

Staff Briefing Papers

Meeting Date September 4, 2025

Agenda Item *1

Company Otter Tail Power Company

Docket No. E017/GS-24-309

In the Matter of the Application of Otter Tail Power Company for a Site Permit for the up to 66 MW Solway Solar Project in Beltrami County, Minnesota

- Issues**
- Should the Commission adopt the Administrative Law Judge's Finding of Fact, Conclusions of Law, and Recommendations?
 - Should the Commission find that the Environmental Assessment and the record created at the public hearing adequately address the issues identified in the scoping decision?
 - Should the Commission issue a site permit for the up to 66-megawatt Solway Solar Project?

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✓ **Relevant Documents**

Date

Solway Solar – Application (24 parts)	10/11/2024
PUC- Notice of Public Information and EA Scoping Meeting	12/06/2024
Department of Natural Resources (DNR) – Comments	01/08/2025
Department of Commerce Energy Environmental Review and Analysis (EERA) – Written Comments of the Scope of the EA	01/21/2025
DOC EERA – Oral Public Comments on the Scope of the EA	01/21/2025
PUC Order (via Consent) Accepting Application as Complete	01/28/2025
DOC EERA - EA Scoping Decision (2 parts)	01/31/2025

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 Relevant Documents	Date
Office of Administrative Hearings (OAH) First Prehearing Order	02/13/2025
OAH Amended First Prehearing Order	02/13/2025
PUC – Sample Site Permit by PUC Staff	03/06/2025
PUC Notice of Public Hearing and EA Availability	04/30/2025
DOC EERA Environmental Assessment	04/30/2025
OTP Testimony (4 parts)	05/06/2025
OTP Draft Master Exhibit List	05/12/2025
Shaddix & Associates – Prehearing Transcripts	05/19/2025
Minnesota Interagency Vegetation Management Planning Working Group – Comments	05/30/2025
DNR Comments (2 parts)	05/30/2025
LIUNA Comments	06/02/2025
OTP Reply Comments	06/06/2025
OTP Proposed Findings of Fact (2 parts)	06/06/2025
DOC EERA Reply Comments	06/13/2025
PUC Notice of Legislative Changes	07/09/2025
OAH ALJ’s Report	07/18/2025
PUC EIP Exceptions to ALJ’s Report	07/31/2025
OTP Exceptions to ALJ’s Report	08/01/2025

Attachment A: Project Map

Attachment B: Staff Recommended Draft Site Permit

PROCEDURAL BACKGROUND

On October 11, 2024, the Commission received an application from Otter Tail Power Company (OTP) to construct, own, and operate the Solway Solar Project (Project).

On December 6, 2024, the PUC issued a Notice of Public Information and Environmental Scoping Meetings, scheduled for December 18-19, 2024, with a comment period closing on January 8, 2025.

Between November 8, 2024 and January 8, 2025, the PUC received comments from the Otter Tail Power Company, IUOE Local 49, and the NCSRC of Carpenters, LIUNA Minnesota/North Dakota, and the Department of Natural Resources (DNR).

On January 21, 2025, the Energy Environmental Review and Analysis unit (EERA) filed comments it had received concerning the scope of the environmental assessment (EA).

On January 28, 2025, the PUC issued an Order via the Consent process determining that the application was complete.

On January 31, 2025, EERA filed the EA Scoping Decision.

On February 13, 2025, the Office of Administrative Hearing (OAH) filed a prehearing order establishing the schedule for the review process. On the same day, OAH filed an amended prehearing order.

On April 30, 2025, the Commission issued a Notice of Public Hearings and Availability of the Environmental Assessment scheduled for May 14-15, 2025, with a comment period closing on May 30, 2025.

On April 30, 2025, EERA filed the environmental assessment.

On May 6, 2025, Otter Tail Power Company filed direct testimony of Preston Riewer and Schedule E Cultural Survey Report.

Between May 27 and June 2, 2025, the Commission received post hearing comments from EERA, the Minnesota Interagency Vegetation Management Planning Working Group, DNR, IUOE Local 49 and NCSRC of Carpenters, and LIUNA.

On June 6, 2025, Otter Tail Power Company filed a response to hearing comments and submitted Proposed Finding of Fact, Conclusion of Law, and Recommendation.

On June 13, 2025, EERA filed a response to hearing comments and Otter Tail Power's Proposed Findings of Fact, Conclusions of Law, and Recommendations.

On July 18, 2025, the OAH filed Judge Todnem's Findings of Fact, Conclusions of Law, and Recommendations.

On July 31, 2025, PUC EIP filed a letter noting that they had no exceptions to the ALJ's Report.

