

**Appendix C      Scoping Decision**

# MEMO

**Date:** October 17, 2023

**To:** Michell Gransee, Deputy Commissioner

**Through:** Raymond Kirsch, Supervisor EERA

**From:** William Cole Storm, Environmental Review Manager  
EERA, (651) 539-1844

**Subject:** Environmental Assessment Scoping Decision for Elk Creek Solar Project, PUC Docket Nos. IP7009/GS-19-495

## ***Action Required***

The signature of the Deputy Commissioner is requested on the attached Environmental Assessment (EA) Scoping Decision. Once signed, Department of Commerce, Energy Environmental Review and Analysis (EERA) staff will provide notice of the Scoping Decision to those persons on the *Project Contact List* and begin preparing the Environmental Assessment.

## ***Background***

On September 13, 2019, Elk Creek Solar, LLC (Applicant) submitted applications to the Minnesota Public Utilities Commission (Commission) for a certificate of need (CN) and a site permit for the Elk Creek Solar Project. The site permit application was reviewed under the alternative review provisions of Minnesota Rule Chapter 7850. The Commission issued Orders granting the CN and issuing the site permit on December 31, 2020. The site permit authorized the permittee to construct and operate an up to 80 MW solar energy conversion system and associated facilities on 976 acres in Vienna Township, Rock County, Minnesota.

On June 2, 2023, the Applicant applied to the Commission requesting an *Amendment of Permit Conditions*, pursuant to Minnesota Rule Chapter 7850.4900, to the site permit previously issued for the Elk Creek Solar Project.

The Applicant is requesting Commission approval to increase the Elk Creek Solar project site boundary from 976 acres to 1,522 acres and the nameplate capacity of the project from 80 MW to 160 MW.

On June 12, 2023, the Commission issued notice of the Applicant's filing and requested comments on the appropriate environmental review and permitting process for the project.<sup>1</sup>

On July 21, 2023, EERA recommended that the Applicant file a site permit application for a new solar project, and that the Applicant restructure and refile the current document as a stand-alone site permit application pursuant to Minn. Stat. § 216E.04.

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<sup>1</sup> Notice of Comment Period on Site Permit Amendment Request, June 12, 2023. Docket No. 20236-196477-01.

On August 31, 2023, the Commission approved a modified permit amendment process which included: 1) varying the 10-day decision timelines in Minn. R. 7850.4900, Subp. 3; 2) requiring the applicant to submit a standalone site permit application that incorporates the amended application and modifications; 3) requiring a supplement to the EA; and 4) requiring a hearing in the project area.

On September 13, 2023, Commission staff issue a notice of public comment period on the scope of the environment assessment; the comment period closed on October 4, 2023.

***Schedule***

Please review and provide a signature by October 20, 2023. If you require any changes or have any questions, please contact staff as soon as possible. The Environmental Assessment is scheduled to be completed by the end of February 2024.

In the Matter of the Application of  
Elk Creek Solar, LLC, for a Site Permit for the  
160 MW Elk Creek Solar Project in Rock  
County, Minnesota

**Environmental Assessment  
Scoping Decision**

**Docket No. IP7009/GS-19-495**

The above matter is before the Commissioner of the Department of Commerce (Department) for a decision on the scope of the environmental assessment (EA) to be prepared for the Elk Creek Solar Project (Project) proposed by Elk Creek Solar, LLC (Applicant) in Rock County.

This scoping decision identifies topics that will be analyzed in the EA.

### Project Purpose and Description

The Applicant is proposing to construct a solar facility on 1,522 acres to accommodate an increase in the nameplate capacity of the Elk Creek Solar project to the full 160 megawatts that Elk Creek has executed Generation Interconnection Agreements for with the Midcontinent Independent System Operator (MISO).

The Project is in Vienna and Magnolia Townships, Rock County, Minnesota. Under the current proposal, the Project will generate up to 160 MW. Elk Creek plans to construct the Project on a schedule that facilitates an in-service date by the end of 2025.

### Regulatory Background

On September 13, 2019, Elk Creek Solar, LLC (Applicant) submitted applications to the Minnesota Public Utilities Commission (Commission) for a certificate of need (CN) and a site permit for the Elk Creek Solar Project. The site permit application was reviewed under the alternative review provisions of Minnesota Rule Chapter 7850. The Commission issued Orders granting the CN and issuing the site permit on December 31, 2020. The site permit authorized the permittee to construct and operate an up to 80 MW solar energy conversion system and associated facilities on 976 acres in Vienna Township, Rock County, Minnesota.

