maintaining the statutory status quo of applying the Exemption as written imposes no meaningful administrative burdens for DLI. Public Policy considerations weigh in favor of injunctive relief.

The relationship between the parties is that of a state agency, responsible for the enforcement of certain safety codes, and a non-public utility company, attempting to satisfy all applicable state and federal safety code requirements. Granting the injunction would eliminate supervision by DLI, and the administrative burden on the court would be minimal. The application of the Exemption is straightforward. Recognizing that the Exemption applies to Elk Creek, as it does for public utilities, imposes no significant administrative burden on DLI or the Court. This factor weighs in favor of granting the injunction.

This Court has declared that DLI's interpretation and application of Minn. Stat. § 326B.33, subd. 21(e) is contrary to law, declaring that Elk Creek meets the criteria of the Exemption, and

enjoining DLI from any action inconsistent with the plain language of the law.

Conclusion

Having determined that the Exemption is applicable to the Project as approved by the MPUC, this Court now declares, as a matter of law, that Elk Creek is entitled to the Exemption and further orders that DLI is enjoined from bringing enforcement actions against Elk Creek associated with the Project.

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