On August 1, 2025, Otter Tail Power Company filed exceptions to the ALJ's Report.

Statement of Issues

- Should the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendations?
- Should the Commission find that the Environmental Assessment and the record created at the public hearing adequately address the issues identified in the scoping decision?
- Should the Commission issue a site permit for the up to 66-megawatt Solway Solar Project in Beltrami County?

Project Description

Otter Tail Power Company (Otter Tail Power) submitted a site permit application for the construction and operation of the Solway Solar Project, an up to 66-megawatt (MW) photovoltaic (PV) solar energy generating facility (Project) located in Lammers Township in Beltrami County, Minnesota.

The proposed project would consist of approximately 100,000 solar panels and be located on approximately 267 acres within a 487-acre site. The main components of the project would include PV solar modules and tracking system, inverters, step-up transformers, collector lines, security fencing, access roads, stormwater treatment areas, weather stations, an operation and maintenance building, a substation, transformers, and a new approximately 500-foot overhead 115 kV transmission line that would connect the project using existing interconnection rights at the Solway Combustion Turbine Generating Station. The project would be constructed on property owned by Otter Tail Power Company. The applicant plans to construct the project on a schedule that facilitates an in-service date by the end of 2026.

Statutes and Rules

A. Certificate of Need

Minn. Stat. § 216B.243 Subd. 9.¹ The Project is exempt from certificate of need

¹ [Minn. Stat. § 216B.243 Subd. 9](#)

requirements pursuant to Minn. Stat. § 216B.2422, subd. 5, and Minn. Stat. § 216B.243, subd. 9 because the Project was selected through a Commission-approved bidding process and is intended to meet Minnesota's renewable energy objectives.

B. Site Permit

Minn. Stat. § 216E.03, Subd. 1.² No person may construct a large electric generating plant or an energy storage system without a site permit from the commission. A large electric generating plant or an energy storage system may be constructed only on a site approved by the commission.

Minn. Stat. § 216E.01, Subd. 5.³ Large electric power generating plant. "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more. The proposed Project is up to 66 MW. As a result, a site permit is required.

Minn. Stat. § 216E.04.⁴ Alternative Review of Applications. The Applicant chose to follow the alternative review process outlined in Minn. R. 7850.2800-.3900 and requires the commissioner of the Department of Commerce to prepare an environmental assessment on behalf of the Commission.

Minn Stat. § 216E.03, Subd. 7.⁵ Considerations in Designating Sites and Routes.

C. Route Permit

Minn. Stat. § 216E.01, Subd. 4,⁶ defines a high-voltage transmission as one capable of operating at 100 kilovolts or more and exceeding 1,500 feet in length. The proposed Project includes a 115 kV gen-tie line that is less than 500 feet long. As a result, the Project does not require a route permit from the Commission.

ALJ Report⁷

The ALJ was charged with applying the siting criteria established in statute and rule, and preparing a report that contained findings of fact, conclusions of law, and a recommendation on the proposed project. Commission staff summarized the full ALJ report in this briefing paper but refers the Commission to the ALJ Report for a complete analysis.

Staff Note: The ALJ used EERA's April 30, 2025 draft site permit attached to the EA

² [Minn. Stat. § 216E.03, Subd. 1](#)

³ [Minn. Stat. § 216E.01, Subd. 5](#)

⁴ [Minn. Stat. § 216E.04](#)

⁵ [Minn Stat. § 216E.03, Subd. 7](#)

⁶ [Minn. Stat. § 216E.01, Subd. 4](#)

⁷ OAH, [Report-Findings of Fact, Conclusions of Law and Recommendations](#), 07/18/2025

(Appendix C) as the basis for their analysis and recommendation.

A. Public Hearings⁸

The Commission referred this docket to the Office of Administrative Hearings for the assignment of an Administrative Law Judge (ALJ) to conduct public hearings on the Project. On April 30, 2025, a notice was issued for hearings to be held on May 14th and 15th, 2025. A comment period was open until May 30, 2025.

Throughout the comment period, the Commission received several comments on the Project from members of the public, DNR and local government representatives. The comments or concerns expressed included the following topics:

- Heat generation from solar panels reflection
- Runoff water
- Security fencing
- Lighting
- Dust control during construction
- Erosion control
- Tree clearing
- Vegetation Management Plan
- Tax Revenue to local governments
- Production tax credit
- Recycling solar panels
- Impact on local roads
- Solar panels impact on downstream water quality

B. Agency, Tribal, and Stakeholder Coordination⁹

As part of their pre-Application efforts, Otter Tail Power initiated outreach to public agencies and Tribal Governments through Project notification letters. Many agencies were contacted to gather feedback on the Project. Initial outreach letters and maps were sent to most federal and state agencies, and tribal governments in Summer 2024. Otter Tail Power requested input specific to the resources under each agency's respective jurisdiction, as well as the identification of permits and/or approvals that may be potentially required for the Project. All representative letters and agency responses received as of September 20, 2024 are included in Appendices Q and R of the Site Permit Application.