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### Scoping Process Summary

On September 13, 2023, Commission staff issued a notice of public comment period on the scope of the environment assessment; the comment period closed on October 4, 2023.<sup>2</sup>

One comment letter was received, and it came from the Minnesota Department of Natural Resources (DNR).<sup>3</sup> The DNR made several points that the EA should cover and that the applicant should take note of:

- Security Fencing  
The EA should address the security fence design. Section 3.1.4 of the permit application states that security fencing will be installed along the perimeter of the solar arrays and Preliminary Development Area. DNR appreciates the integration of deer egress gates, as shown in Appendix B, Sheet C200. However, the placement of the gates should be adjusted so that any deer removed from the solar facility are not directed onto nearby roadways. Additionally, placing the gates at an “outward facing” corner, rather than an “inward facing” corner, would aid in removing deer that may enter the facility. DNR advises that the DNR’s *Commercial Solar Siting Guidance* was updated in February 2023. The guidance reflects current fencing recommendations to help avoid or mitigate wildlife entanglement or entrapment.
- State-listed Fish  
The EA should describe measures to avoid and/or minimize impacts to state-listed fish species. The Natural Heritage review letter (July 5, 2023) states that Topeka shiner (*Notropis topeka*), a federally listed endangered and state-listed special concern species, and plains topminnow (*Fundulus sciadicus*), a state-listed threatened species, have been documented in several places in Elk Creek in the vicinity of the proposed project. These fish species are adversely impacted by actions that alter stream hydrology or decrease water quality. Stringent erosion and sediment control practices must be implemented and maintained near the stream and any of its tributaries during project construction and operation. Section 4.5.8.4 of the permit application indicates that Elk Creek will follow the U.S. Fish and Wildlife Service’s *Recommendations for Construction Projects Affecting Waters Inhabited by Topeka Shiners in Minnesota*.

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<sup>2</sup> Notice of public comment period on scope of environmental assessment, September 13, 2023. Docket No. 20239-198913-01.

<sup>3</sup> Minnesota Department of Natural Resources, October 4, 2023. Docket No. 202310-199388-01.

- Facility Lighting  
The EA should discuss measures to mitigate lighting impacts associated with the operation and maintenance facility, inverters, and security lighting at the entrances. Section 3.1.4 of the permit application states that lighting at the entrances and inverters will be downlit. Downlighting will help minimize light pollution. The DNR advises that LED lighting is often high in blue light, which is harmful to birds, insects, and other animals. Potential project impacts related to illuminated facilities can be avoided or minimized by using shielded and downward facing lighting and lighting that minimizes blue hue.
- Dust Control  
The EA should address dust control. Section 4.5.1.1 of the permit application states that, when necessary, dust from construction traffic will be controlled using standard construction practices such as watering of exposed surfaces and reduced speed limits. DNR recommends avoiding products containing calcium chloride or magnesium chloride, which are often used for dust control. Chloride products that are released into the environment do not break down, and instead accumulate to levels that are toxic to plants and wildlife.
- Wildlife-Friendly Erosion Control  
The EA should address the importance of using wildlife-friendly erosion control. Due to entanglement issues with small animals, the DNR recommends that erosion control blankets be limited to “bio-netting” or “natural netting” types, and specifically not products containing plastic mesh netting or other plastic components. Hydro-mulch products may contain small synthetic. (plastic) fibers to aid in its matrix strength. These loose fibers could potentially re-suspend and make their way into waterways.

Having reviewed the matter and consulted with Department staff, I hereby make the following scoping decision in accordance with Minnesota Rule 7850.3700:

#### **MATTERS TO BE ADDRESSED**

The EA will describe the project and the human and environmental resources of the project area. It will provide information about potential impacts—both positive and negative—concerning the resources outlined in this scoping decision. The EA will describe mitigation measures that could reasonably be implemented to reduce or eliminate identified negative impacts. The EA will identify impacts that cannot be avoided and irreversible and irretrievable commitments of resources.

Data and analyses in the EA will be commensurate with the importance of potential impacts and the relevance of the information to consider mitigation measures. EERA staff will consider the relationship between the cost of data and analyses and the relevance and importance of the information in determining the level of detail to provide in the EA. Less important material may be summarized, consolidated, or simply referenced.

The EA will list information sources. If relevant information cannot be obtained within timelines prescribed by statute and rule, the costs of obtaining such information is excessive, or the means to

obtain it is unknown, EERA staff will include in the EA a statement that such information is incomplete or unavailable and the relevance of the information in evaluating potential impacts or alternatives.

The issues outlined below will be analyzed in the EA for the project. This outline is not intended to serve as a table of contents for the document itself.

### **Project Information**

- Purpose
- Description (including perimeter/security fencing, facility lighting/spectrum)
- Location
- Site Requirements
- Engineering and Design
- Construction (including dust control and use of chloride containing products)
- Operation and Maintenance
- Decommissioning
- Cost

### **Regulatory Framework**

- Certificate of Need
- Site Permit
- Other Permits or Approvals
- Environmental Review Process

### **Affected Environment, Potential Impacts, and Mitigative Measures**

#### **Human Settlement**

- Aesthetics
- Cultural Values
- Displacement
- Electronic Interference
- Land Use and Zoning
- Noise
- Public Health and Safety (including EMF, stray voltage)
- Public Services and Infrastructure
- Recreation
- Socioeconomics (including property values)

#### **Land Based Economies**

- Agriculture (including drainage infrastructure)
- Forestry
- Mining
- Tourism

#### **Archaeological and Historic Resources**

### **Natural Environment**

- Air
- Geology
- Groundwater
- Surface Water
- Rare and Unique Resources (including T&E species)
- Soils (including dust control and use of chloride containing products)
- Vegetation (including pollinator plants)
- Wetlands (including stormwater control/designs)
- Wildlife (including fencing, state-listed fish species, lighting, and wildlife-friendly erosion control)
- Wildlife Habitat

### **Unavoidable Impacts**

The EA will discuss ways to mitigate potential impacts; however, even with mitigation strategies, certain impacts cannot be avoided. These unavoidable impacts will be listed.

### **Irreversible and Irretrievable Commitments of Resources**

Resource commitments are irreversible when it is impossible or very difficult to redirect that resource to a different future use. An irretrievable commitment of resources means the resource is not recoverable for use by future generations. Irreversible and irretrievable commitments of resources will be listed.

## **ISSUES OUTSIDE THE SCOPE OF THE ENVIRONMENTAL ASSESSMENT**

The EA will not consider the following:

- Any site alternative other than the site location proposed by the applicant.
- The manner in which landowners are compensated for the project.

## **SCHEDULE**

The EA is anticipated to be complete in a January-February 2024 timeframe. Upon completion, it will be noticed and made available for review. A public hearing will be held in the project area after the EA has been issued. This hearing will be noticed. Comments on the EA may be submitted into the hearing record.