Otter Tail Power indicated they will continue to coordinate with township and county officials as the Project moves forward and will seek any necessary local permits.

⁸ OAH, ALJ's Report, page 1

⁹ [Site Permit Application](#), October 11, 2024, page 95

C. Environmental Assessment¹⁰

The ALJ stated the environmental assessment (EA) is complete if it and the record address the issues and alternatives identified in the Scoping Decision. The ALJ concluded that the evidence in the record demonstrates that the EA is complete.

D. Site Permit¹¹

The ALJ found that the record demonstrates that the Applicant has satisfied the criteria for a site permit outlined in Law and Rule (Minn. Stat. § 216E.03 (2023) and Minn. R. Ch. 7850). Additionally, the Project, as recommended, satisfies the site permit criteria for a large electric generating plant and meets all other applicable legal requirements.

Site Permit Special Conditions supported by the ALJ:

5.1 Noise Monitoring

The Permittee shall complete noise monitoring if any residents report or file a complaint with respect to project noise. Any additional noise monitoring shall be coordinated with Commission staff and the monitoring protocol shall be approved by Commission staff before implementation. Noise monitoring results shall be provided to Commission staff. If any violations of the state noise standard are identified, the Permittee will be responsible for the implementation of any mitigation measures necessary to meet the state noise standard.

5.4 Northern Long-Eared Bat

The Permittee shall comply with U.S. Fish and Wildlife Service guidance and requirements in effect regarding Northern Long-eared Bats, including tree clearing restrictions.

5.5 Gray Wolf

The Permittee shall comply with DNR wolf management guidance and notify the U.S. Fish and Wildlife Service if there is observed gray wolf activity during project construction that could indicate a den or rendezvous site in proximity.

5.6 Bald Eagle

If, in consultation with the U.S. Fish and Wildlife Service, a bald eagle nest must be removed for construction of the project, the Permittee shall file with the Commission the documentation authorizing any such nest removal at least 14 days prior to the pre-construction meetings.

In addition, the ALJ supported the DNR's recommended special permit conditions¹² for facility lighting, dust control, wildlife friendly erosion control, Northern Long-eared Bat (NLEB) protections, and a VMP. The ALJ noted that although the Applicant and DNR disagree about the

¹⁰ OAH, ALJ's Report, page 35

¹¹ Ibid., p. 35-36

¹² [MN DNR Comments](#), May 30, 2025

appropriate fence height, the Applicant does not object to the inclusion of these conditions.

With respect to the security fencing around the solar facility, in their May 30, 2025 Comments, DNR recommended at least ten-foot-tall security fencing to prevent large wildlife from entering the solar facility. The EA and Application describe Project fencing as seven-foot-high agricultural woven wire fence topped with three strands of high-tensile smooth wire, for a total height of eight-feet designed to exclude deer. Otter Tail Power indicated the purpose of the fence is to prevent deer from entering the facility, but a ten-foot-high security fence creates several other issues. For example, as reflected in Section 4.3.32 (Security Fencing) of the DSP, the security fence should be designed to “minimize the visual impact of the Project.” Ten-foot-tall security fencing around the arrays would result in a greater visual impact, in the opinion of Otter Tail Power, with no evidence that it would better exclude deer than Otter Tail Power’s proposed design.

Exceptions to the ALJ Report

A. Otter Tail Power

1. Gray Wolf Condition

Otter Tail Power asserts that there is a contradiction between the ALJ’s Finding 174 which concludes ““DSP Special Condition 5.5, as modified by the Applicant, is reasonable and supported by the record.” and Finding 209 which reaches the opposite conclusion “Otter Tail’s proposed modification is not necessary...”. Otter Tail Power proposed to delete the entirety of Finding 209 and replace it with the following:

209. Otter Tail’s proposed modification is reasonable, and the record supports its inclusion in the Site Permit.

2. Noise Condition

Otter Tail Power recommends the following modification to Finding No. 204 to ensure that Otter Tail Power first has the opportunity to investigate and substantiate noise complaints and to work directly with the landowner to resolve such complaints, consistent with Attachment 2 of the DSP:

5.1 Noise Monitoring

The Permittee shall complete noise monitoring ~~if any residents report or file a complaint with to~~ [address any unresolved complaints with](#) respect to project noise. Any additional noise monitoring shall be coordinated with Commission staff and the monitoring protocol shall be approved by Commission staff before implementation. Noise monitoring results shall be provided to Commission staff. If any violations of the state noise standard are identified, the Permittee will be responsible for the implementation of any mitigation measures necessary to meet the state noise standard.