Signed this 20th day of October 2023

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE



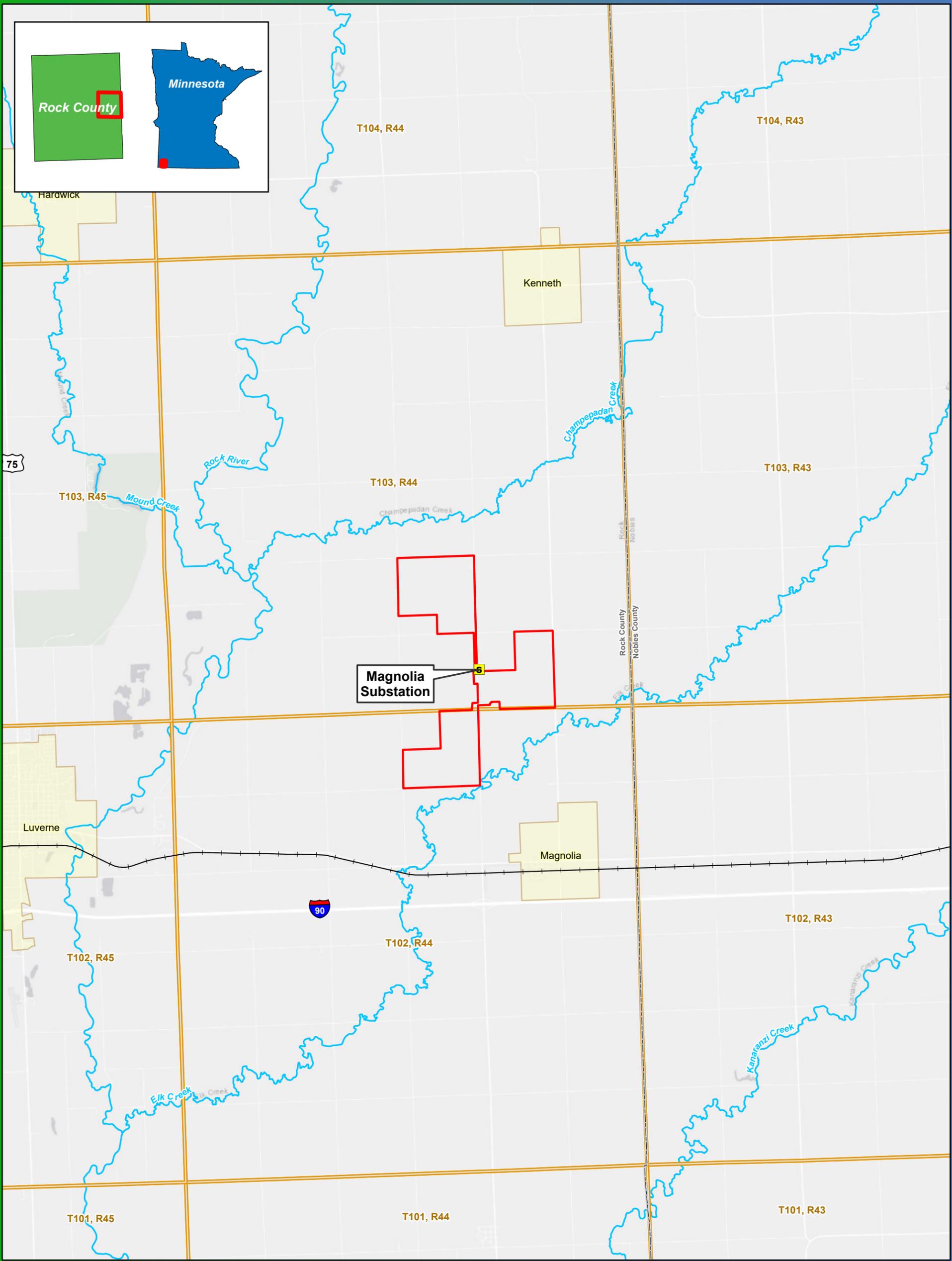
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Michelle Gransee, Deputy Commissioner



**Figure 1 Project Location/Site**





**Figure 1**  
**Project Location**  
**Elk Creek Solar Project**  
**Rock County, MN**  
**43.67819, -96.09293**



0 1 2 Miles

1:75,000

- S Existing Substation
- Land Control Area
- City/Town
- Township
- County Boundary
- ~ NHD Named Stream
- + Railroad

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
EA Scoping Decision**

**Docket No. IP7009/GS-19-495**

Dated this **23<sup>rd</sup>** day of **October 2023**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michael	Allen	michael.allen@allenergysolar.com	All Energy Solar	721 W 26th st Suite 211  Minneapolis, MN 55405	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
Jeremy	Duehr	jduehr@fredlaw.com	Fredrikson & Byron, P.A.	60 S Sixth St Ste 1500  Minneapolis, MN 55402-4400	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Bret	Eknes	bret.eknes@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Lucas	Franco	lfranco@liunagroc.com	LIUNA	81 Little Canada Rd E  Little Canada, MN 55117	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Michael	Kaluzniak	mike.kaluzniak@state.mn.us	Public Utilities Commission	Suite 350 121 Seventh Place East St. Paul, MN 55101	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Jessica	Palmer Denig	jessica.palmer-Denig@state.mn.us	Office of Administrative Hearings	600 Robert St N PO Box 64620 St. Paul, MN 55164	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N  Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Melissa	Schmit	melissa@nationalgridrenewables.com	National Grid Renewables	8400 Normandale Lake Blvd Ste 1200  Bloomington, MN 55437	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190  Richfield, MN 55423	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
William	Storm	bill.storm@state.mn.us	Department of Commerce	Room 500 85 7th Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, MN 55155-4040	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495