3. Project Life

Otter Tail Power noted that the ALJ accurately concluded that the life of the Project is at least 35 years.¹³ Although Otter Tail Power recognizes that the Commission typically issues site permits with 30-year terms, this has largely been a matter of practice. As an investor-owned utility, the Commission has evaluated Otter Tail Power's long-term need for solar resources in selecting this Project as a reasonable means of meeting Otter Tail Power's obligations under the Carbon-free and Renewable Energy Standards. Otter Tail Power asserted it is reasonable that the site permit reflect the full 35-year expected life of the solar equipment such that Otter Tail Power and its ratepayers can rely on the full benefits of the Project.

B. PUC EIP

Minnesota Public Utilities Commission, Energy Infrastructure Permitting (EIP) (formerly EERA staff) has reviewed the Findings of Fact, Conclusions of Law, and Recommendations (ALJ report) issued by Administrative Law Suzanne Todnem on July 18, 2025 and indicated that the report accurately reflects the record for the project, and it did not have any exceptions to the report.

Staff Discussion

The Commission has the following issues before it regarding the proposed Solway Solar Project:

- Whether to adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommendation.
- Whether to find the environmental assessment is adequate.
- Whether to issue a site permit.

Based on information in Otter Tail Power's site permit application, the analysis provided in the EA, public comments, the ALJ's Report, exceptions, and other evidence in the record, staff provides the discussion below.

1. Environmental Assessment

Staff has reviewed the EA and agrees with the ALJ that DOC EERA conducted an appropriate environmental analysis of the project for purposes of these proceedings, and that the EA satisfies the requirements under Minn. R. 7850.3700 and Minn. R. 7849.1500.

- The EA did not identify any unique or significant environmental impacts from the construction and operation of the project that could not be properly mitigated.
- No information was submitted into the record that contested the information and analysis contained in the EA.

If the Commission does not find the EA complete, it must identify the reasons it is not complete

¹³ ALJ Report at Finding 78

and request that the EA be revised or supplemented. In that case, a schedule for revising or supplementing the EA would need to be determined and the Commission would need to revisit its decisions after completion of the revised EA.

B. ALJ Report

Staff agrees with the findings, conclusions, and recommendations reached by the ALJ. Staff finds that the ALJ's Report is a sound, comprehensive, and common-sense ruling that is reflective of the case record. The ALJ's Report documents that the procedural requirements were followed and presents findings of fact for each of the decision criteria that must be met for a site permit for a large electric generating plant. Therefore, staff recommends that the Commission approve the ALJ's Report with the single change proposed by Otter Tail Power in their exceptions and identified above as new Finding 209 to the extent it is consistent with and necessary for the Commission's final decisions in these matters.

C. Proposed Site Permit

Staff agrees with DOC EERA and the ALJ that the Commission should issue a site permit to Otter Tail Power Company for the 66-MW Solway Solar Project to be located in Beltrami County, Minnesota. Staff also agrees that the Draft Site Permit proposed by EERA and as modified by the ALJ, which includes the agencies' concerns¹⁴ as special permit conditions in Section 5, should be issued as the site permit for the project.

Should the Commission modify or propose additional permit conditions, staff will make the necessary modifications to ensure agreement with the Commission's final order in the matter.

Staff noticed that the special permit conditions proposed by the MN DNR in their May 30, 2025 Comments were not explicitly listed in the ALJ's Report or included in the EERA Draft Site Permit. However, the EERA included in their June 13 Reply Comments¹⁵ additional permit conditions proposed by the DNR which are listed here. EERA also proposed a revision to condition 5.1 from the Draft Site Permit:

5.1 Noise Monitoring

The Permittee shall complete noise monitoring if any residents report or file a complaint with respect to project noise. Any additional noise monitoring shall be coordinated with Commission staff and the monitoring protocol shall be approved by Commission staff before implementation. Noise monitoring results shall be provided to Commission staff. If any violations of the state noise standard are identified, the Permittee will be responsible for the implementation of any mitigation measures necessary to meet the state noise standard.

¹⁴ [MN DNR Comments](#), May 30, 2025

¹⁵ [EERA Reply Comments](#), June 13, 2025

5.7 Facility Lighting

The Permittee must use shielded and downward facing lighting and LED lighting that minimizes blue hue at the project substation and operations and maintenance facility. Downward facing lighting must be clearly visible on the site plan submitted for the project.

5.8 Wildlife-Friendly Erosion Control

The permittee shall use erosion control materials that do not contain plastic or synthetic fibers or malachite green dye.

5.9 Dust Control

The Permittee shall utilize non-chloride products for onsite dust control during construction.

DNR proposed the addition of a special condition to the DSP to ensure compliance with state endangered species laws. EERA supports the inclusions of the special condition in the DSP and recommended the following language provided by the DNR:

5.10 State-listed Species

The Permittee will comply with applicable Minnesota Department of Natural Resources requirements related to state-listed endangered and threatened species in accordance with Minnesota's Endangered Species Statute (Minnesota Statutes, section 84.0895) and associated Rules (Minnesota Rules, part 6212.1800 to 6212.2300 and 6134). The Permittee shall keep records of compliance with this section and provide them upon the request of Department of Commerce or Commission staff.

The other two conditions listed by DNR in their May 30 Comments namely the Northern Long-eared Bat condition and the recommendation for coordination with the Vegetation Management Plan Working Group (VMPWG) to refine the Project's Vegetation Management Plan (VMP) are already included in the DSP as conditions 4.3.16, 4.3.17, and 5.4.

Staff notes that the final site permit will list the special permit conditions under a new numbering system in section 5. The ALJ concluded that permit conditions 5.2 Subsurface Investigation and 5.3 Archeological Survey as proposed in the DSP are no longer needed because those conditions have already been met or are no longer needed.

Staff supports a final site permit what would include permit condition 5.1 as modified by Otter Tail Power in their exceptions filing, permit conditions 5.4, 5.5, and 5.6 as proposed by EERA in the DSP and supported by the ALJ and the new permit conditions 5.7, 5.8, 5.9, and 5.10 as proposed by DNR and supported by the ALJ and EERA.

DECISION OPTIONS

Environmental Assessment

1. Determine that the Environmental Assessment and the record created in this matter address the issues identified in the Scoping Decision. (Applicant)
- (OR)
2. Determine that the Environmental Assessment and the record created in this matter do not address the issues identified in the Scoping Decision and direct PUC EIP staff to prepare a supplement to the Environmental Assessment that addresses the identified deficiencies.

ALJ Report

3. Adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommendation, to the extent it is consistent with the Commission's final decisions. (Applicant)
- (AND)
4. Adopt the following modifications to the ALJ Report as identified in Otter Tail Power's August 1, 2025 Exceptions to ALJ Report: (Applicant)

- a. Replace Finding 209 with the following: Otter Tail's proposed modification is reasonable, and the record supports its inclusion in the Site Permit.
- b. Modify Condition 5.1 Noise Monitoring as follows:

The Permittee shall complete noise monitoring ~~if any residents report or file a complaint with~~ to address any unresolved complaints with respect to project noise. Any additional noise monitoring shall be coordinated with Commission staff and the monitoring protocol shall be approved by Commission staff before implementation. Noise monitoring results shall be provided to Commission staff. If any violations of the state noise standard are identified, the Permittee will be responsible for the implementation of any mitigation measures necessary to meet the state noise standard.

Site Permit

5. Issue the EERA Proposed Site Permit as included with EERA's April 30, 2025 EA Filing (Attachment C) and recommended by the judge in the ALJ's Report as the Site Permit for the 66-megawatt Solway Solar Project proposed in Beltrami County, Minnesota.
- (OR)
6. Issue the EERA Proposed Site Permit as included with EERA's April 30, 2025 EA Filing (Attachment C) with the recommendations provided by the ALJ and the following additional or modified conditions:
 - a. Modified permit condition 5.1 as proposed by the Applicant. (Applicant)
 - b. 5.7 Facility Lighting as proposed by DNR. (DNR)
 - c. 5.8 Wildlife-Friendly Erosion Control as proposed by DNR. (DNR)

- d. 5.9 Dust Control as proposed by DNR. (DNR)
- e. 5.10 State-listed Species as proposed by DNR. (DNR)
- f. Extended permit duration of 35 years from the date of approval instead of 30 years. (Applicant)

(OR)

- 7. Do not issue a site permit for the 66-megawatt Solway Solar Project and state the reasons for the denial.

Administrative

- 8. Authorize Commission staff to modify the Proposed Site Permit to correct typographic and formatting errors, to reflect recent changes to infrastructure permitting legislation as applicable, and ensure consistency with the Commission's final order in the matter. (Staff)

Staff Recommendation: 1, 3, 4(a-b), 6(a-f), and 8

Appendix A, Figure A-2: Project Area and Project Footprint

